

CWP- 19966-2017 (O&M) & connected cases -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254	CWP- 19966-2017 (O&M) Date of Decision: 06.03.2024
HC Balbir Singh and others	...Petitioners
Versus	
State of Punjab and others	...Respondents
With	
	CWP-20135-2017
Vijay Kumar and others	...Petitioners
Versus	
State of Punjab and others	...Respondents
With	
	CWP-27454-2017
Ct. Saurav Kamboj and others	...Petitioners
Versus	
State of Punjab and others	...Respondents
With	
	CWP-11918-2021
Surjit Pal and others	...Petitioners
Versus	
State of Punjab and others	...Respondents

CWP- 19966-2017 (O&M) & connected cases -2-

With
CWP-11306-2022

Major Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-7436-2022

Varinder Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-7505-2022

Sukhjit Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-17696-2022

Rashpal Ram and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19966-2017 (O&M) & connected cases -3-

With
CWP-19325-2022 (O&M)

Sukhdev Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-2631-2022

Ranjit Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-9773-2022

Harjinder Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-13183-2022

Ranjit Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CWP- 19966-2017 (O&M) & connected cases -4-

With
CWP-24147-2022

Gurdarshan Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-24388-2022

HC/LR Pawan Kumar and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With
CWP-24441-2022

Sahil and others ...Petitioner

Versus

The State of Punjab and others ...Respondents

With
CWP-25578-2022

Anirudh Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19966-2017 (O&M) & connected cases -5-

With

CWP-25524-2022

Harjinder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-29485-2022

Kulvinder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-5540-2023

Ravinder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

And

CWP-4004-2024

SI/LR Sukhjinder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Gaurav Chopra, Senior Advocate with
Mr. Akshat Dalal, Advocate
Ms. Sanjana Makkar, Advocate and
Mr. Jaskaran Singh, Advocate for the petitioner
(in CWP-19966-2017, CWP-20135-2017, CWP-7505-2022,
CWP-7436-2023)

Mr. Krishan Kumar Thakur, Advocate and
Ms. Komal Thakur, Advocate for the petitioners
(CWP-11918-2021, 25524-2022, 24147-2022, CWP-4004-2024)

Mr. Sarbjit Singh Khaira, Advocate for the petitioner
(in CWP-13183-2022)

Mr. N.K. Vadehra, Advocate for the petitioners
(in CWP-19325-2022, CWP-5540-2023)

Mr. R.K. Arya, Advocate for petitioner (in CWP-2631-2021)

Mr. S.K. Kanojia, Advocate for
Mr. Gurmeet Singh, Advocate for the petitioners
(in CWP-27454-2017)

Mr. H.S. Saini, Advocate for petitioner(s)
(in CWP-9773-2022, CWP-11306-2022 and CWP-17696-2022)

Mr. K.G. Chaudhary, Advocate and
Ms. Sakshi Singh, Advocate for the petitioners
(in CWP-243858-2022, CWP-24441-2022, CWP-25578-2022
and CWP-29485-2022)

Mr. Aman Dhir, Deputy Advocate General, Punjab

Mr. Sandeep Sharma, Advocate for respondent Nos.4 to 174
(in CWP-19966-2017)

Mr. Amit Jhanji, Senior Advocate with
Mr. Abhishek Kumar, Advocate for respondent Nos.175 to 232
(in CWP-19966-2017)

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in this bunch of petitions, with the consent of all the parties, the captioned petitions are hereby disposed of by this common order. The facts for the sake of brevity and convenience are borrowed from *CWP No.19966 of 2017*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking declaration that Clause 5(b)(ii) of the Standing Order No.2 of 2017 (Annexure P-3) is *ultra vires* the Rule 3 of Punjab Intelligence Cadre (Group 'C') Service Rules, 2015.

3. The petitioners were initially selected and appointed as Constables in Punjab Police and subsequently promoted as Head Constables in accordance with Punjab Police Rules, 1934 (for short '**1934 Rules**'). During the course of service, they came to be deputed in the Intelligence Wing of the Punjab Police. The State of Punjab with effect from 20.02.2008 introduced Punjab Police Act, 2007 (for short '**2007 Act**'). As per Section 4(b) of 2007 Act, there are four cadres i.e. (i) District Police (ii) Armed Police (iii) Intelligence and (iv) Technical and Support Services.

4. The Governor of State of Punjab, in exercise of power conferred by Article 309 of the Constitution of India, promulgated Punjab Intelligence Cadre (Group 'C') Service Rules, 2015 (for short '**2015 Rules**'). The 2015 Rules came into force w.e.f. 10.08.2015. The Director General of Police, in exercise of power conferred by Rule 2(1)(k) of 2015 Rules, issued Standing Order No.2 of 2017. Pursuant to standing order, Additional Director General of Police, Intelligence Wing, Punjab constituted four professional evaluation committees for scrutinizing the record of every candidate seeking absorption into Intelligence Cadre. A State-Level Scrutiny Committee was also constituted to finalize the absorption process. The scrutiny committee considered 2407 officers of different ranks for absorption. The rounding off the marks was done up to 0.5 interval. The Committee with the approval of DGP considered ACRs for the year ending 31st March' 2016 though as per

Standing order should have considered for the year ending 31st March' 2015. The said committee fixed qualifying marks 60% for SI, 58% for ASI, 58% for HC and 50% for Constable. The respondent on 14.08.2017 issued a list of candidates who were found eligible to be absorbed. The committee recommended 819 officers of different ranks for absorption and rejected the remaining.

5. The petitioners are not figured in the aforesaid list meaning thereby they are not absorbed in the Intelligence Cadre and are liable to be repatriated to their parent cadres. The grievance of the petitioners is that respondent by impugned standing order, contrary to mandate of Rule 3 of 2015 Rules, has prescribed 50 out of 100 marks for interview.

6. A battery of Advocates led by Mr. Gaurav Chopra, Senior Advocate and Mr. K.G. Chaudhary, Advocate would submit that as per Rule 3 of 2015 Rules, Scrutiny Committee constituted by Director can consider performance, merit and seniority of the aspirants. As per Rule 6 of 2015 Rules, a person to be absorbed in the service is bound to give his consent and should be found suitable by the Scrutiny Committee. The respondent travelling beyond its delegated jurisdiction has provided that there would be a professional evaluation and interview of candidates who want to be absorbed under the Intelligence Cadre. As per impugned clause, there are 50 marks for professional evaluation committee and interview. There is no provision for constitution of professional evaluation committee and interview of the candidates. It is settled proposition of law that standing order/instructions cannot travel beyond the Rules or other statutory provisions. The standing order is a piece of delegated legislation which cannot be contrary to the Rules

framed by Governor in exercise of power conferred by proviso to Article 309 of the Constitution of India read with Section 80 of 2007 Act.

7. *Per contra*, Mr. Amit Jhanji, Senior Advocate and Mr. Aman Dhir, Deputy Advocate General, Punjab would submit that validity of 2015 Rules is under challenge and matter is pending before a Division Bench of this Court. On being asked, they conceded that validity of impugned clause of Standing order is not subject matter of the said writ petition. They submit that the petitioners do not possess minimum qualification as specified in Appendix 'B' read with Rule 6 of 2015 Rules, thus, they are not at all eligible for appointment in Intelligence Cadre. As per Appendix 'B' of 2015 Rules, the minimum qualification for the appointment of Constable and Sub-Inspector is Graduation and petitioners do not possess the said qualification. As per Rule 3 of 2015 Rules, scrutiny committee is supposed to consider performance, merit and seniority of the candidates. The performance of candidates may be assessed on the basis of annual confidential reports, awards, recommendations and achievements secured by them; however, merit of the candidate can be determined only after conducting written test or interview. The competent authority has decided to ascertain merit on the basis of professional evaluation and interview. Under heading 'professional evaluation & interview' different sub-headings have been carved out which include professional knowledge in intelligence trade craft, outstanding professional output, knowledge of computers and technical equipment, power of expression, general health and personality. The marks for each sub-heading have been prescribed. The petitioners participated in the selection process and having failed are assailing the standing order. The impugned standing order was issued prior to

commencement of absorption process and petitioners were well aware of terms and conditions of standing order. The petitioners before participating in the absorption process did not object to impugned clause and after declaration of result, they are finding fault in the impugned clause and have approached this Court. It is trite law that a candidate after participating in a selection process cannot challenge terms and conditions of the advertisement or selection process itself.

In support of their contention, they relied upon judgment of Supreme Court in *Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others* 2023 SCC OnLine SC 344. In their concluding argument, they pointed out that 2015 Rules are one time arrangement so no officer deputed in Intelligence Cadre after introduction of 2015 Rules, can be absorbed under these Rules.

8. I have heard the arguments and with the able assistance of counsel for the parties have perused the record.

9. The conceded position emerging from the record is that State of Punjab introduced Punjab Police Act, 2007 with effect from 20.02.2008. The entire Police Force was divided into 4 cadres i.e. District Police, Armed Police, Intelligence Wing and Technical & Support Services. As per 2007 Act, officials of one cadre cannot be transferred to another cadre though may be sent on deputation. The Governor in terms of article 309 of the Constitution has promulgated 2015 Rules. As per Rule 3 of 2015 Rules, there would be Punjab Intelligence Cadre (Group 'C') Service. Group 'C' Service includes post of Sub-Inspector, Assistant Sub-Inspector, Head Constable and

Constable already working in the Intelligence Wing who are taken from various police cadres. A scrutiny committee shall be constituted to absorb the officers belonging to other cadres on the basis of their performance, merit and seniority. The Director General of Police is 'Director' in terms of Rule 2(1)(e) of 2015 Rules. He in exercise of power conferred by Rule 2(1)(k) has issued standing order No.2 of 2017. As per said standing order, 50 marks are prescribed for service record i.e. commendation certificates, medals/disc, ACRs of five years ending 31.03.2015. 50 marks have been earmarked for professional evaluation & interview. The respondent constituted different committees to complete the process. Record was scrutinized by one set of committee and interview was conducted by another set of committee. State level Scrutiny Committee finalized the process. The said committee fixed minimum qualifying marks for each rank of officers. The petitioners participated in the selection process, however, could not succeed as they secured marks less than the qualifying marks. As per petitioners, they could not succeed because they were awarded lesser marks in professional evaluation & interview. There was no maximum limit to absorb the members of the 'service'.

10. Before advertizing with the issue involved, it would be relevant to look at relevant statutory provisions. The Punjab Police prior to 2007 Act was governed by Punjab Police Act, 1861 read with Punjab Police Rules, 1934. There were two cadres as per 1934 Rules i.e. 'District Police' and 'Intelligence/investigation Wing'. Punjab Police Act, 2007 came into force w.e.f. 20.02.2008. As per said Act, there is one police service which consists of various ranks, cadres and members of Indian Police Service allocated or

deputed to the State. As per Section 4(b) of 2007 Act, the officers of subordinate ranks are divided into four cadres i.e. i) District Police ii) Armed Police iii) Intelligence and iv) Technical and Support Services. Seniority of each cadre is maintained at State level and transfer of members from one cadre to another is not permissible. A member of police service may be sent on deputation from one cadre to another cadre or organization or department. As per Section 80, State Government shall make rules for carrying out the purposes of the Act. As per Section 85, 1934 Rules shall remain in force unless those rules are specifically superseded. There is no provision in the Act with respect to absorption of members of one cadre in another cadre. Rule 21.25(1) of 1934 Rules provides for deputation and its maximum period. As per said rule, no officer can be retained for more than 5 years on deputation. Sections 2(z), 3(1), relevant extracts of Sections 4, 80 and 85 of 2007 Act and Rule 21.25(1) of 1934 Rules are reproduced as below:-

“2. **Definitions-**

	XXXX	XXXX	XXXX
(z)	“Service” means the police service, constituted under this Act;		
	XXXX	XXXX	XXXX

3. **Constitution of Police Service -**

- (1) There shall be one Police Service in the State.
- (2) Notwithstanding anything contained in any other law or any of the provisions of this Act, members of the Police Service shall be liable for posting anywhere in the State and outside the State, as may be ordered by the competent authority.

4. **Organization and Composition of Police Service-**

Subject to the provisions of this Act-

(a) the Police Service shall consist of such numbers in various ranks and have such organization or cadres, as the State Government may, by general or special order, determine, and shall include the members of the Indian Police Service, allocated or deputed to the State;

(b) the officers of subordinate ranks of district police, armed police, Intelligence and technical and support services shall form separate cadres. Seniority of each cadre shall be maintained at the State level. Transfer of a member of one cadre to another cadre shall not be allowed;

(c) notwithstanding anything contained in sub-clause(b), a member of the Police Service may be allowed to be deputed on deputation from one cadre to another cadre or organization or department, as per rules;

(d) the direct recruitment to various subordinate ranks in the Police Service shall be made through a State Level Police Recruitment Board or District Level Police Recruitment Board in a transparent manner;

XXXX XXXX XXXX

80. **Power to make Rules-**

(1) The State Government shall, by notification in the Official Gazette, make rules for carrying out the purposes of this Act, within one year from the date on which this Act, come into force.

XXXX XXXX XXXX

85. **Continuation of Punjab Police Rules, 1934**

The Punjab Police Rules, 1934, framed under the Police Act, 1861 (Central Act 5 of 1861), shall remain in force, unless those rules are specifically superseded.”

Rule 21.25(1) of Punjab Police Rules, 1934

“21.25. Appointments to Criminal Investigation Department.
- (1) Upper and lower subordinate posts other than those of inspectors in the Criminal Investigation Department shall be filled by the deputation of suitable men from districts for periods of three years extendible by not more than two years at a time at the discretion of the Deputy Inspector General, Criminal Investigation Department.”

11. The 2007 Act and 1934 Rules did not provide for absorption though there was provision for deputation. There were many officers of other cadres who were/are working with Intelligence Wing. They as per 1934 Rules could not be retained for more than 5 years but respondent permitted to stay many officers even for more than a decade. On account of their deep and pervasive experience to crack hard cases, they became indispensable for Intelligence wing. These officers are not now willing to re-join their parent cadre. Though there was no provision to retain deputationist beyond 5 years and absorb them in Intelligence Wing yet respondent gave its implied consent and permitted them to remain in Intelligence Wing for more than a decade. To resolve the issue, the Governor of the State, in exercise of its power under Article 309 of the Constitution of India, initially framed 2014 Rules which were followed by 2015 Rules. It provided for absorption of officers of other cadres in Intelligence Cadre. Rule 3 lays down broad parameters and conditions for absorption and other rules provide for terms and conditions of members of service. The relevant extracts of 2015 Rules read as:

“No.G.S.R.45/Const.Art.309/2015.-In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with section 80 of the Punjab Police Act, 2007, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules regulating the recruitment and the conditions of Service of the persons appointed to the Punjab Intelligence Cadre (Group ‘C’) Service, namely:-

- XXXX

XXXX

XXXX
2.

Definitions:-

XXXX

XXXX

XXXX
- (b)

‘absorption’ means absorption of members of Service in the Intelligence Cadre in different rank;
- XXXX

XXXX

XXXX
- (e)

‘Director’ means the Director General of Police, Punjab;
- XXXX

XXXX

XXXX
- (j)

‘Service’ means the Punjab Intelligence Cadre (Group ‘C’) Service; and
- (k)

‘Standing Order’ means a form of policy instructions issued from time to time by the Director on any aspect of Police functioning.

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3. Constitution of Service.- *On and with effect from the date of publication of these rules in the Official Gazette, there shall be a Service constituted to be known as the Punjab Intelligence Cadre (Group ‘C’) Service, which shall include the posts of Sub-Inspector, Assistant Sub-Inspector, Head Constable and Constable already working in the Intelligence Wing, who are taken from various police cadres. A Scrutiny Committee shall be constituted by the Director in order to absorb the above said incumbents in Service on the basis of their performance, merit and seniority.*

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6. Method of appointment, qualifications and experience.- (1)

Appointment to the Service shall be made in the manner as specified in Appendix ‘B’:

Provided that if no suitable candidate is available for appointment to the Service by promotion or by direct appointment , then appointment to the Service shall be made by deputation or absorption of a person holding a similar or an identical post under the State Government or the Government of India.

Provided further that a person to be absorbed in the Service shall give consent for the same and shall have to be found suitable by the Scrutiny Committee.

(2) Any official on deputation in Intelligence Wing can be repatriated to his parent department at any time without any prior notice, if his work and conduct is not found satisfactory.

(3) No person shall be appointed to a post in the Service, unless he possesses the qualifications and experience as specified against that post in Appendix ‘B’.

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13. Discipline, Punishment and appeal.- (1) *In the matters of discipline, punishment and appeal, the members of the Service shall be governed by the Punjab Police Rules, 1934, as amended from time to time.*

(2) The authority empowered to impose penalties in respect of the members of the Service shall be such, as prescribed in the Punjab Police Rules, 1934.

14. Application of the Punjab Civil Services(General and Common Conditions of Service) Rules, 1994.- (1) *In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.*

(2) The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, at present in force, are contained in Appendix 'E'.

15. Application of the rules.- *For all other aspects the Punjab Police Rules, 1934 shall be applicable to the members of Service except rules 13.21 and 21.25.*

Provided that any order issued or any action taken under the aforesaid rules, shall be deemed to have been made or taken under the provisions of these rules.

16. Repeal and Saving.- *The Punjab Intelligence Cadre (Group 'C') Service Rules, 2014, are hereby repealed:*

Provided that any order issued or any action taken under the rules so repealed, shall be deemed to have been issued or taken under the corresponding provisions of these rules.”

12. From the reading of 2015 Rules, following salient features are culled out:

- i) 2015 Rules have principally been framed by Governor in exercise of power conferred by proviso to Article 309 of the Constitution of India though Section 80 of 2007 Act has also been invoked. It is settled law that colour and contour of rules, framed by Governor in exercise of power conferred by 309 of Constitution, is plenary. These rules cannot be called subordinate legislation, as held by Supreme Court in ***B.S. Vadera v. Union of India, AIR 1969 SC 118; Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187*** and ***Bhakta Ramegowda v. State of Karnataka, (1997) 2 SCC 661.***

- ii) Section 80 of Punjab Police Act while promulgating 2015 Rules seems to be mechanically invoked and needs to be ignored;
- iii) As per Section 4 of Punjab Police Act, 2007, Intelligence is one of the four cadres of subordinate rank officers. 2015 Rules, within Intelligence Cadre, have constituted a 'Service' known as Punjab Intelligence Cadre (Group 'C') Service;
- iv) The members of the Group 'C' service comprises of:
 - a) Officers of the rank of Sub-Inspector, Assistant Sub-Inspector, Head Constable & Constable;
 - b) Who are **already** working in the Intelligence Wing.
The rules came into force w.e.f. 10.08.2015; and
 - c) Have been taken from various police cadres;
- v) It is Rule 3 which creates and defines expression 'service'. It specially provides that officers from other cadres already working on the date of notification would form part of service, thus there is no question of further recruitment in the said 'service', accordingly, partial Rule 6 seems to be surplus;
- vi) Director means Director General of Police;

- vii) Director has power to issue Standing order for the functioning of the police;
- viii) As per Section 2(ee) of 2007 Act, 'subordinate rank' includes officers below the rank of ASP/DSP means rank of Inspector is part of subordinate rank;
- ix) The sole object of the Rules is to absorb different ranks of officers of others cadres in the Intelligence cadre;
- x) It is a one time measure which has been adventured to decide fate of officers who though belong to other cadres but on deputation are working with Intelligence cadre for quite a long time;
- xi) An officer has absolute discretion to leave Intelligence Cadre but if he wants to be absorbed, the Intelligence Wing would decide his fate;
- xii) There would be a Scrutiny Committee to decide suitability of the candidates for absorption.
- xiii) The parameters to decide question of absorption of a candidate would be performance, merit and seniority;
- xiv) Punjab Police Rules, 1934 except Rule 13.21 & 21.25 and Punjab Civil Service Rules, by rule 13, 14 and 15 have been made applicable to members of the service. All members of different cadres are subject to these rules still

aforesaid rules have been specifically made applicable to
'service' constituted by Rule 3;

xv) Pay of the members is contemplated by Rule 9;

13. To implement the above-cited rules, Director General of Police being competent authority, issued Standing Order No.2 of 2017. The standing order has laid down mode and manner for absorbing suitable candidates. The relevant extracts of the standing order reads as:

ELIGIBILITY CONDITIONS AND PROCEDURE FOR ABSORPTION:-

2. *The absorption of Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables on deputation in Intelligence Wing (henceforth also referred as the incumbents) shall be on the basis of meeting minimum eligibility conditions, performance merit and seniority.*

3. *Written consent shall be taken from all incumbents regarding their willingness to be absorbed in the Intelligence Cadre.*

XXXX XXXX XXXX

5. *All officials willing to be absorbed in the Intelligence Cadre of Punjab Police shall meet the general eligibility conditions laid down hereunder and shall go through the selection procedure mentioned below;-*

a) General Eligibility Conditions:-

- (i) The incumbents who are on extension in service beyond the age of 58 years shall not be considered for absorption.*
- (ii) The incumbents should have completed at least three (3) of continuous service on deputation in*

Intelligence Wing as on 31st December, 2016 to be considered for absorption.

b) Procedure for selection:-

A two stage process shall be followed for evaluating the suitability of an incumbent official for absorption in the Intelligence Wing:

i) Scrutiny of Service Records:- *A Committee for scrutiny of records shall be constituted by the Addl. Director General of Police, Intelligence. Eligibility Criteria for incumbents and weightage of entries in service record shall be as follows:-*

- a) Official should not have been awarded any major penalty in any disciplinary proceedings in the last five years.*
- b) No Vigilance Enquiry or Departmental Enquiry should be pending or being contemplated against the official.*
- c) Official should not have been charge-sheeted in any criminal case. However, where the criminal case was registered while discharge of duty, it may not be counts as a disqualified criteria.*
- d) Official should not have been convicted in a criminal case.*
- e) Official should not have an adverse Annual Confidential Report during the last five years.*
- f) Weightage for service record shall be as follows:-*
 - i) Years of unblemished service: Half (1/2) point for each year of unblemished service in Intelligence Wing with a maximum of 10 pts.*
 - ii) Weightage for Commendation Certificates and Medals/Disc:*

- *Half (1/2) point for each CC-III, One (1) point for each CC-II and Two (2) points for each CC-I to a maximum of 20 pts.*
- *DGP's Commendation Disc (5 pts) Chief Minister's Medals (5 pts), Police Medal for Meritorious Service (5 pts) and/or President's Police Medal for Meritorious Service (5 pts) with a maximum of 10 pts for all put together.*
***Note:** Weightage shall only be given to Commendation Certificates issued on or prior to 31st December, 2016.*
- iii) *Weightage for ACRs of five years ending 31st March, 2015:*
 - *Outstanding : Two (2 pts)*
 - *Very Good : One (1pts)*
 - *Good : Half (1/2 pt)*
- g) *The Director General of Police, Punjab may relax any of the criteria/conditions (a) to (e) above by passing a specific order in this regard*
- ii) ***Professional Evaluation & Interview*** - *The Professional Evaluation and Interview shall be conducted by one or more Professional Evaluation Committee(s) to be constituted by Addl. Director General of Police, Intelligence as per requirement. These committees shall evaluate all willing incumbents based on the following criteria:-*
 - a) *Professional knowledge in intelligence trade craft (weightage 15 pts)*
 - b) *Outstanding Professional output (weightage -15 pts)*
 - c) *Knowledge of computers and/or technical equipment (weightage 05 pts)*
 - d) *Power of expression (weightage -05 pts)*

e) General Health (physical & mental) and personality (weightage -10 pts)

COMPOSITION OF PROFESSIONAL EVALUATION COMMITTEE AND SCRUTINY COMMITTEE:-

6. The reports of the Committee for Scrutiny of Records and Professional Evaluation Committee(s) shall be examined by a Scrutiny Committee (State Level) to be constituted by the Addl. Director General of Police, Intelligence. After thorough examination and compilation of the results, the Scrutiny Committee shall submit a report to the Addl. Director General of Police, Intelligence recommending clearly the officials to be absorbed. The Scrutiny Committee may use standard statistical methods to moderate scores given by different Professional Evaluation Committees, if the need for same is felt, to ensure parity. The Scrutiny Committee may if deemed necessary to do so, call few or all officials for personal interaction and evaluation.”

14. From the reading of standing order, following salient features are culled out:

- i) 2015 Rules contemplated ‘Scrutiny Committee’ but Standing order constituted two more committees i.e. one for scrutiny of records and another for professional evaluation & interview;
- ii) 50 marks would be for Annual Confidential Reports (ACR) & Medals/commendations/disc. and 50 for interview.
- iii) The Evaluation committee in the interview has to consider professional knowledge in intelligence trade craft,

outstanding professional output, knowledge of computers and technical equipment, power of expression, general health and personality.

15. From the above noted facts, pleadings and arguments of both sides, the following questions arise for the adjudication of this Court.

- i) Whether the petitioners can lay challenge to Clause 5 (b)(ii) of the Standing Order No.2 of 2017 after participating in the absorption process?
- ii) Whether Clause 5 (b)(ii) of the Standing Order No.2 of 2017 is *ultra vires* the Rule 3 of Punjab Intelligence Cadre (Group 'C') Service Rules, 2015?
- iii) Whether prescription of 50% marks for interview was just, fair and reasonable?

16. **Question No.1:-** Whether the petitioners can lay challenge to Clause 5 (b)(ii) of the Standing Order No.2 of 2017 after participating in the absorption process?

16.1 The respondents vehemently pleaded that the petitioners after participating in the absorption process cannot be permitted to challenge one or another clause of the standing order. By participating in the process, they acquiesced to terms and conditions of the standing order. As per principle of estoppel, they are prevented from assailing one or another clause of the standing order.

16.2 A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others 2023 SCC OnLine SC 344*** has held that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

In ***Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309***, after referring to a catena of judgments on the principle of waiver and estoppel, Supreme Court did not entertain the challenge to the advertisement for the reason that the same would not be maintainable after participating in the selection process. The relevant extracts of the judgment read as:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

In ***Ashok Kumar v. State of Bihar, (2017) 4 SCC 357***, the Apex Court after referring to catena of judgments made an observation that having participated in the selection process without objection, precludes the candidate to challenge the process at a later stage.

In *Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100*, the Apex Court held that it is well settled principle that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

The Apex Court in *Sadananda Halo v. Momtaz Ali Sheikh, (2008) 4 SCC 619* has noted that the only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board.

A two Judge Bench of Supreme Court in *State of Uttar Pradesh v. Karunesh Kumar and Others, 2022 SCC OnLine SC 1706* has clearly held that a candidate who has participated in the selection process is estopped and cannot challenge the selection process.

The Apex Court in *Madan Lal v. State of Jammu and Kashmir AIR 1995 SC 1088* has held that if a candidate takes a calculated chance and participates in the selection process, he cannot challenge selection process on being found unsuccessful.

16.3 The petitioners indubitably participated in the absorption process which was initiated in terms of 2015 Rules read with the standing order. As laid down by Supreme Court in above noted judgments, no one after participating in the selection process can be heard to challenge advertisement, however, no candidate can be stopped from challenging validity of the rules or instructions made there-under on the ground that rules/instructions are arbitrary and violative of Article 14 of the Constitution of India.

16.4 The Supreme Court in *Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another (2021) 10 SCC 116* has

adverted with challenge to terms and conditions of advertisement or appointment letter by a candidate after his selection. The court has opined that employer is always in a dominating position, thus, in case of public employment, terms and conditions are subject to judicial scrutiny. The relevant extracts of the said judgment read as:

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”

16.5 A Two Judge Bench of Supreme Court in ***Munindra Kumar and others v. Rajiv Govil and others, (1991) 3 SCC 368*** has held that candidates who have remained unsuccessful in the selection process cannot be estopped from challenging the Rules which are arbitrary and violative of Article 14 of Constitution of India. The relevant extracts of the judgment read as:

“10. It may be noted that Rajeve Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations.”

From the perusal of above-quoted judgments, it is quite evident that a candidate cannot be estopped from assailing instructions which are arbitrary and violative of Article 14 of the Constitution of India. The petitioners in the present case are assailing Clause 5(b)(ii) of the standing order on the ground that it is contrary and beyond the scope of Rule 3 of 2015 Rules.

As the petitioners are assailing one clause of the standing order on the ground that it is contrary to 2015 Rules which is source of the standing order, they cannot be detained from assailing said clause despite the fact that they had participated in the absorption process. Accordingly, contention of the respondents that petitioners in terms of principle of estoppel cannot lay challenge to impugned clause of standing order and consequential proceedings is not sustainable.

17. Question Nos. 2 & 3 are inter-connected, thus, both are taken up together.

17.1 The petitioners are assailing validity of one clause of a standing order which has been issued by an executive in exercise of power bestowed by Rules. It is apt to notice that 2015 Rules have been made by Governor under

proviso to Article 309. There is no cavil that DGP has power to issue Standing order. The dispute is confined to scope of the power. As petitioners are assailing validity of a clause of the Standing order, it would be imperative to have a bird's eye view of judicial precedents adverting with the scope of interference in such matters.

Judicial Precedents:-

In *S.G. Jaisinghani v. Union of India*, (1967) 2 SCR 703, Supreme Court has held that absence of arbitrary power is the first essential of the rule of law upon which whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within clearly defined limits. Discretion must be guided by rule of law. It must not be arbitrary, vague and fanciful.

Supreme Court in *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3 while dealing with claim of petitioner to the post of Chief Secretary in the State of T.N. in terms of Indian Administrative Service Rules, 1954 evolved the doctrine of arbitrariness and its application to State action as a distinct doctrine on which State action may be struck down as being violative of the rule of law contained in Article 14. The relevant extracts of the judgment read as:

“85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to

employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is

extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

In ***State of Tamil Nadu and another v. P. Krishnamurthy and others, 2006 (4) SCC 517***, while dealing with Validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959, Supreme Court in Para 12 expounded grounds to challenge subordinate legislation as below:

"Whether the Rule is valid in entirety?"

15. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a sub-ordinate legislation can be challenged under any of the following grounds:-

- a) Lack of legislative competence to make the sub-ordinate 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 court might well say that Legislature never intended to give authority to make such Rules).*

16. *The Court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity.*”

In ***Cellular Operators Association of India and others v. Telecom Regulatory Authority of India and others***, (2016) 7 SCC 703, Supreme Court while declaring Regulation framed under Telecom Regulatory Authority of India Act, 1997 as *ultra vires* the Act held that the impugned Regulation is manifestly arbitrary and unreasonable.

A Constitution Bench in ***Shayara Bano v. Union of India***, (2017) 9 SCC 1, dealt with subordinate legislation besides plenary legislation. The Hon’ble Court noticed its precedent and concluded:

“100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In ***Cellular Operators Association of India v. Telecom Regulatory Authority of India***, (2016) 7 SCC 703, this Court referred to earlier precedents, and held:

"Violation of fundamental rights

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be

*manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. (See **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641**, SCC at p. 689, para 75)*

*43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In **Khoday Distilleries Ltd. v. State of Karnataka (1996) 10 SCC 304**, this Court held (SCC p. 314, para 13):*

*"13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641]**, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; `unreasonable*

not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

44. Also, in ***Sharma Transport v. State of A.P.*** [(2002) 2 SCC 188], this Court held: (SCC pp. 203-04, para 25)

"25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

101. It will be noticed that a Constitution Bench of this Court in ***Indian Express Newspapers v. Union of India***, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case,

there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

Principle of Proportionality:-

17.2 As per principle of proportionality, punishment prescribed by legislation must be commensurate to alleged offence. In ***Om Kumar v. Union of India, (2001) 2 SCC 386*** a matter came up for hearing on account of an order of Supreme Court dated 04.05.2000 proposing to re-open the quantum of punishments imposed in departmental inquiries on certain officers of the Delhi Development Authority who were connected with the land of the DDA allotted to M/s. Skipper Construction Co. It was proposed to consider imposition of higher degree of punishment in view of the role of these officers in the said matter. The question posed before the Court was whether the right punishment was awarded to the officers in accordance with well known principles of law or whether the punishment required any upward revision. Proportionality as a constitutional doctrine has been highlighted as follows:

“30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on

*the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of "proportionality" has indeed been applied vigorously to legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India - such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India - this Court has occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. "Reasonable restrictions" under Articles 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which "reasonable restrictions" could be imposed was considered. In **Chintamanrao v. State of M.P. [AIR 1951 SC 118: 1950 SCR 759]** Mahajan, J. (as he then was) observed that "reasonable restrictions" which the State could impose on the fundamental rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public". "Reasonable" implied intelligent care and deliberation, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in **State of Madras v. V.G. Row [AIR 1952 SC 196: 1952 SCR 597: 1952 Cri LJ 966]**, observed that the Court must keep in mind the "nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil*

*sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time". This principle of proportionality vis-a-vis legislation was referred to by Jeevan Reddy, J. in **State of A.P. v. McDowell & Co. (1996) 3 SCC 709** recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands.*

*31. Article 21 guarantees liberty and has also been subjected to principles of "proportionality". Provisions of the Criminal Procedure Code, 1974 and the Indian Penal Code came up for consideration in **Bachan Singh v. State of Punjab [(1980) 2 SCC 684]** the majority upholding the legislation. The dissenting judgment of Bhagwati, J. (see **Bachan Singh v. State of Punjab (1982) 3 SCC 24** dealt elaborately with "proportionality" and held that the punishment provided by the statute was disproportionate.*

*32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [see **Air India v. Nergesh Meerza [(1981) 4 SCC 335 (SCC at pp. 372-373)]**]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in **State of A.P. v. McDowell and Co. (1996) 3 SCC 709.**"*

18. The dispute is confined to introduction of concept of 'interview' by way of standing order and percentage of marks fixed for viva voce. The ambit, scope and purpose of interview have been elaborated by different

authors as well as Hon'ble Judges in different judgments. 'Interview' is now an accepted aid to selection and is designed to give the selectors some evidence of the personality and character of the candidates. Interview came to be recognized as an essential part of the process of selection on the belief that some qualities necessary and useful to public servants which cannot be found out in a written test would be revealed in a viva voce examination.

18.1 In his book on *Public Administration in Theory and Practice*, Mr. M.P. Sharma has made critical analysis of interview. He has opined:

“The oral test or the interview has been much criticised on the ground of its subjectivity and uncertainty. Different interviewers have their own notions of good personality. For some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificial and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit-or-miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole lifetime to judge a man's worth while interviewers have to do it in a quarter of an hour. Even at its best, the common sort of interview reveals but the superficial aspects of the candidate's personality like appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc. go largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition.”

Judicial Precedents on marks prescribed for viva voce:-

18.2 In *Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722*, a Constitution Bench held that allocation of 33.3% marks for viva voce test was beyond reasonable proportion and rendered the selection of candidates arbitrary.

In *Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159*, the Supreme Court held that allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable.

In *Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417*, a Four Judge Bench of Supreme Court considered the question of marks of viva voce. The State had allocated 200 marks for viva voce test out of a total 900 marks. The Court held that in case of selections to be made to Haryana Civil Services (Executive Branch) and other allied services where the competitive examination consists of a written examination followed by viva voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks. The Court further suggested that this percentage should also be adopted by Public Service Commission in other States so that there would be uniformity in the selection process throughout the country and the practice of 12.2% for viva voce followed by UPSC should be taken as a guide for the State Public Service Commission.

It is apt to notice here that Court, considering the fact that practice of high percentage of marks for viva voce was adopted for almost 50 years and everyone had acted on the basis of rules in force, did not set aside selections already made on the basis of unduly high percentage of marks

allocated for viva voce test. The Court directed the authorities to give one more opportunity of appearance in the competitive exam to those candidates who had secured minimum 45% marks in the written examination but could not find their names in the select list despite they have crossed the maximum age prescribed by the rules for recruitment.

A Two Judge Bench of Supreme Court in ***Mohinder Sain Garg v. State of Punjab and others, (1991) 1 SCC 662*** considered validity of 25% marks for interview. The Court relying upon its earlier judgment in ***Ashok Kumar Yadav (supra)*** observed that State of Punjab should have followed the law laid down by Supreme Court in ***Ashok Kumar Yadav (supra)***. In this case, the State of Punjab had initiated selection process for the post of Excise and Taxation Inspectors. The exam was conducted by subordinate selection body and not by Public Service Commission. The Court held that principle enumerated in ***Ashok Kumar Yadav (supra)*** should be applied. The Court declared 25% marks for viva voce test arbitrary and excessive. The Court further held that viva voce test cannot be totally dispensed with but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15% of the total marks in the selection of candidates for public employment by direct recruitment where the rules provide for a composite process of selection namely written examination and interview.

In ***P. Mohanan Pillai v. State of Kerala, (2007) 9 SCC 497***, 50% marks were fixed for the interview. The Court observed as under: (SCC p. 503, para 16)

“16. In this case allocation of marks for interview was in fact misused. It not only contravened the ratio laid down by this Court in Ashok Kumar Yadav (1985) 4 SCC 417 and subsequent cases, but in the facts and circumstances of the case, it is reasonable to draw an inference of favouritism. The power in this case has been used by the appointing authority for unauthorised purpose. When a power is exercised for an unauthorised purpose, the same would amount to malice in law. (See Govt. Branch Press v. D.B. Belliappa [(1979) 1 SCC 477: 1979 SCC (L&S) 39], Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC 776] and K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581])”

18.3 In **Anzar Ahmed v. State of Bihar and others, 1994 (1) SCC 150**, a Two Judge Bench of Supreme Court had occasion to consider validity of 50% marks for viva voce. The Court noticing its earlier judgments concluded that principles which govern the allocation of marks for interview in a selection based on written and viva voce test cannot be applied to a selection where no written test is held and the selection is based on interview. The relevant extracts of the judgment read as:

“18..... We are unable to construe the said decision to mean that the principles which govern the allocation of marks for interview in a selection based on written and viva voce test would also apply to a selection where no written test is held and the selection is based on interview only.”

A Two Judge Bench of Supreme Court in **Siya Ram v. Union of India, 1998 (2) SCC 566**, considered the question of appointment of Chief Personnel Inspectors in the Railway where selection was based upon oral test. In the said test, 50 out of 100 marks were prescribed for professional ability.

The Court approved appointment on the basis of oral test. The Court has held as under:

“10. This Court held that the selection for the post of Munsifs was valid and could not be struck down. It said that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public service. It said that in the case of service to which recruitment had necessarily to be made from persons of mature personality, interview test may be the only way and subject to basic and essential academic and professional requirements being satisfied and that subjecting such persons to written test might yield unfruitful and negative results. There cannot be any rule of thumb regarding the precise weight to be given and that it must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. The Court said that it was a matter for determination by experts and also a matter for research and that it was not for the Court to pronounce upon it unless exaggerated weight had been given with proven or obvious oblique motives.

11. It is not necessary for us to multiply various decisions rendered by this Court on the question as to how many marks should be allocated for viva voce test in respect of recruitment to any particular public service.

12. In the present case, the appointment was to the post of Chief Personnel Inspector in the Railways. It is a selection post. The Selection Board consisted of high-ranking officials, well versed with the requirements of the post to which promotion was to be made. Norms had been laid for the Selection Board to follow. No fault can be found with the same. Apart from the objection that excessive marks had been allocated for viva voce, the appellant has been unable to point

out any illegality or irregularity in the selection process. Functions and duties attached to the post of Chief Personnel Inspector have nowhere been set out. It is not for this Court to suggest as to what marks should be allocated for interview in a case like the present one. As noted above, at times for certain posts only interview is considered to be the best method for selection. We are thus of the opinion that selection made for the two posts of Chief Personnel Inspector in the present case was according to the Rules. There is no infirmity in the selection process for us to interfere in the appeal. The impugned judgment of the Tribunal is a well considered one. It was, however, not necessary for the Tribunal to make observations from which the appellant sought to draw strength. We do not find any merit in the case of the appellant and would uphold the judgment of the Tribunal. The appeal is dismissed with costs.”

19. In the case in hand, neither question of direct recruitment nor promotion is involved. Issue directly relates to criteria prescribed for absorption. No member of the force can claim absorption as a matter of right but respondent by way of 2015 Rules has created right of consideration. Every member of the service who fulfils eligibility criteria falls within zone of consideration. The respondent by way of Rule 3 has prescribed parameters for absorption i.e. seniority, merit and performance. As per respondents, seniority and performance can be determined on the basis of past service record but merit can be determined either by way of written test or oral interview. The Rules did not prescribe method to determine merit and DGP found it appropriate to conduct interview. Every member of the force got equal opportunity and higher officers of the Wing conducted interview. As per petitioners, rules are silent qua method to determine merit and performance, thus, criteria of selection should be on the basis of past record. The respondent

neither is making fresh appointments nor promoting member of the service. There are members who are working with Intelligence Wing for more than 5 years and may be even a decade. The respondent has retained them due to their past performance and competence. The respondent cannot decide their fate as per its whims and caprices. Every member should be extended equal opportunity. The respondent by earmarking 50% marks for interview has thrown the competence and ability to winds which cannot be permissible by law.

20. As conceded by both sides, few members of the service are working for more than 5 and may be even 10 years with Intelligence Wing. There is no doubt about their performance and integrity. They are fulfilling essential conditions. By impugned order, they have been declined for absorption in the Intelligence Wing. It is settled proposition of law that government/commission is competent to fix the criteria for selection. In case of written test followed by interview, the marks of interview cannot be exorbitant. The Supreme Court has approved 12.2% marks for viva voce where interview is preceded by written test. In the absence of written test, marks of interview may be even 100%. Panel of experts, keeping in view needs of the organization, has to decide mode and manner of selection. Members of interview board decide marks of each candidate on the basis of their performance and pre-determined parameters for interview.

Rule 3 of the 2015 Rules enjoins that seniority, performance and merit would be considered by scrutiny committee for the purpose of absorption. The rules neither provide for constitution of evaluation committee nor interview of the aspirants. The DGP indubitably was supposed to lay

down modalities for the completion of process of absorption. As held by Supreme Court in above-cited judgments, a rule cannot operate contrary to a statutory provision whereunder said rule has been made. Rules cannot be contrary to statutory provisions. Similarly, neither instructions can be contrary to statutory provisions nor rules. The standing order has been issued in exercise of power conferred by 2015 Rules; therefore, it cannot operate contrary to rules. The respondent, to make the scheme envisaged by rules workable, was bound to issue standing order but its water could not flow contrary to the river of rules. As per respondent, 50% marks of viva voce were fixed to determine merit of the applicants. Contention of the respondent needs to be rejected on following counts:

- i) Performance and merit are two inter-connected expressions. Where seniority is not considered as sole criteria, merit cum seniority or seniority cum merit is contemplated. Performance is foundation of merit and there are a number of methods to assess performance e.g. written test, physical test, interview, group discussion etc. In case of competitive exam, only marks cannot be equated with merit and merit of already working employees means past performance and small fraction may be of personality assessment. While determining merit, the selection committee considers past performance of the candidates, thus, use of expression 'performance' as well as 'merit' does not mean that merit should be determined by way of interview and performance is not merit.

- ii) The respondent has fixed points for each year of service with Intelligence Wing. The maximum points under this head are 10 and every year carries half point. It means the respondent is conceding that an officer may be working with Intelligence Wing for last 20 years. The points of each year service represent seniority. There is weightage for commendation certificate and medals/disc. The maximum points for commendation certificates and medals/disc are 30. For ACRs of 5 years ending 31st March' 2015 (as per reply ending 31st March' 2016), there are 10 points. Officers are honoured with President/Chief Minister/DGP commendation certificates, medals/disc for their best of performance. An employee gets 'outstanding' ACR on the basis of his performance. No supervising or reporting officer is expected to grant 'outstanding' or 'very good' grade without performance. Outstanding ACRs and medals/disc indicate performance of an employee. An officer who is having outstanding ACR and medals cannot be poor in merit. A President or Chief Minister medal laureate in all probabilities is meritorious. Thus, contention that performance is independent from merit cannot be countenanced.
- iii) As confirmed by State Counsel, evaluation committee in a single day conducted interview of more than 150 candidates. As per petitioners, no candidate was subjected

to interview for more than 2 minutes. It cannot be expected that within 2-5 minutes without practical test, a committee can test professional output, knowledge of computer and health of a police officer.

iv) As per impugned clause, interview board has to consider professional knowledge in intelligence trade craft, outstanding professional output, knowledge of computers and technical equipment, power of expression, general health and personality. There are 5 points for knowledge of computers and technical equipment. Without practical test, it seems difficult to believe that knowledge of computer or technical equipment can be tested. There are 10 points for general physical health. It is again unbelievable that physical health of a police officer can be tested by interview and without physical test. It is apt to notice that in every armed force, at the time of selection, physical/medical test is conducted to ascertain physical and mental health.

v) As per impugned clause, there are 15 points for professional knowledge in intelligence trade craft. The petitioners for more than 5 years are working with Intelligence Wing. Senior officers have prepared their ACR and assessed them for awards/medals. Grade in the ACR is awarded on the basis of work in the intelligence.

There seems no reason to award marks under the said sub-heading when points are already fixed for ACR.

- vi) As per impugned clause, there are 15 points for outstanding professional output. An officer gets medals/disc or recommendations on the basis of outstanding professional output. There are already marks for medals. There seems no reason to award marks under the said sub-heading when points are already fixed for medals/recommendations/disc.

21. Supreme Court starting from *Ajay Hasia (supra)* has reminded authorities that marks for interview should be reasonable. In the absence of written test, selection may be made on the basis of interview. As discussed in above noted judgments, interview is not a flawless method to select suitable candidates. There is discretion in the hands of interview board. The outcome of interview depends upon impartial behavior, competence and vision of interview board. Competence of candidates cannot be ascertained in a 2-3 minutes interview. Admittedly, petitioners herein were subjected to interview of not more than 2 minutes. Courts cannot substitute opinion of the interview board but being assigned role of sentinel on the qui vive are bound to examine alleged arbitrariness and unreasonableness. The petitioners neither appeared for promotion nor for fresh appointment. The entire process was for absorption. The suitability of a candidate for absorption can be decided by higher authorities. The Governor has made Rules in exercise of power under Article 309 for absorption. The absorption depends upon suitability and requirement. The petitioners in 2015 were working with Intelligence Wing for

last more than 5 years or may be more than a decade. It shows that Intelligence Wing needs their services. The respondent in the rules has prescribed three parameters to determine suitability i.e. seniority, performance and merit. The rules are silent qua mode and manner to determine performance and merit. The suitability of an employee who is working with an organization for last so many years can be judged on the basis of his performance. As per service jurisprudence, performance is determined on the basis of past track record. In public employment, Annual Confidential Report (ACR) of every employee irrespective of rank or status is prepared. Officers specially working with Armed Forces are adorned with medals for their performance/achievement. Therefore, ACRs, recommendations, medals/disc explicitly narrate tale of ability, competence, character and performance of members of armed forces. Interview indubitably is a reasonable tool to achieve the desired results where authorities are selecting candidates who had not worked in their organization or their report card is either unavailable or does not suffice the purpose sought to be achieved. The petitioners belong to Police Force. They were working with Intelligence Wing for quite long time. Their ACRs, medals/disc and recommendations are available with respondent. An officer who without complaint had worked for more than a decade, all of sudden, cannot be declared inefficient or incompetent. The respondent could subject every candidate to interview to find out those aspects which could not be ascertained on the basis of past record. If suitability of a candidate who is working for a decade cannot be determined on the basis of past record/performance, it is highly improbable that his suitability can be determined in an interview which lasts for 2-3 minutes.

22. The State except to plead that merit can be determined on the basis of interview and rules do not inhibit or prescribe any particular mode & manner, has failed to advance even single good reason to prescribe 50% marks for interview. 50% marks of viva voce vest absolute discretion in the interview board. The members of the board are none else than senior officers of the petitioners and they have assumed unguided, unbridled and uncanalised discretion. Absolute discretion makes the decision arbitrary and every act which is arbitrary is against the rule of law. The possibility of discrimination becomes writ large. An officer, on account of minimum marks in the interview, despite best track record in the form of ACRs and medals may be rejected. The courts cannot test validity on the basis of possibility of misuse of a provision. Improper or deficient implementation of a provision does not make it invalid and cannot be declared *ultra vires*, however, the impugned clause in the present case is *ultra vires* because:

- i) Rule 3 of the 2015 Rules does not provide for interview and by Standing order, the respondent has introduced interview carrying 50% marks.
- ii) The petitioners were working with respondent for more than 5 years and may be decade.
- iii) It is not a case of fresh appointment or promotion whereas it is case of absorption.
- iv) The respondent in form of ACRs, recommendation certificates, medals/disc, criminal antecedents, age,

number of years of service etc. is having complete record of performance.

- v) The members of the Board are senior officers who are not forming an independent agency.
- vi) The respondent while making appointment of Constables and Head Constables is not conducting interview.
- vii) The respondent in other wings is making direct recruitment even of Sub-Inspectors on the basis of written test and experience. There is no interview.
- viii) 50 marks only for viva voce and remaining 50 for number of years of service plus past performance cannot be in consonance with the object sought to be achieved.
- ix) 50% marks of interview has vested authorities with absolute discretion. Question of absorption has become choice and liking or disliking of the officers. Past performance and seniority have been thrown to winds.
- x) Rules are silent qua interview. The respondent in the absence of guidance by rules cannot create absolute discretion in the authorities.
- xi) As declared by Constitution Bench in ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248***, the procedure established by law should be just, fair and reasonable. The respondent has prescribed the procedure but in the bundle

of facts in hand, court is at pains to state that it is not just, fair and reasonable, thus cannot withstand judicial scrutiny at the touchstone of Article 14 and 21 of the Constitution.

xii) Neither the 2015 Rules nor Standing Order prescribed qualifying marks and Scrutiny Committee at its own fixed different qualifying marks for different rank of officers.

23. In the wake of above discussion and findings, this Court finds that impugned clause prescribing 50% marks for interview being arbitrary, unreasonable, disproportionate is ultra vires the Rule 3 of 2015 Rules as well Article 14 & 21 of the Constitution of India. Accordingly, it is hereby declared invalid.

24. The respondent has already absorbed many employees on the basis of interview. Keeping in mind judgment of Supreme Court in **Ashok Kumar Yadav (supra)**, it is hereby held that this order shall not disturb their absorption. The 2015 Rules are one time arrangement, thus, would not be applicable to officers belonging to other cadres who have joined after coming of 2015 Rules into force.

25. All the petitions stand disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

06.03.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No