



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1971-2022 (O&M)
Reserved on: 12.09.2025
Pronounced on: 16.09.2025

Rekha Devi ...Petitioner
Versus
State of Haryana and Others ...Respondents
And

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-11456-2022 (O&M)	Rajesh Kumar and Another	State of Haryana and Others
3.	CWP-3252-2022 (O&M)	Dushyant	State of Haryana and Others
4.	CWP-15126-2022 (O&M)	Naib @ Nayab Gir	State of Haryana and Others
5.	CWP-15420-2022 (O&M)	Narender	State of Haryana and Others
6.	CWP-15128-2022 (O&M)	Jagat Ram	State of Haryana and Others

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Aditya Yadav, Advocate
for the petitioner(s)
in *CWP Nos.1971, 3252, 15126 and 15128 of 2022.*

Mr. Sahil Gupta, Advocate
for the petitioner(s)
in *CWP Nos.15420 and 11456 of 2022.*

Mr. Suneel Ranga, DAG, Haryana.

JAGMOHAN BANSAL, J.

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-1971-2022.*

2. The petitioner joined Haryana Police as lady constable on 24.03.2011. She during 12.10.2013 to 11.04.2014 underwent six months Computer Training at one branch of HARTRON which is a Government owned and controlled organization. HARTRON is a State Government Public Sector Undertaking. She underwent Computer Course with the prior approval of jurisdictional Superintendent of Police. Training was imparted after working hours. Tenure of training was two hours a day. There was no provision of seeking approval of Training Branch of Haryana Police.

3. The respondent initiated process of promotion from the post of Constable to Head Constable. The seats for Lower School Course- 2019 came to be allocated vide letter dated 12.11.2020. Final result of Lower School Course-2019 under 62% category was declared on 29.11.2021. The petitioner submitted representation seeking inclusion of her name but to no avail. She preferred CWP No.25668 of 2021 before this Court which was disposed of vide order dated 16.12.2021 with a direction to respondents to consider petitioner's claim in accordance with law.

4. The respondent by impugned order dated 17.01.2022 rejected claim of the petitioner on the ground that as per WAN message dated 13.06.2019 and 13.09.2019 her computer course is not eligible for marks.

5. As per amended Rule 13.7 of Punjab Police Rules, 1934 (as applicable to State of Haryana) (for short '**PPR**'), a Constable is entitled to 10 marks if he has completed 20 weeks general course. The petitioner

claimed 10 additional marks that she has completed 20 weeks computer course before the cut-off date i.e. 31.12.2018. As per Rule 13.7 of PPR, age of the candidate is considered as on first day of January of the year in which selection is made. Marks for training courses are awarded which are completed upto 31st December of the year preceding the year in which selection is made. The petitioner participated in Lower School Course-2019, thus, cut-off date was 31.12.2018.

6. The petitioner is assailing impugned order on following counts:

- (i) She belongs to 2019 Batch, thus, for all intents and purposes her eligibility and qualifications ought to be considered as on 31.12.2018. The instructions dated 13.06.2019 and 13.09.2019 are prospective in nature. This Court in '*State of Haryana Versus Anju Bala*', *LPA No.26 of 2021* has disapproved those instructions to the extent of retrospective applicability.
- (ii) She is governed by Rule 13.7 of PPR and as per said Rule, 10 marks are awarded for general course of more than 20 weeks.
- (iii) She had completed 260 hours' course during October' 2013 to July' 2014, thus, she is entitled to 10 marks as per Rule 13.7 of PPR.
- (iv) The clarification can be prospective in nature and it cannot be applied retrospectively.

- (v) She had undergone Computer Course conducted by a branch of HARTRON. Indubitably, HARTRON is a State Government Undertaking. She did not seek approval of Training Branch of Haryana Police Headquarters, Panchkula because there was no such requirement during 2013-14.

7. *Per contra*, Mr. Suneel Ranga, DAG, Haryana submits that DGP, Haryana has clarified the matter and clarifications issued by respondent stand upheld by this Court in *Anju Bala (Supra)*. The instructions were issued because rules were not clear. To clarify the rules, instructions were issued. The petitioners were never deputed or selected by Training Institute of Police Headquarters. They at their own requested Superintendent of Police to undergo Computer Training. The petitioners in view of judgments of this Court are not entitled to benefit of additional marks.

8. The DGP with intent to clarify courses eligible for marks under Rule 13.7 of PPR issued instructions dated 13.06.2019 and 13.09.2019. Rule 13.7 of PPR and instructions read as:

“13.7 –Selection of Constables for admission to Lower School Courses :-

(1) A list B shall be maintained at the State Police Headquarters as per Form 13.7. It shall include the names of all constables selected for admission to the Lower School Course. Selection to the list B shall be made annually for the entire State and shall be limited to the number of seats determined for the general and different reservation categories for the year. The number of seats for

Lower School Course in a year shall be determined on the basis of existing vacancies of head constables and the vacancies likely to be created within one year in the entire State. The total seats determined for admission to Lower School Course in a year shall be filled up as under :-

- (a) 62 % of the seats shall be filled up on the basis of aggregate of constable's service record, marks obtained in a competitive examination called the Lower School Entrance Test (LSET) and parade;*
- (b) 35 % on the basis of seniority-cum-fitness;*
- (c) 03 % on the basis of consistent outstanding performance in job / obtaining gold or silver medal in all India police games and duty meet / national games or exceptional display of bravery during the course of performance of official duty:*

Provided that no constable during the period when he is undergoing major punishment shall be eligible for entry into list B.

(2) The Lower School Entrance Test shall be an online objective type test of ninety minutes duration comprising of one hundred forty multiple choice questions carrying one mark each with a provision of negative marking at the rate 0.25 mark for marking an incorrect answer. Every candidate appearing in the online Lower School Entrance Test on submitting his test finally shall be able to view his test score on the screen instantly and shall also be given a hard copy of his score card, after the test. The syllabus for Lower School Entrance Test shall be the same as prescribed for the basic recruit course for constable. Constable shall have to score a minimum of fifty percent to qualify in the Lower School Entrance Test. Only those who qualify shall be allowed to appear in the parade test and

for eventual selection within this category.

(a) Parade test: All the eligible candidates shall appear in a parade test of total 10 marks with the following breakup :

<i>(i) Turn out</i>	<i>01;</i>
<i>(ii) Marching</i>	<i>02;</i>
<i>(iii) Arms drill</i>	<i>02;</i>
<i>(iv) Command control</i>	<i>02;</i>
<i>(v) Weapon handling</i>	<i>03.</i>

(b) There shall be no interview test for selection of constables for List B.

(3) Eligibility:

(a) 62% selection category: All constables irrespective of their educational qualifications shall be eligible to appear for Lower School Entrance Test, if they are under the age of 35 years and have completed 5 years of qualifying service on the 1st day of January of the year in which selection is made.

(b) 35% selection category: All constables irrespective of their educational qualifications shall be eligible to be brought on list B on seniority-cum-fitness basis i.e. under 35 % category if they are between 35 to 40 years of age and have completed 5 years of qualifying service on the 1st day of January of the year in which selection is made. However, candidates appearing under this category shall have to attain a minimum bench mark of 31 marks to be eligible for consideration for selection under this category.

- (c) *03% selection category: All constables irrespective of their educational qualifications shall be eligible to be brought on list B under 03 % category i.e. on the basis of consistent outstanding performance in job / obtaining gold or silver medal in all India police games and duty meet / national or international games or exceptional display of bravery during the course of performance of official duty if they are under the age of 40 years and have completed five years of qualifying service on the 1st day of January of the year in which selection is made.*

Provided that –

- (i) *a constable belonging to reserve category who is recruited near the maximum prescribed age limit for the category as per Government instructions shall be allowed to appear in Lower School Entrance Test (LSET) for minimum three consecutive chances after completion of five years of service even if he has crossed the age of 35 years up to maximum of 40 years of age;*
- (ii) *an ex-serviceman enrolled as constable shall be allowed to appear in Lower School Entrance Test (LSET) for three consecutive chances irrespective of age after completion of five years of qualifying service;*
- (iii) *no candidate shall be considered eligible under 62% as well as 35 % selection category simultaneously. The ex-servicemen or reserve category candidate who is over 35 years of age shall have to either, first exhaust his chance to compete in Lower School*

Entrance Test (LSET) or surrender it in writing before becoming eligible to be considered against 35 % selection category;

- (iv) *a candidate eligible under 03% category may be simultaneously considered under 62% or 35% selection category. However, where the name of such candidate appears in more than one selection category, the candidate shall be considered by the Departmental Selection Committee under the category in which chances of his final selection are maximum. However, the decision of the Departmental Selection Committee regarding retaining / bringing his name under one of the selection category shall be final.*
- (4) *Departmental Selection Committees (DSCs) :*
- (a) *The Director General of Police shall constitute separate Departmental Selection Committees for selection of constables to Lower School Course one each for the 62%, 35% and 03% selection category. Each DSC shall consist of an officer not below the rank of Deputy Inspector General of Police as Chairperson and two officers not below the rank of Deputy Superintendents of Police as Members. The DSC so constituted with the approval of Director General of Police may co-opt as many officers/staff as required for the smooth conduct of selection process. For all eligible candidates, the Lower School Entrance Test shall be held at one prescribed place only to rule out any possibility of unfair practice at different centres during this examination.*
- (b) *The assessment of service record shall be done on the basis of education, training courses passed and commendation certificate during the*

service.

The marks assigned to these shall be as follows:-

(i) Education:		
	Class	Mark
	10+2	01
	ITI or Polytechnic college certificate in any Technical Trade	02
	ITI or Polytechnic college Diploma in any Trade	03
	Graduate (Arts)	03
	Graduate (Science and Engineering)	05
	Law Graduate	08
	Post Graduate (Arts)	06
	Post Graduate (Science)	08
(ii) Commendation Certificate (CC)		
	CC	Mark
	Class I	03
	Class II	02
	Class III	01

Total marks to be awarded for commendation certificates shall not exceed 10. Commendation granted upto 1st July of the previous year only shall be taken into consideration for counting the marks.

(iii) Training Courses Passed:

Maximum marks awarded for training courses passed by a candidate shall be thirty. Only the training courses passed by the candidates upto 31st December of the year preceding the year in which selection is made shall be taken into account while awarding marks. Constables who obtain all round 1st, 2nd and 3rd positions in the basic recruit training course shall be awarded 15, 10 and 05

marks respectively. Following marks shall be given for general and special training courses passed by a candidate.

<u>General (Duration)</u>	<u>Mark</u>	<u>Special (Duration)</u>	<u>Mark</u>
For training courses of less than two weeks	01	Armourer Basic Course- (10 M)	10
For training courses of two weeks duration	02	Police commando Instructor Course by National Security Guard/ Central Armed Police Force	06
For training courses of duration exceeding 2 weeks but not exceeding 4 weeks.	03	Bomb Disposal Course – Advance by National Security Guard/ Central Armed Police Force	06
For training courses of duration exceeding 4 weeks but not exceeding 6 weeks.	04	Bomb Disposal Course - Basic	05
For training courses of duration exceeding 6 weeks but not exceeding 8 weeks	05	Basic Commando Course - (3M)	05
For training courses of duration exceeding 8 weeks but not exceeding 12 weeks	06	Special Weapon and Tactics Course - (3M)	05
For training courses of duration exceeding 12 weeks but not exceeding 16 weeks	07	Un-Armed Combat for Women - (3M)	05
For training courses of duration exceeding	08	Martial Arts for Men – (3M)	05

<i>16 weeks but not exceeding 20 weeks</i>			
<i><u>For training courses exceeding 20 weeks</u></i>	<i>10</i>	<i>Drill Basic Course – (4 M)</i>	<i>05</i>

(iii) Negative marking :

Marks at the following rate shall be reduced for every major/minor punishment while calculating marks for both categories of competitive examination and seniority:-

<i>Punishment</i>	<i>Mark</i>
<i>For every major punishment</i>	<i>05</i>
<i>For every minor punishment</i>	<i>02</i>

The major / minor punishment considered for deduction of marks shall only be those which have been awarded on or before the 1st day of July of the year preceding the year in which selection is made.

(5) Selection on the basis of seniority-cum-fitness i.e. under 35 % category:

(a) For selection of 35% candidates on the basis of seniority-cum-fitness as mentioned in sub-rule (1) above, the Departmental Selection Committee shall grant marks in this category for service records on the same basis as mentioned in sub-rule (4) above. Further for this category, marks shall also be awarded for the length of service as on 1st January of the year in which selection is made at the rate of 2 marks for each completed calendar year of service after 5 years of qualifying service subject to a maximum of 24 marks:

Provided that exemptee Head Constables who were promoted in view of Director General of Police, Haryana standing order No. 127/2008, dated the 22nd September, 2008 are willing for admission of their names to list B according to seniority-cum-fitness in view of their consequential reversion then they can do so in their own

interest by giving their consent in writing and on being admitted to list B shall be reverted to the rank of constable.

(6) Selection under 3% category :

(a) Selection of constables for Lower School entrance under 3% category at the rate of one percent for each of the following categories shall be made by the Departmental Selection Committee from amongst the recommendations forwarded by the Superintendents of Police through their respective Inspectors General of Police to the State Police Headquarters up to 31st December of the preceding year in which selection is made.

(i) on the basis of consistent outstanding performance in job- (1%);

(ii) attaining Gold or Silver Medal in All India Police Games & Duty Meet/National Games- (1%);

(iii) exceptional display of bravery during the course of performance of official duty- (1%);

(b) Whenever, no case is found suitable for recommendation under this category, the Superintendent of Police shall forward a 'no - recommendation certificate' to this effect to the State Police Headquarters through the respective Inspectors General of Police;

Provided that sports achievements under consideration for selection under 3% category pertaining to constables who have been enrolled into service against posts reserved for Sportspersons category relate only to the period, after their having joined the service.

(7) Order of merit :

(a) For the purpose of determining inter-se-merit of the constables for the aforementioned three different categories for admission to list B, wherever, the

score / achievement of two or more constables is found to be equal, the constable who is senior in service shall be selected first; further, in case, two or more constables who have equal scores and the same seniority, then the constable who is higher on inter-se merit of the basic recruits course shall be brought on list B first, finally, if there is still a tie between candidates, the constable who is senior in age shall be selected first.

- (b) Government policy on reservation in promotion, if any, shall be followed for selection of constables for list B under 62% as well as for 35% category. However, no reservation policy shall be applicable under 3% category meant for selection of constables on the basis of Consistent Outstanding Performance in job, All India Police Games / Duty Meet / National Games and for Exceptional Bravery.*
- (c) There shall be no waiting list. Seats which remain unfilled in any of the above mentioned category in a year shall lapse.*

(8) The recommendations of the Departmental Selection Committee shall not be final until the same are approved by the Director General of Police. The Director General of Police shall accord his approval only after due scrutiny of the list about its correctness. The Director General of Police may either consider to seek any clarification or refer the list back to the Departmental Selection Committee concerned for correction of errors / omission in the list, if any.”

[Emphasis supplied]

Instructions dated 13.06.2019: -

“Only those courses that are conducted by the training institutions of either Haryana Police or Haryana Government should be considered for assigning marks for B-I purpose.

Besides above, the courses conducted by Government of India, other State Government/ Police, any Central Police Organization, any other institution set-up by Public Sector undertaking of the Central/ State Government and any public/ private institution should also be considered, if a Police personnel is deputed/ selected for said training course by the Training Branch of Haryana Police Headquarters/ Govt. of Haryana.

It was further clarified that in case of any divergence/conflict with any earlier instruction(s), this instruction shall prevail”

Instructions dated 13.09.2019:-

“The marks of computer courses and other refresher courses conducted at district police lines without approval of Training Branch, Police Headquarters, Panchkula may not be considered for allotting marks in undergoing selection process of list B-I, 2018 under 62% merit quota and 35% seniority-cum-fitness quota and initial action may be taken according to clarification issued vide this office WAN under reference in letter and spirit.”

9. From the arguments of both sides and perusal of record, following questions arise for the consideration of this Court:

- i) Whether clarifications issued by DGP are binding?
- ii) Whether clarifications issued by DGP are prospective

or retrospective in nature?

- iii) Whether DGP can issue clarification with respect to a matter covered by PPR?
- iv) Whether petitioner is entitled to marks of computer course conducted by HARTRON?

10. Matter relates to scope and ambit of Rule 13.7 of PPR *vis-a-vis* clarifications issued by DGP, thus, it would be relevant to examine nature, colour and contour of the Punjab Police Rules, 1934.

10.1 A five judge bench of Hon'ble Supreme Court in ***Pankajakshi v. Chandrika, (2016) 6 SCC 157*** adverted to issue of effect of Section 100 of CPC over Section 41 of Punjab Courts Act, 1918 (for short 1918 Act'). The Court overruling its two Judge judgment in ***Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262*** held that 1918 Act is an 'existing law' and it did not cease to exist as per article 395 of Constitution of India. Article 254 is inapplicable to the extent of inconsistency between Section 100 of CPC and Section 41 of 1918 Act. Article 372 is applicable to 1918 Act. Relevant extracts of the judgment read as:

“24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved

in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under: (SCC p. 270, para 10)

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] : (SCC p. 276, paras 27-29)

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after

it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

*‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’
(Noticed again for convenience.)*

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to

hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, 1977 SCC OnLine P&H 188 : AIR 1978 P&H 137 : (1978) 80 PLR 1] cannot be sustained and is thus overruled.”

25. *We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.*

26. *Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of*

Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.”

well as State Legislature to make appropriate legislation to regulate recruitment and conditions of service of their employees. Proviso to Article 309 provides that it shall be competent for the President in case of posts connected with affairs of Union and Governor, in case of posts connected with affairs of State to make rules regulating the recruitment and conditions of service. The Rules made by President or Governor hold the field till provisions are made by appropriate legislature. The Punjab Police Rules were made prior to enforcement of the Constitution of India. As per Article 366 (10) of the Constitution of India, these are 'existing law'. Article 366 (10) is reproduced as below:

“existing law” means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, byelaw, rule or regulation.”

10.3 The PPR came into force prior to commencement of Constitution, thus fall within definition of 'existing law' under Article 366(10). Judgment of Hon'ble Supreme Court in ***Pankajakshi (supra)*** is equally applicable to PPR as applicable to Punjab Courts Act. These Rules can be amended by State Legislature and in case of repugnancy with Central Legislation shall have overriding effect.

11. From the perusal of record, it comes out that service of petitioner is governed by Haryana Police Act, 2007 (for short 'Police Act') and Rules made thereunder. The State Government made Haryana Police (Non-Gazetted and Other Ranks) Service Rules, 2017 (for short '2017 Rules') which came into force w.e.f. 08.05.2017. 2017 Rules are

applicable to the petitioner because she was directly recruited before publication of the Rules but did not pass Lower School Course before publication of 2017 Rules. As per Rule 21 of 2017 Rules, her service is also governed by PPR.

Section 96 of Police Act provides that PPR shall be deemed to have been framed under this Act till new Rules are framed. The State Government has framed 2017 Rules under Police Act and service of the petitioner is governed by 2017 Rules as well PPR. Section 92 of the Police Act empowers State Government to make Rules for carrying out purposes of the Act. Thus, State Government can make any Rule for carrying out purposes of the Act. As per Section 93, State Government has power to remove difficulties, if arise, in implementation of the Act. The difficulty may be removed by way of notification in the Official Gazette. There is no dispute with respect to the fact that mode and manner of promotion from the post of constable to head constable is governed by Rule 13.7 of PPR. Rule 13.7 prescribes procedure for selection of Constables for preparation of List 'B' which precedes their promotion to the rank of Head Constable. As per Rule 13.7 read with Rule 13.8, a Constable is promoted to the rank of Head Constable if his name is recorded in List 'B' and he passes Lower School Course.

Learned State counsel has relied upon WAN messages of DGP who while exercising power conferred by Section 50 of Police Act may make regulations or issue orders with respect to matters enumerated in the said Section. For the ready reference, Section 50 of the Police Act

is reproduced as below: -

“50. Regulations.- The Director General of Police shall be competent to make regulations or issue orders, not inconsistent with the provisions of this Act or the rule framed thereunder regarding.-

- (a) prevention and investigation of crime;*
- (b) maintenance of law and order;*
- (c) regulation and inspection of the police organization and of the work performed by the police officers;*
- (d) regulating the issue and use of arms and ammunition;*
- (e) wearing of uniform;*
- (f) prescribed the places of residence of the members of the police service;*
- (g) institution, management and regulation of any Non-Government fund for the purpose connected with the police administration or welfare of police personnel;*
- (h) regulation, deployment, movements and location of the police;*
- (i) assigning duties to officers of all ranks and grades, and prescribing the manner and the conditions subject to which, they shall exercise and perform their respective powers and duties;*
- (j) regulating the collection and communication of intelligence and information by the police;*
- (k) prescribing the records registers and forms to be maintained and the returns to be submitted by different police units and officers;*
- (l) community policing;*
- (m) functioning of police stations and other units;*
- (n) training of the police force and management*

of training institutions;

- (o) generally, for the purpose of administering this Act and for rendering the police more efficient, and preventing abuse of power or neglect of duties by them;*
- (p) covering any aspect of police administration which is not covered under the provisions of this Act or rules framed thereunder.”*

From the perusal of above quoted section, it is evident that DGP has power to make regulations or issue orders not inconsistent with the provision of the Act and Rules framed thereunder regarding any aspect of the police administration which is not covered by the Act or Rules made thereunder. DGP has not issued order under Section 50 which is evident from language of the WAN messages. It is clarification issued by an officer. As State Government in exercise of power conferred by Police Act has not issued clarification by way of notification to remove difficulties, clarification issued by DGP is beyond his jurisdiction. He could not issue clarification relating to matters covered by PPR. Action of DGP amounted to amendment of Rule 13.7 of PPR which was impermissible in law and beyond his jurisdiction. Amendment in Rules and clarification to remove difficulties can be made/issued by State Government.

12. It is settled law that clarifications/circulars/instructions issued by Government are not binding upon courts which are supposed to interpret and rely upon statutory provisions. A five judge bench of the Apex Court in ***CCE v. Ratan Melting & Wire Industries, (2008) 13***

SCC 1 has held that circulars/clarifications issued by government are not binding upon court which has to declare what the particular provision of statute says and it is not for the executive. The court has held:

“7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

In view of above-cited judgment, inescapable conclusion is that clarifications issued by DGP in the form of instructions are not binding at least upon this court. Matter needs to be examined in the light of applicable rules.

13. From the perusal of PPR, Police Act and 2017 Rules, it is evident that petitioners are Members of ‘service’. PPR are in the form of complete Code which govern each and every attribute of police officials. There are specific Rules for appointment, promotion, transfer, disciplinary proceedings, superannuation, misconduct, punishment, appeal/revision etc. The appointment and promotion of police officers is governed by PPR. There is specific Rule with respect to promotion from

the post of constable to head constable i.e. 13.7 of PPR. Section 92 of Police Act empowers State Government to make Rules for carrying out purposes of the Act. Section 93 empowers State Government to remove difficulties. The DGP has power to make regulations and issue orders under Section 50 of the Police Act, however, he has issued clarification with respect to Rule 13.7 of PPR. Said clarification issued by way of WAN messages is not binding upon petitioners as well as this court. As per Section 50 of Police Act, DGP has power to make regulations or issue orders whereas he has issued clarification for which he is neither empowered by PPR or Police Act. As per different clauses of Section 50 of Police Act, DGP has power to control, manage and regulate members of service for the maintenance of law & order and proper administration, however, he has no power to regulate conditions of service of police officers. Thus, DGP has issued WAN messages beyond his jurisdiction and cannot be relied upon.

14. As per Rule 13.7 of PPR, a constable who has completed general course for a particular period is entitled to prescribed additional marks e.g. if a constable has completed general course of 20 weeks is entitled to 10 marks. There is no definition of 'general course'. The police officials as per their understanding have undergone computer course conducted by government instrumentalities. As per Rule, they are entitled to additional marks, however, DGP by clarifications has restricted said benefit. As per clarification dated 13.06.2019, marks of computer course are available if course was conducted by training institute of Haryana Police or Haryana Government. Marks may also be granted if course was

conducted by any of the following:

- i) *Government of India or*
- ii) *Other State Government or*
- iii) *Other State Police or*
- iv) *Any Central Police Organization or*
- v) *Any other institution set-up by Public Sector Undertaking of the Central/ State Government or*
- vi) *Any public/private institution if officer was deputed/selected for said training course by the Training Branch of Haryana Police Headquarters/Govt. of Haryana.*

The petitioner has undergone computer course conducted by HARTRON which is a public sector undertaking. Thus, petitioner has complied with partial condition of the clarification dated 13/06/2019, however, there is non-compliance to the extent that she was not deputed or selected for said training by training branch of Headquarter. The petitioner had sought approval of the jurisdictional SP. She cannot comply second condition of the clarification. The petitioner has not undergone training course conducted by district police, thus, clarification dated 13.09.2019 is inapplicable to her. The petitioner in 2019 could not comply with condition imposed by 2019 clarifications. In Rule 13.7 of PPR, there was no such stipulation. Thus, clarification is prejudicial to her. She belongs to batch of 2019, thus, as per rule 13.7, cut-off date for experience, qualifications and achievements is 31.12.2018. DGP issued clarifications from June' 2019 onwards. If aforesaid clarifications are

applied to her, it would amount to their retrospective application.

14.1 A Constitution Bench in *CIT v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1 adverted to the question of retrospectivity of amending provision. The court concluded that amending provision cannot take away already created right. If it clarifies existing provision, it may be retrospective. A particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as “declaratory statutes”. Relevant extracts of the judgment read as:

“General principles concerning retrospectivity

27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of “interpretation of statutes”. Vis-à-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed

*not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips v. Eyre* [(1870) LR 6 QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

*29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* (1994) 1 AC 486. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly*

emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. (2005) 7 SCC 396, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra (2006) 6 SCC 289. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it

is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.

32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as “declaratory statutes”. The circumstances under which provisions can be termed as “declaratory statutes” are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:

“Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [Ed. : The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] : ‘For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect

of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word “declared” as well as the word “enacted”.’ But the use of the words ‘it is declared’ is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ‘shall be deemed always to have meant’ is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit.

A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.”

The above summing up is factually based on the judgments of this Court as well as English decisions.

33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas [AIR 1968 SC 1336], while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows : (AIR p. 1339, para 8)

“8. ... The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.”

14.2 A Division Bench of this Court in ***Roshan Lal and another Vs Administrator, Market Committee, Kaithal and others 2002 SCC OnLine P&H 234*** has held that instructions which adversely affect any person can be only prospective in operation. Relevant extracts of the judgment read as:

“It is indisputably correct that instructions which adversely affect any person can be only prospective in operation. However, it appears clear to us that the respondents have not applied the instructions retrospectively. In fact, the instructions had been issued in the first instance on August 26, 1982. These were merely reiterated vide letter dated Nov. 3, 1992. It has after a lapse of almost eight years that the orders for disengagement of the petitioners were issued on the ground that they had crossed the age of 60 years. In fact, it was pointed out that the petitioners were born on Dec. 12, 1935 and May 15, 1939 respectively. Since they had crossed the prescribed age limit their further engagement was discontinued. In doing so, the Committee did not give retrospective operation to the instructions issued by the Board.”

The above-cited judgments shed light on the issue of retrospective applicability of a particular amendment/clarification which is prejudicial to one or more. It is clear that any amendment or clarification which is prejudicial to an employee cannot be retrospective. It cannot take away vested right. If it is mere clarificatory, it may be retrospective. In the case in hand, the clarification is prejudicial to petitioner, thus, cannot be applied to her. The respondent is relying upon judgment of this Court in **Anju Bala (Supra)**. In the said case also Court has held that clarification is applicable from the date it is issued. The petitioner belongs to Batch of 2019, thus, instructions issued in June or September’ 2019 are inapplicable to her. If instructions of 2019 are applied to her despite being prejudicial, it would amount to retrospective application of clarification which is impermissible in law. It is also well

known that no executive instruction can be retrospective unless specifically provided by law.

15. The respondent is relying upon judgment of this Court in ***Anju Bala (Supra)***. Initially, matter was considered by Ld. Single Judge in ***CWP No.6708 of 2020*** titled as '***Anju Bala and other Vs State of Haryana and others***' who held that instructions cannot override statutory provisions. Ld. Single Judge held:

“8. The case of the Petitioners is fully covered by the aforesaid Division Bench decision, and this Court has no hesitation in concluding that the clarification communicated vide No. 8144/T-2 dated 13/06/2019 (Annexure P-6 in CWP No. 2426 of 2020) cannot override the actual Statutory Rule 13.7, since it cannot be regarded as anything more than the observation of an Executive Authority, which by no means can do away with the requirement of awarding additional marks to concerned candidates in terms of Clause 9 to Rule 13.7 (4)(II) of the Punjab Police Rules, 1934.”

15.1 State preferred intra court appeal against said judgment. The matter came for consideration before Division Bench which upheld order of Ld. Single Judge and held that benefit would not be available to fence sitters. It was made clear that instructions would be applicable from date those were issued. Relevant extracts of the judgment read as:

*“11. Keeping in view the above, the present appeals are disposed of by holding that the benefit as such would apply to the writ petitioners only who were successful as such and had agitated for their claim at the initial point of time and had not been fence sitters as has been held in '***State of Uttar Pradesh & others v. Arvind Kumar Srivastava &****

others' 2015 (1) SCC 347. The instructions which were issued, however, cannot be faulted with since they are to fill in the gaps in the statutory rules. They only laid down as to which of the tests could be recognized for the purpose of granting benefits as per the statutory rules and the said instructions would thus only operate from the date they were issued.

12. Accordingly, the present appeals are partly allowed and the order of the learned Single Judge is modified to the above extent that the writ petitioners be given the benefit of the computer/training test.”

15.2 The petitioner herein belongs to batch of 2019 whereas case of **Anju Bala (supra)** related to batch of 2018. The Division Bench denied benefit to fence-sitters, however, petitioners therein were granted marks as per Rule 13.7 of PPR. The petitioner cannot be called as fence-sitter because she belongs to 2019 batch and this is her second round of litigation. She earlier filed CWP No.25668 of 2021 which was disposed of with a direction to respondent to pass a speaking order.

16. In the wake of above discussion and findings, the questions framed heretofore are resolved as below:

- i) Clarifications issued by DGP are not binding upon court.
- ii) Clarifications issued by DGP are prospective in nature.
- iii) DGP cannot issue clarification with respect to a matter covered by PPR.
- iv) Petitioner is entitled to marks of computer course conducted by HARTRON.

17. In the above premise, the instant petitions deserve to be allowed and accordingly allowed with consequential benefits.

(JAGMOHAN BANSAL)
JUDGE

16.09.2025
Prince Chawla

Whether Speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No