

212

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5062-2022
Date of Decision:-16.05.2025

Vakil Singh and Others

...Petitioners

Vs.

State of Haryana and Another

...Respondents

And

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-6749-2022	Krishan Kumar	State of Haryana and others
3.	CWP-6728-2022	Kunti Rani and Others	State of Haryana and others
4.	CWP-6805-2022	Rijwana	State of Haryana and others
5.	CWP-6418-2022	Sudesh Rani	State of Haryana and others
6.	CWP-25440-2021	Sandeep	State of Haryana and another
7.	CWP-2485-2022	Sampat and Others	State of Haryana and others
8.	CWP-23562-2021 (O&M)	Ekta Kamboj	State of Haryana and others
9.	CWP-4401-2022	Reman	State of Haryana and others
10.	CWP-5598-2022 (O&M)	Mohit Sheoran	State of Haryana and others

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. D.S. Patwalia, Senior Advocate with
Mr. Aditya Singh Chadha, Advocate and
Ms. Priyanka Chaudhary, Advocate for the petitioners
in CWP-5062-2022 and CWP-23562-2021.

Mr. Ashwani Bhardwaj, Advocate
for the petitioner in CWP-4401-2022.

Mr. R.S. Malik, Advocate
for the petitioner in CWP-5598-2022.

Mr. Jasbir Mor, Advocate

for the petitioners in CWP-6728-2022, CWP-6418-2022 and CWP-2485-2022.

Mr. Rajat Mor, Advocate
for the petitioner in CWP-6805-2022.

Mr. Sandeep Singh Ghangas, Advocate
for the petitioner in CWP-25440-2021.

Mr. Raman Sharma, Addl. A.G., Haryana.

Ms. Rajni Gupta, Addl. A.G., Haryana.

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitioners, 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-5062-2022.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to include their name in the list of selected candidates and issue them appointment letter by granting 5 marks under socio-economic criteria as per notification dated 30.12.2021.

3. The petitioners pursuant to advertisement dated 15.06.2021 applied for the post of Sub-Inspector. The written test was conducted on 26.09.2021. The candidates who cleared written test were invited for physical screening test held on 23.10.2021. The final result was declared on 31.10.2021. The petitioners came to be selected. They were awarded 5 marks under socio-economic criteria. Few unsuccessful candidates filed complaints and respondent conducted inquiry wherein it was found that there are a few candidates who have filed forged documents or have been wrongly granted marks under socio-economic criteria. The petitioners

were also found in the second category i.e marks wrongly granted under socio-economic criteria. Their selection was recalled and next eligible candidates came to be selected.

4. Learned counsel representing the petitioner(s) submit that respondent, by notification dated 30.12.2021, substituted paragraph 6 (d) of notification dated 28.01.1970. No particular date from which the amendment had to come into force was notified, thus, the substitution related back to date of insertion of Clause (d) in Paragraph 6 of aforesaid notification. As per substituted Clause, married brother is excluded from the definition of family similarly, parents of a married lady are excluded from the definition of family. Married ladies are linked with their in-laws i.e. husband, father-in-law, mother-in-law, unmarried brother-in-law and son. It is settled proposition of law that substitution is retrospective in nature. The Supreme Court of India in the case of ***Gottumukkala Venkata Krishnamraju Vs. Union of India and Others, (2019) 17 SCC 590***, while relying upon its earlier judgments has held that substitution is different from amendment. As a normal rule, substitution is from retrospective date though it may be in particular situation may be prospective in nature.

5. *Per contra*, Mr. Raman Sharma, Addl. A.G., Haryana submits that selection process starts from the date of advertisement and completes on the date of declaration of result. In the case in hand, the date of advertisement was 15.03.2021 and final result was declared on 31.10.2021. The notification which is foundation of claim of petitioners was issued on 30.12.2021. The notification is not retrospective in nature. No doubt, in the notification, it is provided that Clause (d) of Paragraph 6

is substituted, however, it does not mean that substitution relates back to date of insertion of Clause (d) of Paragraph 6. Any amendment which is made after conclusion of selection process cannot be relied upon. The judgment relied upon by learned counsel for the petitioners do not enunciate the law that in every case substitution is retrospective in nature.

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

7. The conceded position emerging from the record is that the respondent vide Advertisement No.3/2021 dated 15.03.2021 invited applications for the post of Sub-Inspector. The petitioners applied pursuant to said advertisement and final result was declared on 31.10.2021. The petitioners claimed 5 marks under socio-economic criteria as laid down in the advertisement read with notification dated 28.01.1970 as amended. They were granted 5 marks under the said criteria and came to be selected. The respondent on the complaint of other candidates, verified marks of petitioners under said criteria. It was found that they were ineligible for 5 marks and were wrongly granted. Accordingly, respondent revised the result and selection of petitioners came to be cancelled. Candidates next in merit came to be selected.

8. The petitioner are claiming that notification dated 30.12.2021 is retrospective in nature. It relates back to date on which Clause (d) of Paragraph 6 was inserted in the notification of 1970.

9. For the appreciation of controversy, it would be appropriate to look at history of notification of 1970. The Governor of Haryana in

exercise of power conferred by Article 309 of the Constitution of India issued notification dated 28.01.1970. The said notification is reproduced as below:

**“GENERAL ADMINISTRATION DEPARTMENT
GENERAL SERVICES
NOTIFICATION
The 28th January, 1970**

No. 523-3GS-70/2068. - In exercise of the powers conferred by Article 309 of the Constitution of India, and in modification of all other rules in this behalf, the Governor of Haryana hereby constitutes, with effect from the date of the publication of this notification, Subordinate Services Selection Board.

The constitution of the Board, the terms and conditions of service of the members thereof and its functions shall be as follows:

1. Constitution of the Board - *The Board shall consist of three members, including the Chairman, two of whom shall be such persons as have held office for at least ten years either under the Government of India or under the Government of a State. The Board may act notwithstanding the absence on leave or otherwise of the Chairman or any other member.*

2. Terms and Conditions:

(1) The Chairman shall receive a salary of Rs. 12,50 per mensem and a member Rs. 1,000 per mensem unless he was a Government employee immediately before his appointment as Chairman or member as the case may be.

(2) A Government employee appointed to be a Chairman or a member of the Board, shall draw his own pay plus special of Rs.150 per mensem in the case of Chairman and Rs.100 per mensem in the

case of a member.

(3) If the Chairman or a member at the time of his appointment as such is a retired Government employee, either his pension will be held in abeyance or his remuneration will be reduced to the extent of his pension including any commuted portion thereof.

(4) If a Government employee appointed as Chairman or a member retire: from the service to which he belongs during the course of his tenure as Chairman or member, as the case may be, either his pension will be held in abeyance or his remuneration will be reduced to the extent of his pension including any commuted portion thereof.

(5) If during the absence of the Chairman on leave or otherwise another member performs the duty of the Chairman in addition to his own he shall be entitled to an additional pay of Rs. 150 per mensem which shall not be payable for any period which is less than fourteen days or for any period in excess of two months.

3. Term of Office: - *The term of the member of the Board shall be four years:*

Provided that he shall on attaining the age of 50 years cease to be a member of the Board.

4. Leave:- *The member of the Board who immediately before his appointment was not a Government employee shall be governed by the leave rules applicable to temporary Government employees. The member who immediately before appointment was a Government employee shall, however, be governed by leave rules applicable to him in his own service.*

5. Travelling allowance:- *Government employees appointed as member of the Board shall be governed by*

the Travelling Allowance Rule applicable to them. The travelling allowance of other members will be governed by such rules as the State Government may frame from time to time.

6. Functions:- *All appointments to non-gazetted Class II posts under the Haryana Government, except appointments of officers and employees of the Punjab and Haryana High Court provided for in Article 229 of the Constitution of India, shall be made on the advice of the Board,*

Provided that the State Government shall be competent to exclude any such posts from the purview of the Board.

7. The State Government shall be competent to fix the headquarters and other place at which the Board may function from time to time and make such other regulation as may be necessary for the due performance of the functions of the Board.”

10. The said notification came to be amended from time to time. Paragraph 6 of the notification was first time amended vide notification dated 21.05.1971. By said notification, Paragraph 6 was substituted. The substituted Paragraph 6 reads as under:

“6. Functions:-

The Board shall be consulted on the following appointment/matters:-

(a) all appointments to non-gazetted Class III under the Haryana Government except appointments of Officers and Employees of the Punjab and Haryana High Court provided for in Article 229 of the Constitution of India:-

Provided that the State Government shall be competent to exclude any such posts from the purview of the Board.

(b) promotions and transfers from one service or post to another service or post pertaining to non-gazetted Class III and Class IV posts.

(c) disciplinary matters pertaining to non-gazetted Class III and Class IV Government employees.”

11. By notification dated 29.06.1973, Paragraph (6) of the notification was substituted. The substituted paragraph reads as:

“6. Functions:- The Board shall be consulted on the following matter:-

(a) appointments to Class III posts under the State Government, except appointments of officers and employees of the Punjab and Haryana High Court provided for in article 229 of the Constitution of India;

(b) promotions and transfers from one service or post to another service or post pertaining to Class III and Class IV posts;

(c) disciplinary matters pertaining to Class III and Class IV Government employees;

(d) methods of recruitment and the principles to be followed in making appointments to Class III and Class IV posts under the State Government; and

(e) appointments to posts carrying an initial pay of not less than one hundred and fifty rupees per mensem and not more than three hundred and fifty rupees per mensem under a Municipal Committee, Notified Area Committee, Town, Improvement Trust, Zila Parishad or Panchayat Samiti except appointment of the Executive Officer of Municipal (Executive Officers), Act 1931, or the Patiala Municipal (Executive Officers) Act, 2003 Bk.:

Provided that it shall not be necessary to consult the Board

in respect of such posts and matters as the State Government may by notification, specify”

12. Sub-Para (c) of Paragraph 6 of aforesaid notification was substituted by notification dated 30.12.2021. From 1971 to 21.06.2007, Paragraph 6 was amended on multiple occasions. Many times, it was specifically provided that substituted provision would come into force from a particular date e.g. in the notification dated 21.06.2007, it was mandated that Clause (d) of Paragraph 6 shall be substituted and shall be deemed to have been substituted w.e.f. 10.01.2006, meaning thereby, amendment was carried out on 21.06.2007, however, it came into force w.e.f. 10.01.2006.

13. State Government, by notification dated 13.12.2017, substituted Clause (d) of Paragraph 6. By said notification, 10 marks under socio-economic criteria & experience were ear-marked. The notification dated 13.12.2017 reads as:

“(d) (i) In case of selection and recommendation of the names of candidates to a department or an office for Group C posts, there shall be written exam only. The practice of interview shall be discontinued.

The scheme of marks in respect of selection to Group C posts shall comprise of total 100 marks, which is detailed below:-

1. Written exam: 90 marks

2. Socio-Economic criteria and experience: 10 marks

The marks for experience and some objective socio-economic criteria are to be allocated as follows:-

(a) If no person from among the applicant’s father,

mother, spouse, brothers, sisters, sons and daughters is, was or has been a regular employee in any Department/ Board/ Corporation/ Company/ Statutory Body/ Commission/ Authority of Government of Haryana or any other State Government or Government of India.

(5 marks)

(b) Orphan/Widow:—

- a. if the applicant is a Widow ; or*
- b. if the applicant is the first or the second child and his father had died before attaining the age of 42 years ; or*
- c. if the applicant is the first or the second child and his father had died before the applicant had attained the age of 15 years.*

(5 marks)

(c) If the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of Haryana which is neither a Scheduled Caste nor a Backward Class.

(5 marks)

(d) Experience: One-half (=0.5) mark for each year or part thereof exceeding six months of experience, out of a maximum of 10 years, on the same or a higher post in any Department/ Board/ Corporation/ Company/Statutory Body/Commission/Authority of Government of Haryana. No marks will be awarded for any period less than six months.

(a maximum of 5 marks)

No applicant shall be given more than 10 marks under any circumstances and for the post of Clerk,

the State Eligibility Test in Computer Appreciation and Applications shall be mandatory.

(ii) For the posts of Teacher, Educational Supervisor and Teacher Educator in School Education Department, the Commission shall make selection and recommendation of the names of candidates belonging to Group B and C posts on the basis of written exam only.

The written exam shall be divided into two portions comprising:—

(a) 75% weightage for General Awareness, Reasoning, Maths, Science, English, Hindi and concerned or relevant subject, as applicable;

(b) 25% weightage for History, Current Affairs, Literature, Geography, Civics, Environment, Culture etc. of Haryana.

To qualify Clause (b) above, the candidates would have to score minimum 50% marks and the proportion of questions shall be decided by the Commission at its own level.

6(d) (iii) In respect of Group D posts:—

In case of selection and recommendation of the names of candidates to a department or an office for Group D posts, there shall be written exam only. The practice of interview shall be discontinued.

The scheme of marks in respect of selection to Group D posts shall comprise of total 100 marks, as detailed below:—

1. Written exam: 90 marks

2. Socio-Economic criteria and experience: 10 marks

The marks for experience and some objective socio-economic criteria are to be allocated as follows:

(a) If no person from among the applicant's father,

mother, spouse, brothers, sisters, sons and daughters is, was or has been a regular employee in any

Department/Board/Corporation/Company/Statutory Body/Commission/Authority of Government of Haryana or any other State Government or Government of India.

(5 marks)

(b) Orphan/Widow:—

a. if the applicant is a Widow ; or

b. if the applicant is the first or the second child and his father had died before attaining the age of 42 years, or

c. if the applicant is the first or the second child and his father had died before the applicant had attained the age of 15 years.

(5 marks)

(c) If the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of Haryana which is neither a Scheduled Caste nor a Backward Class.

(5 marks)

(d) Experience: One-half (=0.5) mark for each year or part thereof exceeding six months of experience, out of a maximum of 10 years, on the same or a higher post in any Department/ Board/ Corporation/ Company/ Statutory Body/ Commission/Authority of Government of Haryana. No marks will be awarded for any period less than six months.

(a maximum of 5 marks)

No applicant shall be given more than 10 marks under any circumstances.”

14. Clause (d) of Paragraph 6 was further amended by notification dated 13.02.2018. By notification dated 11.06.2019, a substantial change was made in the definition of 'family'. The notification dated 11.06.2019 reads as:

"(d) (i) The selection and recommendation of the names of the candidates belonging to Group B posts viz. Teacher, Educational supervisor, Teacher Educator in School Education Department and Group C posts in all departments shall be done on the basis of written exam, socio-economic criteria and experience.

(ii) The Commission shall be at liberty to set the number of questions, marks per question and duration of written examination. The scheme of marks in respect of selection to the post shall comprise of total 100 marks, as detailed below, namely:-

<i>Serial Number</i>	<i>Subject</i>	<i>Marks</i>
<i>1</i>	<i>Written Exam</i>	<i>90</i>
<i>2</i>	<i>Socio-Economic Criteria and Experience</i>	<i>10</i>

(iii) The 90 marks for written exam shall be divided into two parts comprising;

(a) 75% weightage for General Awareness, Reasoning, Maths, Science, Computer, English, Hindi and concerned or relevant subject, as applicable;

(b) 25% weightage for History, Current Affairs, Literature, Geography, Civics, Environment, Culture etc. of Haryana.

(iv) The 10 marks for socio-economic criteria and experience shall be allocated as follows,-

(a) if neither the applicant nor any person from

among the applicant's family viz father, mother, spouse, brothers and sons is, was or has been a regular employee in any Department Board Corporation/ Company/ Statutory Body Commission/ Authority of Government of Haryana or any other State Government or the Government of India;

(5 Marks)

(b) if the applicant is:-

(i) a Widow; or

ii) the first or the second child and his father had died before attaining the age of forty two years; or

(iii) the first or the second child and his father had died before the applicant had attained the age of fifteen years,

(5 marks)

(c) if the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State of Haryana which is neither a Scheduled Caste nor a Backward Class;

(5 marks)

(d) Experience: One-half (=0.5) mark for each year or part thereof exceeding six months of experience, out of a maximum of sixteen years, on the same or a higher post in any Department/Board Corporation/ Company/ Statutory Body/ Commission/Authority of Government of Haryana. No marks shall be awarded for any period less than six months.

(maximum 8 marks)

Note: No applicant shall be given more than a total of 10 marks for socio-economic criteria and experience under any circumstances."

[Emphasis Supplied]

15. The respondent-State vide notification dated 30.12.2021

substituted Clause (d) of Para 6 of notification of 1970. Notification dated 30.12.2021 reads as:

“(d) (1) The Haryana Staff Selection Commission shall conduct a Common Eligibility Test (CET), as per Haryana Government, General Administration Department (General Services-I Branch), notification No. 42/119/2019-5GS-I, dated the 10th September, 2021, for the purpose of selection and recommendation of names of candidates to a Department for Group C posts.

(2) The Commission shall be at liberty to set the number of questions, marks per question and duration of Common Eligibility Test. The scheme of marks in respect of selection to the post shall be as detailed below, namely:-

<i>Serial number</i>	<i>Subject</i>	<i>Marks Percentage</i>
<i>1.</i>	<i>Common Eligibility Test</i>	<i>95%</i>
<i>2.</i>	<i>Socio-economic criteria and experience</i>	<i>0.5%</i>

(3) The syllabus for Computer based-online/offline or OMR based Common Eligibility Test shall further be divided into two parts comprising-

(a) 75% weightage for General Awareness, Reasoning, Maths, Science, Computer knowledge, English, Hindi and relevant or concerned subject(s), as applicable;

(b) 25% weightage for History, Current Affairs, Literature, Geography, Environment, Culture etc. of Haryana.

(4) 5% weightage for socio-economic criteria in the Common Eligibility Test (CET) shall be provided to candidates fulfilling various socio-economic criteria as detailed below:

(4.1) An applicant who is bonafide resident of Haryana shall be entitled to 5% weightage provided

that-

(i) neither he himself nor any person from amongst the applicant's family is/was or has been a regular employee in any Department Board/ Corporation/ Company/Statutory Body/ Commission/ Authority of Haryana Government or any other State Government or Government of India; and

(ii) gross annual income of the family from all sources i.e., salary, agriculture, business, profession etc. for the financial year prior to the year of application should be less than one lakh eighty thousand rupees only.

Note 1. It shall be confirmed from the data of Parivar Pehchan Patra.

Note 2- The definition of 'Family' for the purpose of this sub-clause shall be as under
Family for the purpose of-

(i) male applicant means applicant himself, his father, mother, wife, unmarried brother(s) and son(s);

(ii) female unmarried applicant means applicant herself, her father, mother and unmarried brother(s);

(iii) female married applicant means applicant herself, her husband, father-in-law, mother-in-law, unmarried brother-in-law and son(s);

(iv) divorced female applicant means applicant herself, her father, mother, unmarried brother(s) and son(s).

(5% weightage)

(4.2) If the applicant being a bonafide resident of

Haryana is,-

(i) a widow; or

*(ii) the first or the second child and his father
had died before attaining the age of forty-two
years; or*

(iii) the first or the second child and his father had died before the applicant had attained the age of fifteen years;

shall be entitled to 5% weightage subject to entries in Parivar Pehchan Patra or certificate issued by the competent authority in the specified proforma.

(5% weightage)

(4.3) If the applicant being a bonafide resident of Haryana belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State which is neither a Scheduled Caste nor a Backward Class shall be entitled to 5% weightage.

(5% weightage)

(4.4) If the applicant being a bonafide resident of Haryana, he shall be awarded half percent weightage for each year or part thereof exceeding six months of experience, on the same or a higher post in any Department/Board/ Corporation/ Company/ Statutory Body/Commission/ Authority of Haryana Government. No weightage of experience shall be awarded for any period less than six months or for a period exceeding eight years.

(Maximum 4% weightage)

(5) Other Conditions:

(i) No applicant shall be given more than a total of 05% weightage for socio-economic criteria and experience under any circumstances.

(ii) The weightage by Haryana Staff Selection Commission or any other recruiting agency/body under Haryana Government shall be given only once in a lifetime for appointment to a post of Group C or D.

(iii) If a person himself or his family member is once selected/appointed with or without getting the benefit of weightage, no other family member shall be considered for weightage for selection/appointment to the same or any other post for which application has been submitted by any member of the family, as defined in Note 2 under sub-clause (4.1).

(iv) If a person resigns from government service while working on regular basis in any Department/ Board/Corporation under Haryana Government, any State or Government of India on whatsoever reason, he or any other family member shall not be eligible to claim weightage again under socio-economic criteria.”

16. The petitioners filed application form pursuant to Advertisement No.03/2021 dated 15.06.2021. The selection process commenced from the date of issuance of advertisement. The petitioners participated in the written test which was followed by physical screening test. The final result was declared on 31.10.2021. The notification which is foundation of claim of petitioners was issued on 30.12.2021, meaning thereby, notification dated 30.12.2021 was issued after conclusion of selection process. The petitioners are claiming that by notification dated 30.12.2021, Clause (d) of Paragraph 6 of notification of 1970 was substituted and as per them, substitution takes place from the date of insertion of un-substituted clause. Clause (d) in Paragraph 6 was, for the first time, introduced vide notification dated 29.06.1973. If the claim of petitioners is conceded, the substitution would relate back to 29.06.1973 i.e. the date on which Clause (d) was inserted in Paragraph 6 of the

notification of 1970. In the present form, Clause (d) of Paragraph 6 was inserted by notification dated 13.12.2017. If contention of petitioners is accepted, the amendment at least would relate back to 13.12.2017 i.e. the date on which 10 marks were ear-marked for socio-economic criteria. The respondent during 2017 to 2021 conducted many exams where marks were awarded as per notification in force. If petitioners are extended benefit of substituted provision, all the similarly situated candidates who had participated during 2017 to 2021 would be entitled to 5 marks under socio-economic criteria. There would be total chaos and all the selections may be disturbed.

17. Claim of petitioners need to be examined from another angle. By amendment dated 30.12.2021, the Government has changed definition of family. As per amended definition, the married brother with respect to male candidate is excluded from the definition of family and parents are excluded with respect to the married female candidate. Married female candidate is linked with her matrimonial home i.e. husband, father-in-law, mother-in-law etc. The petitioners claimed and got 5 marks under socio-economic criteria despite the fact that their married brothers/parents were having Government Job, thus they were not entitled to 5 marks under socio-economic criteria. They were caught claiming ineligible benefit. Their act was bad in the eye of law. By advertisement, the respondent had invited applications for the post of Sub-Inspectors. There must be many candidates who did not claim marks under socio-economic criteria because in case of male ones their brothers were in service and in case of female ones, their parents were in service. In case of male candidates,

there was slight amendment, however, in case of female candidates there was a substantial amendment. Prior to amendment, female candidate was linked to her parents whereas after amendment, she was linked to her matrimonial home. Status of married lady was to be examined in the light of status of members of her matrimonial home. Her link was snapped with her parents. There must be many married women who did not claim marks under the said criteria because of their parents being in service. If claimed benefit is granted to the petitioners, it would prejudice all those ones who did not claim marks under socio-economic criteria though had participated in the selection process. If claim of petitioners is accepted, it would amount to incentive to those who adopted malpractice and attempted to avail ineligible benefit. Any order in favour of petitioners of this Court, would lead to discrimination with similarly situated persons and violation of Article 14, 16 and 21 of the Constitution of India. No Court can come for rescue of a person who has suppressed as concealed material facts. The petitioners claimed and at one stage got ineligible benefit and now on technical grounds are trying to rekindle on being taken away.

18. The selection of petitioners has been cancelled and candidates next in merit list have been selected. If the petitioners are allowed to join, equal number of already selected candidates shall have to leave. They are in service for last more than 3 years. The petitioners at the time of claiming benefit of socio-economic criteria were not aware that after competition of selection process, there would be some amendment which would justify their illegal action. Appointment of petitioners at the

cost of already eligible selected candidates would be grave miscarriage of justice. This Court is astonished to notice that despite claiming ineligible benefit and being caught on the wrong side, the petitioners have approached this Court.

19. The Supreme Court of India has held that substitution of a provision is retrospective in nature. The Supreme Court has not held that in every case, substitution takes effect from retrospective date whereas Supreme Court has held that date of amendment in case of substitution depends upon intention of legislature and facts and circumstances of each case. The respondent made amendment in notification of 1970 on multiple occasions. On many occasions, while substituting one or another Clause of Paragraph 6, it was made clear that substitution would take effect from retrospective date. It shows that whenever Government was interested to substitute provision from retrospective date, it was provided in the notification itself. There is no such provision in the notification dated 21.12.2021 which shows that substituted clause has come into force from the date of introduction.

20. The Supreme Court in ***Pernod Ricard (India) (P) Ltd. v. State of M.P., (2024) 8 SCC 742*** has held that substituted provision will commence to operate from the date of its substitution. Repealed provisions cease to operate, however, statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Relevant extracts of the judgment read as:

“18. The operation of repeal or substitution of a statutory provision is thus clear, a repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution. This principle is subject to specific statutory prescription. Statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Similarly, a substituted provision which operates prospectively, if it affects vested rights, subject to statutory prescriptions, can also operate retrospectively.

19. The principle governing subordinate legislation is slightly different inasmuch as the operation of a subordinate legislation is determined by the empowerment of the parent Act. The legislative authorisation enabling the executive to make rules prospectively or retrospectively is crucial. Without a statutory empowerment, subordinate legislation will always commence to operate only from the date of its issuance and at the same time, cease to exist from the date of its deletion or withdrawal. The reason for this distinction is in the supremacy of Parliament and its control of executive action, being an important subject of administrative law.”

20.1 The Supreme Court in ***Gottumukkala Venkata Krishnamraju v. Union of India, (2019) 17 SCC 590*** has held that effect of substitution is deletion of old provision and make the new provision operative. In certain situations, the court having regard to the purport and object sought to be achieved by the legislature may construe the substitution as amendment having a prospective effect.

“18. Ordinarily wherever the word “substitute” or “substitution” is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps

: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word “substitution” as an “amendment” having a prospective effect. Therefore, we do not think that it is a universal rule that the word “substitution” necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on 1-9-2016.”

20.2 The Supreme Court in ***Zile Singh v. State of Haryana, (2004) 8 SCC 1*** has adverted to effect of substitution of a provision. The court has held that effect of substitution is that old provisions cease to exist and new provision comes into force.

“23. The text of Section 2 of the Second Amendment Act provides for the word “upto” being substituted for the word “after”. What is the meaning and effect of the expression employed therein — “shall be substituted”?

24. *The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. “Substitution” has to be distinguished from “supersession” or a mere repeal of an existing provision.*

25. *Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P. [(2002) 2 SCC 645], State of Rajasthan v. Mangilal Pindwal [(1996) 5 SCC 60], Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. [(1969) 1 SCC 255] and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael [AIR 1963 SC 933]. In West U.P. Sugar Mills Assn. case [(2002) 2 SCC 645] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case [(1996) 5 SCC 60] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case [(1969) 1 SCC 255] a three-Judge Bench of this Court emphasised the distinction between “supersession” of a rule and “substitution” of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.”*

21. In the case in hand, the selection process commenced on 15.06.2021 and concluded on 31.10.2021. During the pendency of selection process, notification dated 11.06.2019 was in force. The respondent in the advertisement provided for weightage of 10 marks. It was further provided that 5 marks shall be given if neither the applicant nor any person from applicant's father, mother, spouse, brother and son, was or has been a regular employee in Department/Board/Corporation/Company/Statutory Body/Commission/Government. The relevant extracts of the advertisement read as:

“xxx xxx xxx

Miscellaneous (10% weightage):- (10Marks)

(a) (i) Five (05) marks shall be given if neither the applicant nor any person from among the applicant's father, mother, spouse, brother, and Son is, was or has been a regular employee in any Department/Board/Corporation/Company/Statutory Body/Commission/Authority of Government of Haryana or any other State Government or Government of India.

(ii) Five (05) marks shall be given, if the applicant is:-

(i) a widow; or

(ii) the first or the second child and his father had died before attaining the age of 42 years: or

(iii) the first or the second child and his father had died before the applicant had attained the age of 15 years,”

(iii) Five (05) marks will be given, if the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of Haryana which is neither a Scheduled Caste nor a Backward Class.

(iv) Maximum of Eight (08) marks have been kept for

experience as an adhoc or contract employee. One-half (=0.5) mark for each year or part thereof exceeding six months of experience, out of a maximum of 16 years, on the same or a higher post in any Department, Board, Corporation, Company, Statutory Body, Commission, Authority of Government of Haryana. No marks will be awarded for any period less than six months:

Provided that no applicant will be given more than ten marks under any circumstances for (i) to (iv) above.

(b) Claim of reservation benefit and/or relaxation etc., if any, shall be admissible to those candidates only, who submit the requisite valid original certificate for scrutiny alongwith their application in support of their claim failing which, they will be considered under general category provided they are otherwise eligible. Information in this regard will be displayed on official website of the Haryana Staff Selection Commission.

Note *Claim under Socio-economic criteria, if any, shall be admissible to candidates of Haryana domicile only, and to those who would fill the details of the requisite certificate i.e. name of issuing authority, date of issue and reference no. etc and also upload the requisite valid original document along with their application in support of the claim failing which no certification benefits shall be considered after last date of filing online application.”*

[Emphasis Supplied]

22. From the perusal of Clause (d) of the advertisement, it is evident that it is verbatim replica of notification in force. In the advertisement, it is specifically provided that family includes brother, father and mother. If relying upon notification dated 30.12.2021, married brother is excluded from definition of family or parents are excluded in

case of married women, it would amount to violence to advertisement. It is settled proposition of law that nobody can travel beyond the advertisement. All the stake holders are bound by terms and condition of the advertisement. The respondent never amended Clause in question of the advertisement, thus, there was no question to rely upon a notification which was not in force during the term of the selection process.

23. A Constitutional Bench in '***Tej Prakash Pathak v. High Court of Rajasthan***', 2024 SCC OnLine SC 3184 while approving opinion in ***K. Manjusree K. Manjusree v. State of A.P., (2008) 3 SCC 512*** has held that eligibility criteria cannot be altered after commencement of the selection process. The Court has held:

“65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in K. Manjusree K. Manjusree v. State of A.P., (2008) 3 SCC 512 lays down good law and is not in conflict with the decision in Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220] deals with the right to be appointed from the select

list whereas K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512] deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent or silent, administrative instructions may fill in the gaps;

65.6. Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

24. In the wake of above discussion and findings, this Court is of the considered opinion that present petitions deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

16.05.2025
Prince Chawla

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