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2024.PHHC:172792



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 05.12.2023
Pronounced on : 07.03.2024

1. CWP-20880-2011 (O&M)

Suresh Kumar and others ...Petitioners
Vs.

The Sutlej Gramin Bank and others ...Respondents

2. CWP-4896-2012

Malkit Singh ...Petitioner
Vs.

The Sutlej Gramin Bank and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. A.K.Walia, Advocate
for the petitioners.

Mr. Bhushan Bhatia, Advocate
for respondent No.1-Bank.

Mr. Suman Jain, Advocate
for respondent Nos.2 and 4.

DEEPAK MANCHANDA, J.

Both the aforementioned petitions are based on similar facts and raise identical issues. Therefore, the facts from CWP No.20880 of 2011 are being considered to adjudicate both the writ petitions.

2. Petitioners have filed these separate writ petitions under Article 226 Constitution of India for issuance of a writ in the nature of certiorari for

quashing of the impugned orders dated 25.06.2011 (Annexure P-6) and 14.02.2007 (Annexure P-4) passed by the respondent-Bank, whereby claim of the petitioners for promotion as Officer Scale-I was rejected and the private respondents were promoted with the further prayer that the petitioners be promoted as Officer Scale-I w.e.f.14.02.2007 along with all the consequential benefits.

3. The facts emanated from the pleadings of the present case are that petitioners were appointed on regular basis Group-B post as Clerk-cum Cashier on 01.04.1989 with respondent No.1-the Bank. To promote its employees, respondent No. 1 issued circular No.1000 dated 06.10.2006 according to which the vacancies were to be filled by way of internal promotion from clerical staff to Scale-I Officer. It was decided that the guidelines of the bank contained in Annexure P-2 would be followed for promotions. In pursuance to the promotion process initiated by Annexure P-1, the petitioners appeared in the written test held on 19.11.2006 who qualified the same and were declared qualified for an interview in order of their seniority wherein the name of petitioner No. 1 was shown at seniority No.3, the name of petitioner No. 2 was shown at seniority No. 4, and the name of petitioner No. 3 was shown at seniority No. 7. The petitioners were called for interview on 01.02.2007, where the final result was declared vide circular No. 1028 dated 14.02.2007, but the names of the petitioners did not figure out and in contrary all the persons, who were juniors to the petitioners were selected after ignoring all the petitioners. Aggrieved against the same, petitioners submitted their joint representation, however, when no action was taken up, a CWP No. 4006 of 2011 was filed, which was disposed of vide order dated 07.03.2011 (Annexure P-5) wherein

the directions were issued to consider the claim of the petitioners for further promotion to the post of Officers on a Scale-I by deciding their representation and passing an order within three months. But vide impugned order dated 26.05.2011, annexed as Annexure P-6, the respondent-Bank rejected the claim of the petitioners on the ground that the benchmark/cut-off marks of 70% were fixed for the selection of the candidates and none of the petitioners had been able to secure the required number of marks to satisfy the benchmark fixed by the Selection Committee. Further, the promotions which were made among the candidates only after satisfying the benchmark of 70% going down in seniority order starting from the top. Being aggrieved against rejecting the same, this petition had been filed.

4. Learned counsel for the petitioners contends that respondent No. 1 wrongly rejected the petitioner's claim by adopting the criteria of benchmark/cut-off marks of 70%, which was never communicated to the petitioners. He further contends that the promotion process was regulated by the Guidelines/Rules contained in Annexure P-2, which reveals that there is no mention of any such benchmark/cut-off marks of 70% in the rules/guidelines and prescribing the same subsequently after the starting of the promotion process after the gap of four years would amount to change in the rules earlier framed which is illegal, void, arbitrary and liable to be set aside. Learned counsel for the petitioners, by referring to Annexure P-2, has contended that the minimum 40% marks were fixed for qualifying for the written test, and after that, the candidates were to appear in the interview, where no minimum qualifying marks were fixed for the interview. The marks fixed for performance appraisal of previous years were 10; hence, the policy of 70%

benchmark adopted by the respondent-bank is self-contradictory, self-defeating, and *void ab-initio* because the benchmark fixed for the written test was only 40%, and no other benchmark was fixed for Performance Appraisal Reports and interview. He also contends that the higher benchmark of 70% cannot be sustained when a lower benchmark over and above the benchmark earlier fixed would lead to the sacrifice of the policy of seniority-cum-merit giving over emphasis to the criterion of merit, which in turn is ultra vires of Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 and the guidelines Annexure P-2. Learned counsel for the petitioners submits that petitioner No. 1 represented to the respondent-bank on 24.02.2007, and even in reply to the same, no such ground of 70% of the benchmark was taken by respondent No. 1. It is for the first time that such a plea was raised by the respondent-bank in the impugned order Annexure P-6 by relying upon the judgement of Apex Court in the case of “***Rajindera Kumar Srivastva and others V/s Samyut Kshetriya Gramin Bank and others***”, which does not apply to the facts of the present case as in said case the benchmark of 78% by following the process was fixed well before the starting of the selection process and the relevant instructions to that effect were duly circulated and communicated to all the employees whereas in the present case benchmark 70% never existed in the original promotion policy Annexure P-2 or before the starting of promotion process. To support his contentions, learned counsel for the petitioners has relied upon the judgement dated 30.08.2007 passed by this Court in CWP-8744-2005, titled as “***Balbir Singh and others Vs. The Malwa Gramin Bank and others***”, judgments passed by Hon’ble the Supreme Court in “***K.Manjusree Vs. State of A.P.& Anr***”, 2008 AIR (SC)

1470, “Hemani Malhotra Vs. High Court of Delhi”, 2008 (2) SCT 736, “Maharashtra State Road Transport Corporation and others Vs. Rajendra Bhimrao Mandve and others”, 2002 AIR (SC) 224, “B.V.Sivaiah Vs. K.Addanki Babu”, 1998 (4) S.C.T.46, “Haryana State Warehousing Corporation and others Vs. Jagat Ram and another” passed in Special Leave Petition No.2659-2011 and judgment passed by this Court in “*Kultar Singh Vs. State of Punjab and others*”, 2014 (2) SCT 256, and “*Dr. Ravi Dutt Mehral Vs. State of Punjab and others*”, 2010 (1) S.C.T. 337.

5. Per contra, learned counsel for respondent No. 1, while justifying the benchmark of 70% adopted by respondent No. 1-bank, has submitted that the same was done in light of the guidelines framed by the NABARD, i.e. National Bank for Agriculture and Rural Development dated 31.03.2010 (Annexure R-1) and has further argued that fixing of the benchmark cannot be challenged as being opposed to the principle of ‘Seniority-cum-Merit’ and cannot be held to be violative of the concept of promotion by seniority-cum-merit considering the nature of duties and functions to be performed on the promotional post. He has also argued that the criteria for judging claims based on the principle of seniority-cum-merit depends upon various factors that the employer may determine, such as the class, category, nature of posts in the hierarchy of administration and the requirements of efficiency for the posts. Learned counsel for respondent No.1 submits that the representation of the petitioners was meticulously considered in most fair and proper manner and the promotions done vide promotion orders Annexure P-4 do not suffer from any legal or procedural infirmity. Learned counsel for respondent No.1 has again argued that it is not the case of the petitioners that the Bank has adopted a

benchmark of 70% for some extraneous considerations or with *malafide* motive towards the petitioners or to afford undeserved benefits to the promotees for some extraneous/malafide considerations. Therefore, the prescription of bench marks of 70% cannot be said to be arbitrary or whimsical by any stretch of the imagination. Learned counsel for respondents No. 2 to 4, by referring to the written statement dated 09.09.2013, also endorsed the similar view as argued by learned counsel for respondent No. 1, justifying the stand taken for 70% of bench marks as applied in the cases of petitioners by rejecting the claim.

6. I have heard the learned counsel for the parties and have perused the material available on record

7. Through the present writ petition, the only question raised before this Court is whether adopting the criteria of 70% bench mark for rejecting the claim of the petitioners was justified or sustainable in the eyes of the law, which became the sole ground for rejection and was against the rules and guidelines framed vide Annexure P-2. After perusal of the entire record available before this Court, this Court finds merit in the arguments raised by the learned counsel for the petitioners that the benchmark of 70% never existed in the original promotion policy, nor the same was ever communicated to the petitioners, the criteria fixed vide Annexure P-2 is different and same is reproduced here below:-

“(3) (a) Name of Post

Scale 1 Officer

(b) Classification

Group "A"

(c) Source of Appointment

50% by direct recruitment through Banking Services Recruitment

Board and 50% by promotion.

(d) Whether promotion to be made on seniority basis or seniority cum-merit basis.

Promotions shall be made on the basis of seniority cum-merit

(e) Eligibility

(A) For direct Recruits

(1) Qualification and eligibility for direct recruits

(i) Degree of recognised university in any discipline or its equivalent.

(ii) Proficiency in local language as may be laid down by the Board.

(iii) Age

Between 18 years and 26 years (relaxable in case of Schedule Casts/Scheduled Tribe candidates or candidates belonging to other categories in accordance with the instructions/orders issued by the Central Government)

(b) For promotees :-

Eligibility:-

Promotion shall be made amongst employees holding the post in Group "B" post on regular basis in the concerned Regional Rural Bank and who possess following qualifications and experience, namely:-

(i) (A) Must have passed Matriculation or Senior School certificate Examination or equivalent examination or Bachelors degree examination or equivalent from a recognized university; and

(B) Must have 10 year experience in the concerned Regional Rural Bank as a Group "B" employee

OR

(ii) A) Must have passed matriculation or Senior School Certificate or equivalent examination or Bachelor degree examination or equivalent examination from recognised University;

and

(B) Must have passed part 1 examination of certificate of Associate of Indian Institute of Bankers examination; and

(C) Must have eight years experience in the concerned Regional Rural Bank as Group "B" employee

OR

(iii) (A) Must have passed Matriculation or Senior School Certificate examination or equivalent or Bachelors degree examination or equivalent from a recognised University; and

(B) Must have passed part I and Part II examination of the certificate of associate of Indian institute of Bankers examination; and

(C) Must have six years experience in the concerned Regional Rural Bank as a Group "B" employee.

Provided that no employee shall be considered for promotion unless he has been confirmed in the feeder grade post.

(f) mode of selection.

(i) In the case of direct recruitment the selection of candidates shall be made by the banking Service Recruitment Board on the basis of written test and interview and in accordance with the procedure specified by them.

(II) In the case of promotion the selection of the candidates shall be made by the committee on the basis of written test interview and performance appraisal reports.

(g) Composition of Committee:-

The committee (for considering promotion) shall consist of the following persons, namely;

(i) The Chairman of the concerned Regional Rural Bank-Chairman.

(ii) A director nominated by the sponsor bank-Member

(iii) A director nominated by National Bank-Member.

Note: If none of the members of the committee belongs to scheduled casts and scheduled Tribes the Board may nominate a person belonging to Scheduled Casts/Scheduled Tribes as an additional member and such person shall participate in the process of selection by the concerned committee.

(h) Reckoning the minimum eligibility

The minimum eligibility in terms of the number of years of service for promotion shall be reckoned as on the 1st April of the year in which the vacancy is expected to arise or has actually arisen.

(I) Number of candidates to be considered for promotion.

All eligible candidates shall be considered for promotion.

(j) Selection process for promotion

The selection shall be on the basis of performance in the written test, interview and three years performance Appraisal Reports as per the division of marks given below:-

(A) Interview 20 Marks

(B) Written Test 70 Marks

(C) Performance Appraisal report 10 marks

Total marks 100 marks

A) Written test (70 marks)

The candidate shall be required to appear for written test comprising test in english and test in Banking Law, Practice and procedures including working procedures in the Regional Rural Bank concerned.

70 Marks allotted to written test shall be further divided as under :-

English 35 marks

Banking Law Practice and Procedures 35marks

Total Marks 70 Marks

A list of only those candidates who secure a minimum 40% marks each in English, Banking Law, practice and procedures shall be prepared. The Bank, thereafter, shall prepare the list of selected candidates in the order of Seniority to the extent of two hundred percent of the vacancies for promotion for the purpose of calling for interview.

(B) Interview (20 Marks)

There shall be no minimum qualifying marks in the interview

(C) Assessment of performance appraisal report.

The performance Appraisal Reports for the preceding three years of the concerned employees, shall be considered.”

8. Moreover, as per order dated 15.02.2023 passed by this Court the counsels appearing for the parties were *ad-idem* that the rules governing the issue provided for ‘Seniority-cum-Merit’ as a rule for promotion. At the same time, rules prescribed for a selection process wherein the candidates were provided marks on their evaluation by way of written test as well as interview.

It was also observed that the petitioners were senior to the private respondents, who had also qualified the written examination, however, were denied promotion because they could not make up the benchmark of 70% and at the time of passing of said order dated 15.02.2023 it was not disputed by the parties that such benchmark, even if decided by the Board, was never communicated. Learned counsel for the respondent-bank sought time to seek instructions whether the petitioners could be granted promotion from the date the private respondents were promoted. Once the aforesaid factual position was not disputed by the learned counsel for respondent No. 1 in the light of the order dated 15.02.2023, the arguments raised by the respondent-Bank in the proceeding Para No.5 of this judgement cannot be accepted.

9. Further, the ground cited by the respondent-bank in the impugned orders Annexure P-6 for the rejection of the claim of the petitioners by justifying the benchmark/cut-off marks of 70% seems to be unjustifiable as when the promotion process was initiated by respondent No.1, only guideline/rules contained in Annexure P-2 were applicable. There is no mention of any such bench mark/cut-off marks of 70% in the same. Hence prescribing the benchmark/cut-off mark subsequently after starting the promotion process would amount to change of the rules. Moreover, the respondent-bank failed to justify the delay of four years as alleged by the petitioners. The action of respondent No. 1, making the rules regulating the selection, can prescribe the minimum marks of benchmark for the selection process by regulations, which were not prescribed before the commencement of the selection process. In that case, the authority concerned cannot do the same after the selection process. The perusal of the selection policy reveals that

minimum of 40% marks were fixed for qualifying. It is after that the candidate would appear in the interview where there were no minimum qualifying marks fixed for them; hence, in that context, the arguments raised by the learned counsel for the petitioners have weightage by saying that the addition of 70% benchmark adopted by the respondent bank is self-contradictory and is *void ab-initio* because the benchmark fixed for the written test was only 40%. Further, the judgement passed in Rajendra Kumar's case (*supra*) does not apply to the facts of the present case as in that case, the benchmark of 78% was fixed by following the process established by law and that too well before the starting of selection process where the instructions were duly communicated to all the employees. In contrast, in the present case, the benchmark of 70% never existed in the original promotion policy, and the same was never communicated to the petitioners.

10. The object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, the appointing authority/recruiting authority/competent authority, in absence of Rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. Therefore, introduction of 70% benchmarks criteria after the entire selection process was over would amount to changing the rules of the game after the game was played, which can't be permitted. The Hon'ble Supreme Court in "*Maharashtra State Road*

Transport Corpn.and others Vs. Rajendra Bhimrao Mandve and ors”, 2001

(10) SCC 51, while dealing with the similar issue has held that it has been repeatedly held by the this Court that rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. The relevant para is extracted below:-

“5. The serious dispute and controversy raised relates to the claim of the Corporation that the Circular No. 17 of 1996 dated 24-6-1996, only came to be issued by way of clarification and it was not only necessary to be issued but also governed the selection of Drivers in question. The Writ Petitioners, who were unsuccessful, asserted that it is the Circular dated 4-4-1995 which should govern the selection and consequently the selections ought to have been made by assigning 87 1/2% marks for written/Trade Test and 12 1/2 for the oral test (Personal Interview) and results declared, accordingly. On going through the above Circular Orders, we find that the for recruitment of Drivers is separate from recruitment for other categories where Written Test/Trade Test has been specifically laid down and that it is only where the Written Test and Interview are stipulated, the percentage of weightage for Written Test/Interview has been resolved by the Board, under the directions of the State Government, to be fixed at 87.5% and 12.5% respectively. The directions of the State Government in their Letter dated 2-1-1995 only fixes the weightage to be given between marks obtained in Written Test and those in Interview and no reference is found therein of any Trade Test of Driving Test. The Resolution of the Board dated 21-3-1995 also seems to be on the same lines and is with reference to marks obtained in Written Test and Interview respectively and not otherwise. Apparently, in view of the above and the absence of reference to Driving Test or other Trade Test too, that the Corporation claims to have issued the Circular Order No. 17/1996 dated 24-6-1996, on the basis of the earlier Circulars Nos. 52/80 for pass in Driving Test to be presented to the S.T. Committee and 25/90 dated 2-7-1990 pertaining to award of marks in the Interview, by fixing the average of the marks awarded by the S.T. Sub-Committee to be the final and deciding factor in the matter of selection of a candidate. Therefore, the High Court cannot be said to be correct in holding that the Circular Order dated 24-6-1996 is illegal or arbitrary or against the orders of the State Government or the Resolution of the Board of the Transport Corporation. Instead, it would have been well open to the High Court to have declared that the criteria sought to be fixed by the Circular dated 24-6-1996 as the sole determinative of the merit or grade of a candidate for selection long after the last date fixed for receipt of application and in the middle of the course of selection process (since in this case

the Driving Test was stated to have been conducted on 27-11-1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of the Circular Orders dated 24-6-1996, does not merit acceptance in our hand and the same are set aside."

11. Again, the Hon'ble the Supreme Court in the case of **"K.Manjusree Vs. State of Andhra Pradesh and another", 2008 (3) SCC 512** has held as under:-

"24. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them -P.K. Ramachandra Iyer v. Union of India, 1984(2) SCC 141, Umesh Chandra Shukla v. Union of India, 1985(3) SCC 721, and Durgacharan Misra v. State of Orissa, 1987(4) SCC 646.

25. In Ramachandra Iyer (supra), this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining minimum marks in the interview also. This Court observed that the power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the rules for the Selection Board to prescribe the additional qualification of securing minimum marks in the interview, the restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed :

"Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure

high up in the merit list was likely to be rejected on the ground that he has not obtaining minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtaining qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained."

26. In *Umesh Chandra (supra)*, the scope of the Delhi Judicial Service Rules, 1970 came up for consideration. The rules provided that those who secured the prescribed minimum qualifying marks in the written examination will be called for viva voce; and that the marks obtained in the viva voce shall be added to the marks obtained in the written test and the candidates ranking shall depend on the aggregate of both. 27 candidates were found eligible to appear for viva voce on the basis of their having secured the minimum prescribed marks in the written examination. The final list was therefore, expected to be prepared by merely adding the viva voce marks to the written examination marks in regard to those 27 candidates. But the final list that was prepared contained some new names which were not in the list of 27 candidates who passed the written examination. Some names were omitted from the list of 27 candidates who passed the written examination. It was found that the Selection Committee had moderated the written examination marks by an addition of 2% for all the candidates, as a result of which some candidates who did not get through the written examination, became eligible for viva voce and came into the list. Secondly, the Selection Committee prescribed for selection, a minimum aggregate of 600 marks in the written examination and viva voce which was not provided in the Rules and that resulted in some of the names in the list of 27 being omitted. This Court held neither was permissible. Dealing with the prescription of minimum 600 marks in the aggregate this Court observed :

"There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in paragraph 7 of the counter-affidavit filed in Writ Petition 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should obtain in the aggregate in order to get into the Delhi Judicial Service..... But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an addition requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix.....We are of the view that Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its

Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal."

27. In *Durgacharan Misra (supra)*, this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.

28. In *Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve, 2001(10) SCC 51*, this Court observed that 'the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.' In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

12. Further, a Coordinate Bench of this Court in "**Arvinder Singh and others Vs. State of Punjab and others**" in CWP-14169-2016 decided on

23.12.2021 also dealt with the similar issue and observed as under:-

*“13. Also necessary to mention here that Hon'ble Supreme Court in **Tej Prakash Pathak and others v. Rajasthan High Court and others (2013) 4 SCC 540** after noticing earlier Division Bench judgment (**Subash Chander Marwaha's case (1974) 3 SCC 220**) referred the matter to larger Bench, while observing as under:-*

*"14. Unfortunately, the decision in Subash Chander Marwaha does not appear to have been brought to the notice of Their Lordships in Manjusree. This Court in Manjusree relied upon **P.K. Ramachandra Iyer v. Union of India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa**. In none of the cases, was the decision in Subash Chander Marwaha considered.*

*15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the "rules of the game" insofar as the prescription of eligibility criteria is concerned as was done in **C. Channabasavaiah v. State of Mysore**, etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the "rules of the game" stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard".*

However, the reference made in Tej Prakash Pathak's case (supra) is still pending before Hon'ble Supreme Court.

*Since the judgment in Manjusree's case (supra) was rendered by a bench of 03 Hon'ble Judges; whereas Subash Chander Marwaha's case (supra) is a division bench judgment, thus, as on today, Manjusree's case is holding the field. A fortiori, reference in this regard can be made to **Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another (2005) 2 SCC 673**, wherein it was held by Hon'ble Supreme Court that "The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength."*

In view of the above discussion, there remains no doubt that the game had already started; the respondents changed the rules of game in midway; but that was not permissible in law. Since the recourse taken by the respondents is found to be legally impermissible, therefore, their action amounts to negation of the rule of law.

As a result thereof, there is no option except to allow the writ petition(s). Consequently, the writ petitions are allowed; the impugned public notice dated 30.06.2016 is hereby quashed and set aside."

13. In view of the above discussion as well as the judicial precedents cited, this petition is partly allowed to the extent that the order dated

25.06.2011 (Annexure P-6) is hereby quashed and respondents are directed to consider the claim of the petitioners for promotion, in the light of the principle of ‘Seniority-cum-Merit’ along with consequential benefits within eight weeks from the receipt of copy of this order.

14. Pending application(s), if any, also stands disposed of.

(DEEPAK MANCHANDA)
JUDGE

07.03.2024

vanita

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