

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision:22.04.2024

CWP No.19968 of 2014(O&M)

Surinder Kumar

....Petitioner

VS.

State of Punjab and others

....Respondents

CWP No.1078 of 2014

Pardeep Kumar

....Petitioner

VS.

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Lalit Goyal, Advocate
for the petitioner in CWP- 19968 of 2014
Mr. Mohit Jaggi, Advocate
for the petitioner in CWP- 1078 of 2014
Mr. Pawan Kumar, DAG, Punjab
Mr. D.K.Sihag, Advocate
for respondents Nos. 3, 4 and 6 in CWP- 19968 of 2014
Mr. L.S.Sidhu, Advocate
for respondent No. 3 in CWP- 1078 of 2014

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, CWP No. 19968 of 2014 and CWP No. 1078 of 2014 are hereby adjudicated as common questions of law and facts are involved. With the consent of both sides, facts are borrowed from CWP No. 19968 of 2014.
2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of merit list dated

05.11.2013 (Annexure P-8) and direction to respondents to appoint him on the post of Motor Mechanic (Corporal).

3. On 16.08.2023, the following order was passed by this Court:-

“The matter pertains to selection to the post of Motor Mechanic (Corporal) in Punjab Home Guard and Civil Defence Department, Punjab pursuant to an advertisement published in the year 2012. While the advertisement prescribed a written test for 100 marks, another 10 marks were prescribed for interview. In the said advertisement, the written test is described as under:

“ Selection process for the post of motor mechanic (Corporal)

*a) **Written test***

One test of detailed knowledge and skills of the candidate would be taken for the appointment to the post of Motor Mechanic (Caporal) and the same would be of 100 marks.”

Learned counsel for the petitioner submitted that while in the advertisement it was mentioned that the selection was to be made on the basis of written test and interview but the authorities concerned have gone beyond the said advertisement inasmuch as they have conducted a practical test as well and have allocated a substantial marks to the practical test, whereas very few marks have been allocated for written test. It has further been submitted that the petitioner as a matter of fact had topped in the written test having secured 91 marks out of 100 marks, which had been scaled down proportionally by taking the maximum marks for written test as 30 instead of 100 and assigning 60 marks (max) for practical test and 10 marks for interview and which has caused prejudice to the petitioner inasmuch he has not been selected despite being topper.

Learned counsel for the petitioner as well as learned State counsel to assist this Court as to whether the authorities after having issued advertisement and having prescribed the details of marks to be allocated for written test as well as for interview for the post of Motor Mechanic could subsequently introduce a practical test as well for the post of Motor Mechanic and that as to whether such introduction would amount to merely practical necessity or would violate the entire selection process.

List again on 8.2.2024.”

4. Mr. Pawan Kumar, DAG, Punjab, submits that petitioner participated in the selection process without demur and after having been declared unsuccessful, preferred present petition before this Court. In the advertisement, it was provided that there would be written as well as skills test besides interview, thus, there was no violation of procedure published in the advertisement. The selection process was carried out in accordance with terms and conditions of the advertisement, thus, petitioner cannot be permitted to take somersault and assail selection process. In support of his contention, he relies upon Supreme Court judgment in **Tajvir Singh Sodhi and others vs. State of Jammu and Kashmir, 2023 SCC online SC 344.**

5. I have heard counsel for the parties and perused the paper book with their able assistance.

6. The respondents by advertisement of 2012 invited applications for multiple posts in Punjab Home Guards and Civil Defence Departments. Post of Motor Mechanic (Carporal) was one of the advertised posts. Different parameters/essential conditions were laid down for different posts.

With respect to post of Motor Mechanic, selection process as reproduced below was prescribed:-

***“SELECTION PROCESS FOR THE POST OF MOTOR
MECHANIC (CARPORAL)***

a) Written test

One test of detailed knowledge and skills of the candidate would be taken for the appointment to the post of Motor Mechanic (Caporal) and the same would be of 100

Interview

The successful candidates shall be called for interview on the basis of merit list prepared according to the written test and this interview would be of 10 marks.”

7. The respondent pursuant to aforesaid procedure conducted written test of 100 marks. The petitioner and other candidates appeared for written test. The respondent is pleading that they, as per prescribed procedure, could conduct skill test apart from written test whereas from the reading of afore-stated paragraph of the advertisement, it is evident that respondent had prescribed written test of knowledge and skills. From the reading of narration below marginal notes, ‘written test’ and ‘interview’, it is evident that there was prescription of only written test and interview and it did not provide for skill test. The selection process for the post of Motor Mechanic (Carporal) is mentioned at Sr. No. 10 of the advertisement. In the subsequent paragraph of the advertisement, the respondent has prescribed procedure for posts at Sr. Nos. 4, 6, 7, 8, 9, 11, 12 and 13. The said selection process is reproduced as below:-

***“SELECTION PROCESS FOR THE APPOINTMENT OF
SERIAL NO. 4, 6, 7, 8, 9, 11, 12 AND 13***

All the eligible candidates shall have to appear for the screening/skill test duly prescribed. The basis of the selection of the candidate shall be according to his experience in the concerned trade and that the same would be prescribed by the expert of the concerned trade.”

8. From the perusal of selection process prescribed for other posts, it is evident that respondent had prescribed skill test for other posts whereas no practical/skill test besides written test was prescribed for the post of Motor Mechanic.

9. From the perusal of selection process prescribed for Motor Mechanic and other posts, it is explicit beyond doubt that there was only written test of 100 marks for the post of Motor Mechanic (Carpenter). Apart from the written test, 10 marks were prescribed for interview. The petitioner stood first in the written test by scoring 91 out of 100 marks.

10. It is the settled proposition of law that Recruitment Board after commencement of selection process cannot change rule of game. The selection process commences as soon as posts are advertised. The Recruitment Board cannot travel beyond terms and conditions prescribed in the rules read with the advertisement. In the advertisement, the practical test apart from written test was not prescribed though interview was prescribed, thus, respondent acted beyond the terms and conditions prescribed in the advertisement.

11. A three judge Bench of Apex Court in **K. Manjusree v. State of Andhra Pradesh [(2008) 3 SCC 512]** while dealing with the change of recruitment criteria mid-way through the selection process has held it to be impermissible. The relevant extracts of the judgment read as:-

“27. 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, Umesh Chandra Shukla v. Union of India, and Durgacharan Misra v. State of Orissa.

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36. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the Resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise

be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interview was impermissible”

12. A five judge Bench of Supreme Court in **Sivanandan C.T. and others vs., High Court of Kerala, (2024) 3 SCC 799** has held that terms and conditions contrary to rules cannot be notified after the commencement of selection process. It is inappropriate to change/amend the Rule after commencement of selection process.

13. A two judge Bench of Supreme Court in **Sushil Kumar Pandey and others. vs. High Court of Jharkhand and another, 2024 SCC Online SC 117** while noticing Constitution Bench judgment in **Sivanandan C.T. (supra)** has held that if High Court is permitted to alter the selection criteria after the performance of individual candidates is assessed, that would constitute alteration of the laid down Rules. The relevant extracts of the judgment read as under:-

“23. So far as the ratio of the decision in the case of K. Manjusree (supra) is concerned, that authority deals with change of the Rules mid-way. In the case before us, in our opinion, if the High Court is permitted to alter the selection criteria after the performance of individual candidates is assessed, that would constitute alteration of the laid down Rules. We refer to paragraphs Nos. 14 and 15 of the judgment of the Constitution Bench in the case of Sivanandan C.T. (supra), which lays down the principle of law on this point. We reproduce below the said passages from this authority:-

"14. The decision of the High Court to prescribe a cut-off for the viva-voce examination was taken by the Administrative Committee on 27 February 2017 after the viva-voce was conducted between 16 and 24 January

2017. The process which has been adopted by the High Court suffers from several infirmities. Firstly, the decision of the High Court was contrary to Rule 2(c)(iii) which stipulated that the merit list would be drawn up on the basis of the marks obtained in the aggregate in the written examination and the viva voce; secondly, the scheme which was notified by the High Court on 13 December 2012 clearly specified that there would be no cut off marks in respect of the viva-voce; thirdly, the notification of the High Court dated 30 September 2015 clarified that the process of short listing which would be carried out would be only on the basis of the length of practice of the members of the Bar, should the number of candidates be unduly large; and fourthly, the decision to prescribe cut off marks for the viva-voce was taken much after the viva-voce tests were conducted in the month of January 2017.

15. For the above reasons, we have come to the conclusion that the broader constitutional issue which has been referred in Tej Prakash Pathak (supra) would not merit decision on the facts of the present case. Clearly, the decision which was taken by the High Court was ultra vires Rule 2(c)(iii) as it stands. As a matter of fact, during the course of the hearing we have been apprised of the fact that the Rules have been subsequently amended in 2017 so as to prescribe a cut off of 35% marks in the viva-voce examination which however was not the prevailing legal position when the present process of selection was initiated on 30 September 2015. The Administrative Committee of the High Court decided to impose a cut off for the viva-voce examination actuated by the bona fide reason of ensuring that candidates with requisite personality assume judicial office. However laudable that approach of the Administrative Committee

may have been, such a change would be required to be brought in by a substantive amendment to the Rules which came in much later as noticed above. This is not a case where the rules or the scheme of the High Court were silent. Where the statutory rules are silent, they can be supplemented in a manner consistent with the object and spirit of the Rules by an administrative order."

24. *The ratio of this authority is squarely applicable in the facts of this case. Submission on behalf of the High Court administration that Rule 14 permits them to alter the selection criteria after the selection process is concluded and marks are declared is not proper exposition of the said provision. The said Rule, in our opinion, empowers the High Court administration in specific cases to reassess the suitability and eligibility of a candidate in a special situation by calling for additional documents. The High Court administration cannot take aid of this Rule to take a blanket decision for making departure from the selection criteria specified in the 2001 Rules. The content of Rule 14 has the tenor of a verification process of an individual candidate in assessing the suitability or eligibility.*

25. *We, accordingly, allow both the writ petitions by directing the High Court to make recommendation for those candidates who have been successful as per the merit or select list, for filing up the subsisting notified vacancies without applying the Full Court Resolution that requires each candidate to get 50 per cent aggregate marks. The part of the Full Court Resolution of the Jharkhand High Court dated 23.03.2023 by which it was decided that only those candidates who have secured at least 50% marks in aggregate shall be qualified for appointment to the post of District Judge is quashed."*

14. In the case in hand, the respondent after commencement of recruitment process changed entire selection process. The practical test was

introduced after commencement of process and marks of written test were scaled down. The action of respondent was contrary to law laid down by Supreme Court.

15. The selection process in question was completed in 2014, thus, it would not be appropriate to disturb appointment of the candidates who were selected a decade back. As conceded by respondent, post of Motor Mechanic (Corporal) and Driver is available, thus, it would be appropriate to offer appointment letter to the petitioners.

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16. The petitioner is claiming post of Driver which is a technical post. In view of above discussion and findings, he is entitled to said post. The petitioner at this point of time is 46 years old. Counsel for the parties concede that petitioner would be subjected to driving test and if he is able to clear the said test, he would be offered appointment letter.

17. In the wake of above discussion and findings, both the petitions deserve to be allowed and accordingly allowed. The needful shall be done within three months from today. As conceded by petitioners, they shall not be entitled to back wages and their date of joining for all service benefits would be relevant date.

18. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

22.04.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	