

CWP-14913-2023

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14913-2023 (O&M)

Reserved on 02.09.2024

Pronounced on: September 16 , 2024

Randeep Singh

.....Petitioner

vs.

Punjab and Haryana High Court, Chd and others
Through its Registrar General

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**Present: Mr. Akshit Mehta, Mr. Shivam Sharma and
Mr. Sukhdeep Singh, Advocates, for the petitioner.Mr. Gaurav Chopra, Senior Advocate assisted by
Mr. Ajaivir Singh, Advocate, for respondent No. 1

Ms. Divya Sharma, Advocate, for respondent No. 2

Mr. Maninder Singh, Sr. DAG, Punjab

SUDEEPTI SHARMA J.

1. The petitioner in the present petition has approached this Court for quashing/declaring *ultra vires* Rule 7 (vii) (a) of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (hereinafter to be referred as “Rules 1997”) to the extent that it provides to have passed Matriculation Examination with Punjabi as one of the subject and do not provide for the consideration of those candidates who are having equivalent qualification of Punjabi Language for recruitment to the post of Clerks in the State of Punjab for Subordinate Courts.

BRIEF FACTS OF THE CASE

2. Respondent No. 1 (Punjab and Haryana High Court) advertised 759 posts of Clerk through respondent No. 2 (Society for Centralized

Recruitment of Staff in Subordinate Courts in the State of Punjab), vide

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advertisement No. 30/C/SSSC/PB/2022 dated 06.08.2022 and out of above 759 posts, 355 posts were meant for General Category.

3. The petitioner, who was fully eligible for the above posts of Clerk, as per criteria mentioned in the advertisement, applied for the same under General Category. He submitted all the relevant documents along with his on-line application form. The petitioner was called for appearing in examination conducted as per the above said advertisement under Roll No. 2033019. The final result for the above posts was declared on 12.04.2023, as per which 488 candidates were selected under the General Category. However, the roll number of the petitioner was shown in the **Note** of the final result, wherein it was mentioned that the candidature of the petitioner was rejected due to the reason that he does not possess the requisite qualification of Punjabi as one of the subject in Matriculation.

4. The petitioner submitted his representation to respondent No. 2 (Society for Centralized Recruitment of Staff in Subordinate Courts in the State of Punjab), stating therein that he possess all the qualifications, as mentioned in the advertisement dated 06.08.2022 and his candidature has wrongly been rejected.

5. As per the advertisement, the candidate must possess a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university. Further he/she should have passed matriculation examination with Punjabi as one of the subject and must have proficiency in operation of computers.

6. The case of the petitioner is that his candidature has wrongly been rejected on the ground that he has not passed matriculation examination with Punjabi subject, whereas he appeared and passed Punjabi Language Paper from Bhasha Vibhag Punjab on 19.10.2016.

**CWP-14913-2023****CONTENTIONS OF LEARNED COUNSEL FOR THE PETITIONER**

7. Learned counsel for the petitioner contends that Rule 7 (vii) (a) of Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, violates the Article 14 of the Constitution of India, as it miserably failed the dual test, since the petitioner was left out unreasonably.

8. He further contends that the test conducted by Bhasha Vibhag Punjab is valid for administrative/office level posts in the State of Punjab, as per the letter dated 06.06.2011.

9. He further contends that the validity of this certificate for administrative/official level posts also finds mentioned in the certificate issued to the petitioner by the Department of Language Punjab.

10. He further contends that the selection of Clerks under Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, is arbitrary, as it created discrimination within the group of persons, who are possessing the knowledge of Punjabi language.

CONTENTIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

11. Per contra, learned counsel for State of Punjab argues on the lines of the reply dated 23.11.2023 filed by respondent No. 3 (State of Punjab), wherein it has been stated that respondent No. 3 (State of Punjab) issued letter No. 12/54/2011-10 Cell/1496, dated 6.6.2011. As per this letter, if the person has passed Punjabi language paper conducted by Bhasha Vibhag Punjab, the same is valid for appointment for all the services in the State of Punjab except the post of Teacher. Still, the candidature of the petitioner has been rejected by respondent No. 1 (Punjab and Haryana High Court) and respondent No. 2 (Society for Centralized Recruitment of Staff in Subordinate Courts in the

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State of Punjab), due to the reason that he does not possess the requisite qualification of Punjabi as one of the subject in matriculation.

12. Learned counsel for respondent No. 1 (Punjab and Haryana High Court) argues on the line of the reply wherein it has been stated that the representation of the petitioner was considered and declined in the meeting of the committee with respect to the claim that certificate of Punjabi Prabodh Prakhiya be considered equivalent to clearing Punjabi subject of matriculation level. He has referred to para No.8 and 9 of the reply on merits to justify their stand. The same is reproduced as under:-

“8. That the contents of Para No.8 pertain to a certificate issued by the Department of Language, State of Punjab to the petitioner. Further vide letter dated 06.06.2011 of Punjab Government has conveyed as under-

"Vide the Government letter No. 1149-1 Language-64/15177 dated 3rd June, 1968 on the subject cited above, for getting recruitment in job in the State of Punjab, every candidate is required to have Matric or equivalent educational qualification in Punjab language and vide the Government letter No. 3389-1 L.G...xx/6876 dated 7 November, 1960, the standard of Punjabi Prabodh Parikhya being taken by the Language Department, Punjab is equivalent to the Punjabi subject of Matriculation. In view of the syllabus of this examination of Language Department, the Punjabi Prabodh Parikhya of Language Department, Punjab is meant only and only for Administrative/Official Leave.

In so far as the matter relates to have required knowledge of Punjabi for the teaching work, due to management examination being taken by the Language Department, Punjab meant only for

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administrative/official level, the same cannot fulfil the requirement of teaching works. Therefore, it is directed that for the vacancies of teachers to be filled in future the prescribed Punjabi examination in 10th Class be accepted duly passed from the Punjab School Education Board only because the teachers are required to teach the students of Colleges/Schools in mother tongue.

Therefore, the examination of candidates relating to the Teaching works be taken only by Punjab School Education. Board instead of Language Department, Punjab."

Perusal of letter dated 06.06.2011 reveals that it is a clarification of Punjab Government's earlier letters dated 03.06.1968 and 07.11.1960. Further, it is submitted that letter dated 6.6.2011 of the State of Punjab regarding the starting of Punjabi in the administration - requirements for jobs of the State Government has already been filed. With regard to letters dated 3.6.1968 and 7.11.1960 of the State of Punjab, it is submitted that as per the present record, the aforesaid letters have not been received and therefore have not been adopted.

9. *That the contents of Para No.9 are misprojected and denied. The petitioner has interpreted the law/Rules in a manner which only suits his case. The Advertisement as well as the Rules very clearly provides for Punjabi subject at the matriculation level and the same cannot be read so as to include a scenario, where a candidate has taken a proficiency test only for the purpose of seeking recruitment. The petitioner is seeking to equate the study of language up till the matriculation level to that of a*



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proficiency test, which would not serve the requirements of the post. There are certain parameters by which the study of a subject can be differentiated vis-à-vis the parameters for a proficiency test. This aspect of the matter needs to be considered and the claim of the petitioner should be discarded.”

13. We have heard the learned counsel for the parties and perused the whole record of the case.

14. For proper adjudication of the case, the relevant portion of the advertisement dated 06.08.2020 reads as under:-

“2. Qualification

The candidate should possess a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university. He/she should have passed matriculation examination with Punjabi as one of the subject and must have proficiency in operation of computers”.

15. A perusal of the above advertisement shows that the applicant should possess a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university and he/she should have passed matriculation examination with Punjabi as one of the subject and must have proficiency in operation of computers.

16. Since the petitioner was eligible, therefore, he applied for the post of Clerk and was issued Roll No. 2033019 as well. The final result was declared on 12.04.2023 wherein the candidature of the petitioner was shown to be rejected. The relevant portion of the final result is reproduced as under:-

“Note:- Candidature of candidates with Registration

IDs 2000473, 2012347, 2015944, 2020363, 2025100, 2031915

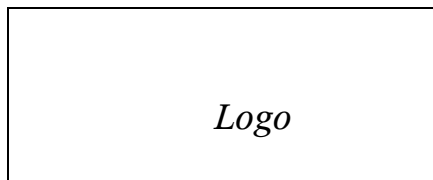


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and 2033019 stands rejected as they do not possess the requisite qualification of Punjabi as one of the subject in matriculation.

17. The petitioner has placed on record the certificate issued to him by the Department of Language, Punjab as Annexure P-6. The relevant portion of the certificate reads as under:-

Department of Language, Punjab



Punjabi Prabodh Prakhiya

It is to be certified that Sh. Randeep Singh s/o Sh. Ujjal Singh and whose name of mother is Smt. Sukhjeet Kaur has passed the Punjabi Prabodh Prakhiya held in October, 2016

Patiala

Sd/-

Date:-19.10.2016 Director, Language Department, Punjab

Note:-Punjab Government letter No. As per 12/54/201 (C.Cell/1496, dated 6.6.2011) Punjabi Proficiency Test is only of administrative/office level and this certificate is not admissible for teaching jobs.

18. The petitioner has also placed on record his detailed marks-sheet of B.Sc as Annexure P-7, wherein one of the subject was Punjabi.



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19. The petitioner has also placed on record **Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997** and the operative part is reproduced as under:-

“Chapter 18

PART-A The PUNJAB SUBORDINATE COURTS ESTABLISHMENT (RECRUITMENT AND GENERAL CONDITIONS OF SERVICE) RULES 1997

7. MODE OF APPOINTMENT AND QUALIFICATIONS TO THE POSTS:-

(vii) Clerks

Appointment to the post of Clerk shall be made in the ratio of 90% in case of direct recruitment and 10% by way of promotion.

Appointment to the post of Clerk shall be regulated as under”-

(a) No candidate for direct recruitment shall be eligible to apply for the post of Clerk unless he holds a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university and has passed matriculation examination with Punjabi as one of the subject.”

20. The petitioner has also placed on record letter No. 12/54/2011-10Cell/1496, dated 6.6.2011 issued by Secretary, Government of Punjab, Department of Education and Language. The letter reads as under:-

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“No. 12/54/2011-10 Cell/1496 dated 06.06.2011

From

Secretary, Government of Punjab, Department of Education and Language.

To

*Chief Officers of all the departments of Govt. of Punjab
Commissioners, Deputy Commissioners of Divisions,
District and Sessions Judges, Sub Divisional Officer
(Civil) and Registrar, Punjab and Haryana High Court.*

Dated, Chandigarh 6.6.2011.

Sub:

*Starting of Punjab in the Administration-
Requirements for jobs of State Government.*

Sir,

*Vide the Government letter No.1149-1 Language-64/15177 dated 3rd June, 1968 on the subject cited above, for getting recruitment in job in the State of Punjab, every candidate is required to have Matric or equivalent educational qualification in Punjabi language and vide the Government letter Memo No.3389-1 L.G.xx/6876 dated 7 November, 1960, the standard of Punjabi Prabhodh Parikhya being taken by the Language Department, Punjab **is equivalent to the Punjabi subject of Matriculation**. In view of the syllabus of this examination of Language Department, the Punjabi Prabhodh Parikhya of Language Department, Punjab is meant only and only for administrative/official level.*

In so far as the matter relates to have required knowledge of Punjabi for the teaching works, due to the Management Examination being taken by the Language Department, Punjab meant only for administrative/official level, the same cannot fulfill the requirement of teaching works. Therefore, it is directed that for the vacancies of teachers to be



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filled in future, the prescribed Punjabi examination in tenth class be accepted duly passed from the Punjab School Education Board only because the teachers are required to teach the students of colleges/school in mother tongue.

Therefore, the examination of candidates relating to the teaching works be taken only by Punjab School Education Board instead of Language Department, Punjab.

*Regards Sd/-R. Sunkaria
Secretary, Govt. of Punjab Department
of Education & Language.*

Dated, Chandigarh 6.6.2011

*Endst. No. 12/54/2011-1C Cell/1497 dated, Chandigarh
6.6.2011*

Copy to:-

- 1. Secretary, Punjab Public Service Commission, Patiala*
- 2. Chairman, under Services Selection Board Punjab,
Chandigarh*
- 3. Chairman, Punjab School Education Board, Punjab, S.A.S.
Nagar*
- 4. Director, Department, Chandigarh.*

For information and necessary action.

*Sd/-R. Sunkaria
Secretary, Govt. of Punjab
Department of Education & Language.”*

21. The petitioner has also placed on record the copy of advertisement dated 24.02.2023 as Annexure P-11 for the post of Clerk of this Court. The relevant portion of the advertisement is reproduced as under:-

“2. Qualification



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The minimum qualification for the post of Clerk is Bachelor of Arts, Bachelor of Science thereto from a recognized university and proficiency in operation of Computer (Word Processing and Spread Sheet). Candidate must possess requisite qualification(s) as on the last date of online submission of application form i.e. 17/03/2023. No person shall be eligible to be recruited as a Clerk unless he possesses educational qualification in Hindi or Punjabi upto matriculation standard or its equivalent. Ten percent of posts shall be filled by persons possessing a degree of Bachelor of Commerce, preference being given to Chartered Accountants and those possessing degree of Masters of Commerce. Merely satisfying eligibility criteria does not entitle candidates to be called for test.

22. In the present case, the advertisement is dated 06.08.2022 and the petitioner has qualified Punjab Prabodh Prakhiya in October 2016 and he was issued certificate by Director, Language Department, Punjab. In this certificate, reference has been made to Punjab Government No. 12/54/2011-10Cell/1496, dated 6.6.2011, which is reproduced above. Further in letter No. 12/54/2011-10Cell/1496, dated 6.6.2011, reference has been made to Government letter No. 1149-1 Language-64/15177 dated 03.06.1998, in which it has been mentioned that every candidate is required to have passed Matric or equivalent education qualification in Punjabi language. Further reference has been made to letter Memo No. 3389-1 L.G.xx/6876 dated 07 November, 1960, whereby, the standard of Punjabi Prabodh Prakhiya being taken by the Language Department, Punjab is equivalent to the Punjabi subject of matriculation.

23. Thus, once the standard of Punjabi Prabodh Prakhiya being taken by Language Department, Punjab, is declared to be equivalent to the

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Punjabi Subject of Matriculation, vide Government letter Memo No. 3389-1 L.G.xx/6876 dated 07 November, 1960, then the qualification mentioned in the advertisement dated 06.08.2022 as to ***‘the candidates should possess a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university. He/she should have passed matriculation examination with Punjabi as one of the subject’***, would include the candidates having certificate of Punjabi Prabodh Prakhiya issued by Department of Language, Punjab.

24. Now coming to Rule 7 (vii) (a) of Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, which lays down the mode of appointment and qualification required for the post of Clerk. The post of clerks which is relevant in the present case are in Class III category and as per Rule 7 (vii) (a), no candidate for direct recruitment shall be eligible to apply for the post of Clerk unless he holds the degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university and has passed matriculation examination with Punjabi as one of the subject. Once the Punjabi Prabodh Prikhya has been taken equivalent to the Punjabi subject of matriculation for Administrative/Official Level jobs, vide Government letter letter/memo Memo No. 3389-1 L.G.xx/6876 dated 7/11/1960 and further the same is referred to in the Government letter No.1149-1 Language-64/15177 dated 3rd June, 1968, which is further referred to in the letter No. 12/54/2011-10 Cell/1496 dated 06.06.2011, then Rule 7 (vii) (a) for appointment to the post of Clerk, cannot ignore the candidates who are having certificate of Punjabi Prabodh Prakhiya from the Department of Language, Punjab, since the same is treated as equivalent to the Matriculation Examination with Punjabi subject, as per letter 3389-I

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L.G.xx/6876 dated 07 November, 1960 and the same was informed to all the departments including this Court, vide letter No. 12/54/2011-10Cell/1496, dated 6.6.2011. Since, there is no withdrawal of Government letters No. 3389-I L.G.xx/6876 dated 07 November, 1960 and 1149-1 Language-64/15177 dated 3rd June, 1968 and No. 12/54/2011-10Cell/1496, dated 6.6.2011, therefore, the candidates having passed Punjabi Prabodh Prakhiya from Department of Language, Punjab, in view of letter No. No. 12/54/2011-10Cell/1496, dated 6.6.2011 for the purpose of getting recruitment in administrative/office level, cannot be rejected on the ground that a candidate do not have the requisite qualification of Punjabi, as one of the subject in matriculation. This reasoning given is bad in the eyes of law. Moreover, it is not the case of the respondents that the certificate of the petitioner is from a private institute or is a forged one. Once the Punjabi Prabodh Prakhiya was considered to be equivalent to the Punjabi subject of matriculation vide letter dated 07.11.1960, then this Court cannot turn around and treat the certificate of the petitioner to be not valid for appointment.

25. Further a perusal of the reply filed by respondent No. 3 (State of Punjab) shows that letter No. 12/54/2011-10Cell/1496, dated 6.6.2011 is admitted by respondent No. 3 (State of Punjab). Para No. 4 of the preliminary submissions and para No. 8 of para-wise reply is reproduced as under:-

“4. That it is humbly submitted that the answering respondent has issued letter no. No. 12/54/2011-10Cell/1496, dated 6.6.2011. As per this letter, if person has passed Punjabi language paper conducted by Bhasha Vibhag Punjab, the same is valid for appointment for all the services in the State of Punjab except for

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the post of teacher. In relation to the same, it is to mention here that so far as the rejection of candidature of present petitioner is concerned, the same has been dealt by the department of respondent no. 1 and 2 due to the reason that he does not possess the qualification of Punjabi language as one of the subject in the matriculation. However, the petitioner has passed the Punjabi Parbodh examination conducted by the Language Department Punjab. In relation to the same, copy of the relevant certificate dated 19-10-2016 is annexed herewith as Annexure R-1. The reason of the rejection of candidature of the petitioner can be best explained by the respondent no. 1 and 2 as the entire recruitment process has been initiated and completed by them. In relation to the same, a translated copy of this No. 12/54/2011-10Cell/1496, dated 6.6.2011 is annexed herewith as Annexure R-2.

8. That the contents of para no. 8 of the writ petition are admitted being matter of record. It is submitted that the answering respondent has issued letter no. 12/54/2011-1Edu.Cell/1496 dated 06.06.2011 (Annexure-2). As per this letter, if person has passed Punjabi language paper conducted by Bhasha Vibhag Punjab, the same is valid for appointment for all the services in the State of Punjab except for the post of teacher. That the petitioner has passed the Punjabi Parbodh examination under Roll No 18212 conducted by Language Department, Punjab in October 2016 (copy annexure R-1). Still the candidature of the petitioner has been rejected by the respondent no. 1 and 2 due to the reason that he does not possess the requisite qualification of Punjabi as one of the subject in matriculation. The reason of the rejection of

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candidature of the petitioner can be best explained by the respondent no. 1 and 2 as the entire recruitment process has been initiated and completed by them. A translated copy of this letter no. 12/54/2011-1Edu. Cell/1496 dated 06.06.2011 is annexed at R-2”.

26. Further even in the reply filed by respondent No. 1 ((Punjab and Haryana High Court), the letter No. 12/54/2011-10Cell/1496, dated 6.6.2011 is not denied in para No. 8 on merits as referred to above, but it has been further submitted that letters dated 3389-I L.G.xx/6876 dated 7/11/1960 and 1149-1 Language-64/15177 dated 3rd June, 1968 issued by State of Punjab, which are referred to in letter No. 12/54/2011-10Cell/1496, dated 6.6.2011, have not been received. This reasoning shows that respondent No. 1 (Punjab and Haryana High Court) has no explanation with respect to factual position that vide letter No. 12/54/2011-10Cell/1496, dated 6.6.2011, it has been specifically mentioned that for getting recruitment/job in State of Punjab, every candidate is required to have matric or equivalent educational qualification in Punjabi language and vide letter 3389-I L.G.xx/6876 dated 07 November, 1960, the standard of Punjabi Prabodh Prakhiya being taken by Language Department, Punjab is equivalent to Punjabi subject of matriculation. This letter has been issued by the Secretary, Government of Punjab, Department of Language to all the Chief Officers of all the departments of Govt. of Punjab those are Commissioners, Deputy Commissioners of Divisions, District and Sessions Judges, Sub Divisional Officers (Civil) and Registrar General, Punjab and Haryana High Court, therefore, it was in the knowledge of this Court as well.



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27. The petitioner has placed on record **High Court Establishment (Appointment and Conditions of Service) Rules 1973.**

The relevant portion required in the present case, is reproduced as under:-

“Clerks

19(1) Appointment to the posts of Clerks shall be made either by direct recruitment or by designating the officials from the High Court Establishment in accordance with the provisions laid down hereunder.

(2) The direct recruitment shall be regulated as under:- to the post of Clerks.

i) Applications shall be invited through advertisement, issued in such manner as the Chief Justice may decide, on the prescribed proforma from the eligible candidates. The candidates will have to pay such fees and in such manner as the Chief Justice may determine and different rates of fees may be fixed for different categories of candidates.

ii) No candidate shall be eligible to apply for the post of a Clerk unless he holds a degree of Bachelor of Arts or Bachelor of science or equivalent thereto of a recognised university and has proficiency in operation of Computers (Word Processing and Spread Sheets).

iii) The candidates may be shortlisted on the basis of any criteria including the result of objective type test.

(iv) The candidates shortlisted shall have to appear in examination of 3 hours duration, in the following subjects.

<i>Sr.</i>	<i>Subject</i>	<i>Maximum</i>
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<i>No.</i>		<i>Marks</i>
<i>1.</i>	<i>English Composition</i>	<i>150</i>
<i>2.</i>	<i>General Knowledge</i>	<i>50</i>
<i>3.</i>	<i>Precis Writing</i>	<i>50</i>
<i>4.</i>	<i>Hindi (Devnagri Script) or Punjabi (Gurmukhi)</i>	<i>50</i>

(v) No person shall be considered to have qualified in the written examination unless he obtains at least 40% marks in the aggregate and minimum 33% marks in each subject.

(vi) Out of the candidates who qualify the written examination, the Chief Justice may further shortlist the candidates to be called for the typing/ computer test, and also for viva voce. The candidates shortlisted, after the written examination and typing /computer test will have to appear for a viva voce test which shall be of 50 marks.

Provided that no candidate shall be called for viva voce unless he/she qualifies the typing/computer test (English) with a minimum speed of 30 w.p.m.

Provided that all the physically incapable candidates who produce the Medical Certificate from the Civil Surgeon of the District to which he/she belongs certifying that he/she is physically incapable of type/ computer writing shall be exempted from qualifying the aforesaid type/computer test.

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Provided further that no candidate shall be considered to have qualified the type/computer test, if he/she commits more than 10% mistakes.

vii) A select list of successful candidates, in order of merit, shall be prepared on the basis of total marks obtained in main combined written test and viva voce. The appointment to the posts of Clerks shall be made in the order of merit, as the vacancies arise, from the list which shall remain in force for a period of two years from the date of publication of result and lapse thereafter. In case two or more candidates obtain equal marks after the result of written test and viva voce, then the candidates who is elder in age will rank senior.

viii) The result shall be published in such manner as the Chief Justice may decide.

(3) Unless the Chief Justice relaxes the requirement of any of the Provisions of sub-rule (2) of rule 19 in exercise of the powers vested in him by rule 38, the minimum qualifications for the posts of Clerks shall be same as provided in sub-rule (2).

Provided that no person shall be eligible to be recruited as a Clerk unless he possesses Educational qualification both in Hindi or Punjabi up to matriculation standard or its equivalent.

28. A perusal of the above Rule shows that even in the Rules 1973, the educational qualification both in Hindi or Punjabi up to matriculation standars or its equivalent is the eligibility criteria for recruitment to the post of Clerk.

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29. Reference at this stage can be made to a judgment passed by Hon'ble the Supreme Court of India in a case of **“Naresh Chandra Agrawal vs. Institute of Chartered Accountants of India and others, 2024 SCC Online SC 114** wherein in para No. 35 of the judgment, it has been observed as under:-

“35. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being ‘ultra vires’ the parent Act:

(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.

(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.



(c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

(d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like ‘to carry out the provisions’ or ‘to carry out the purposes.’ Another sub-section specifies areas for delegation, often using language like ‘without prejudice to the generality of the foregoing power.’ In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the ‘generality vs enumeration’ principle.

(e) The “generality vs enumeration” principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.

(f) The delegated power to legislate by making rules ‘for carrying out the purposes of the Act’ is a general delegation,



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without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”

30. Further reference can be made to a judgment of Hon’ble the Supreme Court of India in a case of **State of Tamil Nadu v. P Krishnamurthy** (2006) 4 SCC 517. The relevant portion of the judgment reads as under:-

“5. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate



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legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules.”

31. Now coming to Rule 7 (vii) (a) of Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, which shows that so far as eligibility criteria for the degree of Bachelor of Arts or Bachelor of Science is concerned, equivalence from a recognized university has been allowed, whereas so far as matriculation examination with Punjabi as one of the subject is concerned, the word ‘equivalence’ is not mentioned therein. On the one hand, the State of Punjab in its reply has admitted letter No. 12/54/2011-10 Cell/1496, dated 6.6.2011 and has specifically stated in the reply that if the person has passed Punjabi Language paper conducted by Bhasha Vibhag Punjab, the same is valid for appointment for all the services in the State of Punjab except for the post of Teacher. It has been further specifically mentioned



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in the reply that vide letter dated 06.06.2011, the standard of Punjab Prabodh Prakhiya being taken by Language Department, Punjab as equivalent to the Punjabi subject of matriculation. The equivalence has been given by the Department of Language, Punjab, Government of Punjab and many of the aspirants in jobs have given the examination of Punjabi Prabodh Prakhiya where the standard of Punjab Prabodh Prakhiya being taken by the Language Department Punjab, is considered to be equivalent to the Punjabi subject of matriculation, vide Punjab Government letter No. 3389-1 L.G..xx/6876 dated 7 November, 1960. This letter was further brought to the notice of all the departments including Punjab and Haryana High Court. If that equivalence was not to be added in the eligibility criteria, then the certificates obtained by the aspirants from the Department of Education and Language, State of Punjab, that too after giving the examination of Punjabi Prabodh Prakhiya, would be of no use. The only reason for acquiring this certificate was that they would be getting job in the State of Punjab. If the State of Punjab in its reply has admitted this fact, then Clause 7 (vii) (a) should be read as under:-

“No candidate for direct recruitment shall be eligible to apply for the post of Clerk unless he holds a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university and has passed matriculation examination with Punjabi as one of the subject or its equivalent.”

32. The word ***‘equivalent’*** has also been mentioned in **High Court Establishment (Appointment and Conditions of Service) Rules 1973.**

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33. A perusal of Rule 7 (vii) (a) of Rules, 1997 shows that in the eligibility criteria with regard to degree of Bachelor of Arts or Bachelor of Science, its equivalence from the recognized university was considered whereas so far as matriculation examination with Punjabi as one of the subject is concerned, its equivalence has not been considered.

34. If the equivalence of degrees is considered then why the equivalence of language is not considered.

35. Further if the certificates issued by the Language Department, Punjab are not to be considered for the purposes of job then why the candidates are allowed to acquire the certificates from the Language Department, Punjab. It should have been clarified by the Department of Education and Language, Punjab that the certificates would be of no use for recruitments. Whereas in the present case, rather the Secretary, Government of Punjab Department of Education and Language has declared the standard of Punjabi Prabodh Prakhiya being taken by the Language Department, Punjab as equivalent to the Punjabi Subject of Matriculation.

36. Once the equivalence has been given to a particular subject then not considering it, would amount to discrimination amongst the candidates of same qualification.

37. Further in the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, if the equivalence of degrees are considered then by not considering the equivalence in the language would again be violative of Articles 14 and 16 of the Constitution of India.

38. In view of the above, Rule 7 (vii) (a) of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions



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of Service) Rules, 1997, is held to be *ultra vires* to the extent of not including the word “equivalent” in the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, in case of matriculation examination with Punjabi as one of the subject.

39. In view of the above, a direction is issued to respondent No. 3 (State of Punjab) to make an addition of the word ‘**equivalent**’ in Rule 7 (vii) (a) of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, as per Government letter No. 3389-1 L.G..xx/6876 dated 7 November, 1960, which is admitted by State of Punjab in its reply. The above Rule would now be read as under:-

*“(a) No candidate for direct recruitment shall be eligible to apply for the post of Clerk unless he holds a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized university and has passed matriculation examination with Punjabi as one of the subject or **its equivalent**”.*

40. Accordingly, the present writ petition is allowed. Since the petitioner was issued roll number and appeared in the examination, therefore, respondent No. 1 (Punjab and Haryana High Court) is directed to declare the result of the petitioner and if he is found to be in merit, he shall be issued appointment letter forthwith.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 16 , 2024
G Arora

Whether speaking/reasoned : Yes
Whether reportable : Yes