



CWP-13414-2011 (O&M) & connected cases

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13414-2011 (O&M)

Date of Decision:11.03.2025

AMIT KUMAR

..... Petitioner

Versus

STATE OF HARYANA AND ORS

..... Respondent

2)

CWP-22884-2010 (O&M)

SANDEEP KUMAR

.....Petitioner

Versus

STATE OF HARYANA AND ORS

.....Respondents

3)

CWP-2476-2011 (O&M)

JITENDER DAGAR

.....Petitioner

Versus

STATE OF HARYANA & ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Akshay Bhan, Senior Advocate with
Mr. Sushant Kareer, Advocate,
Mr. Akhilesh Barak, Advocate and
Mr. Jagtej Singh Kang, Advocate for the petitioner
(in CWP-22884-2010).

Mr. Lekhraj Sharma, Advocate and
Mr. Abhishek Sharma, Advocate for the petitioner
(in CWP-13414-2011).

Ms. Palika Monga, Deputy Advocate General, Haryana.

Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S. Gill, Advocate,
Mr. G.S. Beniwal, Advocate and
Mr. Nitish Bansal, Advocate for respondent Nos.4, 5, 7, 10, 12
and 13 to 16 in CWP-13414-2011.

Mr. Ram Niwas, Advocate
for Mr. R.K. Doon, Advocate for respondent Nos.4 and 5
(in CWP-22884-2010).

Mr. Akshay Kumar Goel, Advocate for respondent No.11
(in CWP-22884-2010 & CWP-13414-2011).

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Mr. Dinesh Arora, Advocate and
Mr. Ashish Khatkar, Advocate for respondent Nos.13, 17, 18 &
19 in CWP-22884-2010 and for respondent No.18 in CWP-
13414-2011.

Mr. Amit Jhanji, Senior Advocate with
Mr. Abhishek Premi, Advocate,
Ms. Triyyambika Rao, Advocate
Ms. Nandita Verma, Advocate and
for respondent No.19
in CWP-13414-2011 & respondent No.12 in CWP-22884-2010.

Mr. Mahipal S. Yadav, Advocate
for respondent No.14 in CWP-22884-2010.

Mr. D.S. Patwalia, Senior Advocate with
Ms. Sehar Navjeet Singh, Advocate for respondent Nos.22
(in CWP-13414-2011).

Mr. Govind Mor, Advocate for respondent No.15
(in CWP-22884-2010).

Mr. J.S. Ahlawat, Advocate and
Mr. Navdeep Singh, Advocate for respondent No.21
in CWP-13414-2011, CWP-22884-2010
& CWP-2476-2011.

Mr. Ravinder Malik (Ravi), Advocate for respondent No.15
in CWP-22884-2010 & respondent No.22 in CWP-13414-2011.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-13414-2011.
2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of selection of private respondents to the post of Inspector of Police (Male).
3. The petitioner pursuant to advertisement No.5/2008 dated 22.07.2008 applied for the post of Inspector of Police (Male). The said

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advertisement was issued by Haryana Staff Selection Commission (for short, 'HSSC'), Panchkula whereby 20 posts of Inspector of Police (Male) were advertised. 09 posts were earmarked for General Category and remaining were meant for reserved category. Essential qualification for the post was graduation from a recognized University with Hindi and Sanskrit up to matric level.

4. The respondent pursuant to aforesaid advertisement conducted written test comprising of two papers of 100 marks each. The exam was conducted in two sessions i.e. morning and evening. A candidate was required to secure 45% marks in each paper and 50% in aggregate to be eligible to participate in physical test and interview. The petitioner secured minimum marks in the written test and successfully passed physical test. He was called for interview on 02.07.2009. He appeared for interview and was very hopeful to be selected. The respondent declared final result on 08.09.2010. The name of petitioner figured at serial No.1 in the waiting list. He secured 145 marks in the written test and 7 marks in interview. In this way, he secured 152 marks out of 225 marks (200 for written test + 25 for interview). The petitioner was of the opinion that he has been awarded lesser marks in interview and candidates who were close relatives of ruling political Party have been awarded higher marks. Hence, this petition.

5. Learned counsel for the petitioner submits that pursuant to direction of this Court, a three members Committee vide its report dated 24.02.2023 has cleared the mystery of selection of private respondents. The report has made it clear that despite specific instructions of booklet and answer sheet, many candidates used fluid/whitener still their papers

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were evaluated and they came to be selected. There are many candidates whose OMR sheets are having scratch marks still their answer sheets were evaluated and they came to be selected. Arjun Rathee and Deepak are two candidates who actually did not appear in the written test still they were selected. The Committee in its report has pointed out that truth can be unearthed by forensic examination of signature/handwriting of these candidates. There is need to compare actual signatures/handwriting of these candidates with signature/handwriting on the OMR sheets. Hardeep Singh is one of the selected candidate who did not mention date of examination in OMR sheet of first session. Vijay Kumar, who is also a selected candidate, did not put his signature on OMR sheet of first session and he further mentioned wrong roll number/date of exam.

The report of Committee makes it clear that few candidates used fluid or scratched OMR sheet still their answer-sheets were evaluated and they came to be selected. As per instructions, the respondent-Commission was bound to outrightly reject their answer-sheets. Intention of the Commission was *mala fide*, thus, instead of rejecting candidature of such candidates, the sheets were not only evaluated but also candidates came to be selected. The action of respondent is palpably *mala fide* and amounts to misuse of process of law. Any appointment which is tainted cannot stand on the touchstone of Articles 14 and 16 of the Constitution of India. The Supreme Court time and again has held that every selection process which is tainted or contrary to Articles 14 and 16 of the Constitution of India should be declared null and void. From the report of the Committee constituted by this Court, it is beyond the pale of doubt that selection process was



tainted, thus, entire selection process needs to be rejected. In alternative, selection of tainted candidates may be set aside and candidates in the waiting list be offered appointment letter. The Supreme Court in plethora of judgments has held that if selection is tainted, it should be set aside irrespective of length of service. The courts are not supposed to legalize illegalities of executive. The respondent did not maintain attendance sheets of written test as well physical examination with intent to conceal identity of candidates who had participated in the selection process which led to impersonation and selection of ineligible candidates. The Interview Board did not award marks separately for each criteria.

6. *Per contra*, learned counsel for the respondents submit that in the instructions, there was nothing specific or categorical inhibiting the candidates from using fluid or scratching OMR sheet. In the instructions, it was mandated that ball point/gel pen be used to solve the questions. All the questions were multiple choice questions. Question booklets and OMR sheets were separate. The candidates were supposed to answer in the OMR sheet. Incomplete answers and answers filled in inappropriate manner were liable to be rejected. All the answer sheets were to be evaluated by electronic means. The Commission simply fed OMR sheets in the computer which evaluated the answers. As there was no specific instruction with respect to scratch or use of fluid, the OMR sheets came to be evaluated by computer. Had there been specific restriction, the software must have been developed in the said manner. The Commission in its subsequent exams specifically made it clear that fluid shall not be used. There was no *mala fide* on the part of Commission. The petitioners are unnecessarily raising the issue. Rohit Mann, one of unsuccessful candidates, on the earlier occasion filed Civil Writ Petition No.1651 of

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2013 which was withdrawn with liberty to file civil suit before Court of Competent Jurisdiction. The said candidate preferred civil suit titled as 'Rohit Mann Vs. State of Haryana and other'. In the said suit, the same prayers were made which are made herein. Civil Judge (Jr. Divn.), Karnal vide judgment dated 07.08.2018 dismissed suit of Rohit Mann with costs. During the pendency of said suit, the Commission produced answer sheets before the Court. The Commission retained colored copies of answer sheets before sending original record to Civil Court. On receipt of original record from Civil Court, it was found that answer sheets of two candidates have been tampered. FIR in this regard was registered and matter is pending before trial Court at Panchkula.

The petitioner has made false allegations of nepotism and favoritism. There was no *mala fide* on the part of Commission as well as selected candidates. The allegations of petitioner are false, fabricated and self-created. There is no substance in their allegations. They are filing multiple petitions just to detract and disturb the selected candidates. Their entire action is out of frustration. There may be minor irregularities, however, there is no illegality and it is settled law that selection process cannot be set aside on the ground of irregularities if there are no illegalities.

A candidate has not signed his one out of two OMR sheets. It needs to be noticed that invigilator had signed both OMRs. There is no allegation of use of fluid/scratch *qua* said candidate. The roll number and sheet number were same and it was to be filled in words and figures and at different places. On account of examination pressure, minor mistake took place, however, there is neither allegation of impersonation nor use



of fluid, scratch etc.

One candidate did not mention date of examination in the OMR sheet of first session. The said mistake is also a minor mistake and a curable defect. It cannot be treated as *mala fide* on the part of candidate or Selection Commission. The similar irregularities were involved in the case of unselected candidates still their OMR sheets were evaluated. The petitioners have also used fluid still their OMR sheets were evaluated which indicates that petitioners were not subjected to discrimination *qua* evaluation. It further shows that use of fluid/scratch was not prohibited. The petitioner-Sandeep (CWP-22884-2010) was awarded 23 marks in the interview, thus, he has no right to allege *mala fide* against Interview Board. The private respondents have already completed 15 years service. During this period, they have been further promoted to the rank of DSP. As per Supreme Court judgment in ***Sivanandan C.T. and others Vs. High Court of Kerala and others, 2023 SCC OnLine SC 994***, they ought not to be dismissed at this belated stage.

The report of Committee is flawed. The Committee has failed to consider that unsuccessful candidates had also used fluid and their OMR sheets were evaluated. Record of Deepak indicates that fluid has been used in six questions. After using fluid, he has opted incorrect answers whereas prior to fluid, he was able to give correct answers. Actually, fluid was never used which is evident from the coloured copy retained by Commission before sending the record to Civil Court. There was no sense for Deepak Kumar to opt for incorrect answers had he connived with Recruitment Board. In the case of Varun Kumar Dahiya, the coloured scanned copy retained by the Commission is disclosing use of fluid *qua* five questions whereas original copy which has been



tampered with while matter was pending before Civil Court is indicating use of fluid *qua* seven questions. In case of five fluided options, he was awarded marks *qua* four because answer to one question still remained incorrect.

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

8. The conceded position emerging from the pleadings and arguments of both sides is that the respondent-Commission vide Advertisement No.5/2008 dated 22.07.2008 invited applications for the post of Inspector of Police (Male). There were 20 posts and 9 were earmarked for General Category. There was written test comprising of two papers of 100 marks each. The exam was conducted in two sessions i.e. morning and evening. In the advertisement, terms and conditions which are source of instant litigation, were not jotted down, however, in the answer sheets and question booklet, there were few instructions. There were many candidates who used fluid as well as scratched options of OMR sheet. The entire exam was of multiple choice questions. There were 100 questions in each paper. 25 marks were ear-marked for interview. The petitioners could not be selected, however, private respondents were selected and even as on day are working with respondent-State.

9. The petitioners, on the basis of report of a Committee constituted on the direction of this Court, are claiming that OMR sheets of selected candidates were evaluated despite use of fluid and scratch marks. The respondent was supposed to reject answer sheets where there was use of fluid or scratch mark. The Committee in its report has found

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that there were 360 candidates who qualified written examination. There are many candidates either selected or unselected who had used fluid or scratched OMR sheet. There are four candidates out of selected candidates who have used fluid/whitener and there are two selected candidates who have scratched their OMR sheets. There are two candidates whose signatures/handwriting are doubtful. The Committee has opined that opinion of Forensic Science Laboratory be obtained and for the said purpose, handwriting/signature of those candidates need to be obtained and thereafter, compared with signatures/handwriting available on OMR sheets. As per Committee, there is one candidate who did not mention date of examination in OMR sheet of first session. There is another candidate who mentioned wrong roll number/date of exam and did not put signature on OMR sheet of first session. He also mentioned wrong date of exam on OMR sheet of second session.

10. The Committee has prepared report on the directions of this Court. The findings of the committee are necessary for the adjudication of instant petitions, thus, relevant extracts of the report are reproduced as below: -

“Findings:

8. After hearing all the concerned and having gone through the relevant record including the representations / written submissions submitted by the petitioners and the respondents and also the reply and record produced by the HSSC, the findings of the Committee are as under:-

i) Record of the recruitment process:

At the very outset, the Committee observed that the complete record of the recruitment process has not been provided by the HSSC. As per the reply of HSSC, the attendance sheet of the candidates against Advt. No. 5/2008, Category No. 3 for the post



of Inspector (Male) is not traceable in the office record. Further, it was replied that the seating Plan prepared by the Centre Superintendent concerned and details of invigilator to whom duties were assigned in specific room, along with their signatures is also not traceable. From the information provided by HSSC, analysis of information in Format A (List of candidates qualifying the written test) would reveal as under:-

- *Total number of candidates who were declared qualified in written examination : 360*
- *Number of Candidates, whose OMR sheets are not available in the office of HSSC :93*
- *Number of Candidates, whose only one OMR sheets is available in the office of HSSC :245*
- *Number of Candidates, whose both OMR sheets are available in the office of HSSC. :22*

Thus, the OMR sheets of both sessions have been provided by the HSSC in respect of 22 candidates only i.e. 18 selected candidates (respondents No. 3 to 22) and 04 petitioner.

ii) Allegations of impersonation:

The petitioners have levelled allegations of impersonation alleging that there is difference in the signature on OMR sheets in both sessions of a candidates namely Sh. Arjun Rathi and that the handwriting of another candidate namely Deepak is different in both sessions. The appearance of the candidates in the examination could have been ascertained from the attendance sheet of candidates and by examining the invigilators, who were on duty. However, as mentioned above the relevant record in respect of the attendant sheet and the details of invigilators have not been provided by the HSSC stating that the same were not traceable in the office record.

In the given circumstances, the fact about actual appearance/non-appearance of above said candidates in the examination can be ascertained by forensic/scientific examination of the signature/handwriting of the said candidates by obtaining the samples of their signature/handwriting and comparison of the same with their signature/handwriting on the OMR sheets, which is a matter of investigation by specialized



investigation agency. Therefore, the Hon'ble Court may form a view and may take final decision in this behalf.

iii) Instructions regarding written examination and use of fluid/whitener:

It is evident from the record submitted by HSSC that there were instructions for the candidates on the question booklets as well as OMR sheets. The relevant instructions on the Question Booklets and the OMR sheets are as under:-

Question Booklets:-

"4. इस पृष्ठ के ऊपर निर्धारित स्थान पर आप अपना रोल नम्बर अवश्य लिखें। निरीक्षक द्वारा आपको उत्तर पुस्तिका अलग से दी जाएगी। प्रश्नों के उत्तर शुरू करने से पहले आप उत्तर पुस्तिका के ऊपर की ओर अपना रोल नम्बर तथा अन्य ब्यौरे भी अवश्य लिखें और अपने हस्ताक्षर करें अन्यथा आपको उत्तर पुस्तिका को जांचा नहीं जाएगा और शून्य अंक दिए जाएंगे।

5. उत्तर पुस्तिका में सभी उत्तरों को केवल ढाल प्वाइंट/ जल पत्र से भरें। उत्तर पुस्तिका में दिए गए निर्देश भी देखें।

OMR Sheets:-

1. उत्तर पत्रिका को इलेक्ट्रॉनिक माध्यम से संसाधित किया जाएगा। अपूर्ण अथवा गलत तरीके से भरा गया उत्तर पत्र आमाम्य होगा और इसका उत्तरदायित्व पूर्णतया परीक्षार्थी का होगा।

3. अपने उत्तर अंकित करे के लिए ढाल प्वाइंट/ जल पत्र को ही प्रयोग करें।

8. इस उत्तर पत्रिका को ध्यान से इस्तेमाल करें। इसको मोड़ना, फाड़ना, कोई खरोच या निशान लगाना मना है।

The response of HSSC with respect to the query raised by the committee time and again with regard to specific guidelines issued by the Commission for the use of fluid/Whitener remained un-replied. The HSSC merely stated that no specific instructions were issued with regard to use of fluid/whitener in the exam for the post of Inspector of Police against Advt. No. 05/2008, Category No. 03 by the office of using the fluid/whitener or having scratch marks on the OMR sheets, as information provided by HSSC, is as under:-



(A) Candidates whose both OMR sheets are available

- i) Total number of candidates : 22*
- ii) Number of Candidates using Fluid/Whitener from (i) above : 05*
- iii) Number of Candidates, whose OMR sheet having scratch marks from (i) above : 04*
- iv) Number of selected candidates using fluid/whitener from (ii) above : 04*
- v) Number of selected candidates having scratch marks on OMR sheet from (iii) above: 02*
- vi) Number of candidates who were not selected having used fluid/whitener from (ii) above : 01*
- vii) Number of candidates who were not selected but having scratch marks on the OMR sheets from (iii) above : 02*

(B) Candidates whose single OMR sheets is available

- (i) Total number of candidates : 245*
- (ii) Number of candidates who used fluid out of (i) above : 17*
- (iii) Number of candidates having scratch marks on OMR sheets from (i) above : 34*

Further, the Committee also analyzed the information of 380 candidates as supplied in Format-B by HSSC. These were the candidates, who were just below the candidates who qualified the written examination in the order of merit. The analysis revealed that:-

- i) Number of candidates whose OMR sheets are not available in the HSSC : 43***
- ii) Number of Candidates whose both OMR sheets are available with HSSC : 00***
- iii) Number of Candidates, whose single OMR sheets are available with HSSC : 337***
- iv) Number candidates using fluid/whitener from (iii) above : 18***
- v) Number of candidates having scratch marks on OMR sheet from (iii) above : 47***

In spite of scratch marks on the OMR sheets, these were evaluated, which is contrary to the instructions No. 8 recorded on the OMR sheets. Scratch marks were reflected on the OMR sheets of selected as well as not selected candidates.

**iv) Other Omissions and Commissions on OMR sheets:-**

As per the record, some of selected candidates did not follow the instructions mentioned on the Question Booklets and the OMR sheets during the written examination. As per instruction No. 4 above, the candidates were required to fill up their Roll No. and all other details in the upper portion of the OMR sheet and affix their signatures, failing which, the OMR sheet was not to be evaluated and zero marks were to be awarded. However, the copies of OMR sheets as provided by the Commission revealed that in spite of leaving column of personal details blank or mentioning wrong details in the OMR sheets, these were evaluated. The details of two candidates are as under:-

► *01 selected candidate namely Hardeep Singh did not mention the date of Examination in OMR sheet of first session.*

► *01 selected candidate namely Vijay Kumar mentioned wrong Roll Number/wrong date of exam and did not put signature on OMR sheet of first session. He also mentioned wrong date of exam on OMR sheet of second session.*

v) Evaluation of OMR sheets:

After conducting the written examination, the OMR sheets were got duly evaluated and while doing so, the instructions as mentioned above were not duly followed as the unfilled/wrongly filled OMR sheets were also evaluated. Marks were awarded to the candidates, who filled up the OMR sheets by using fluid/whitener. As far as use of Fluid/Whitener is concerned, there could have been only two possibilities i.e. either the use of Fluid/Whitener was allowed or use of Fluid/Whitener was not allowed at all.

First of all, there were no specific instructions with regard to use of Fluid/Whitener. Secondly, there is nothing on record to show that all the candidates were made aware about use of Fluid/Whitener. Therefore, some candidates used the Fluid/Whitener and even some resorted to scratching of OMR sheets. Had the use of Fluid/Whitener been allowed, all the candidates could have used the same which was not done in the



present case. Moreover, the instruction regarding “Use of only Ball pen/Gel pen” itself indicate that there was no intention to allow any correction to be made by using Fluid/Whitener, otherwise, all the candidates could be allowed use of pencils and eraser for the purpose of corrections. It is also evident that lateron, HSSC issue clear instructions regarding non-use of Fluid/Whitener in the written examinations.

Otherwise also use of Whitener/Fluid in the written exam was not appropriate for the simple reason that the possibility of tempering of OMR sheets by using Fluid/Whitener at any subsequent stage like at the examination centre after submission of OMR sheet to invigilator or at the office of HSSC or even after interview cannot be ruled out. This fact is supported with the reply of the HSSC to the fact that in compliance of order of Civil Court, Karnal, the Commission sent the requisite record regarding original OMR sheets and retained coloured copies of OMR sheets for Commission's record. Thereafter, it came to the notice of Commission that original OMR sheets of the candidates namely Varun Kumar Dahiya and Deepak were tempered by using white fluid and the Commission lodged FIR No. 372 dated 10.10.2015 in Police Station, Sector -5, Panchkula in this behalf. The matter is still pending before the Trial Court at Panchkula.

Thus, the impression which can be gathered from the overall circumstances, including the instructions mentioned above, is that use of Fluid/Whitener was not allowed. Still, the OMR sheets having Fluid/Whitener and scratch marks, having wrong dates, Roll Numbers and blank columns of personal details were accepted and evaluated by the Commission, which is contrary to the instructions mentioned on the Question Booklet and OMR sheets.

9. That in view of the above findings i.e. evaluating the OMR sheets having wrong Roll Number or wrong date of exam or without signature of the candidate or having scratching marks on it, was willful omission on Commission's part. Further, not maintaining the record properly and allowing the use of fluid/whitener to change the answers, causes serious dent on the fairness of recruitment process and grant of equity to all the candidates.



10. That the above report is based on the scrutiny of the documents submitted by the petitioners and the respondents No. 3 to 20 and the record of recruitment produced by the HSSC, in order to assist the Hon'ble Court."

11. The Supreme Court in plethora of judgments has held that before setting aside any selection process, the Court is bound to see: -

- i. Whether there is sufficient material on record to establish that selection process was tainted;
- ii. Whether any independent agency has sifted the available evidence;
- iii. Whether record of selected and unsuccessful candidates is available;
- iv. Whether illegalities committed by the Commission go to the root of the matter;
- v. Whether tainted candidates can be separated from total selected candidates;
- vi. Whether entire or partial selection is void;
- vii. Length of service of selected candidates; and
- viii. Role of selected candidates.

12. In ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248***, a Constitution Bench elaborated and expounded the relationship between different Articles guaranteeing fundamental rights and enunciated every action of the State is violative of Article 14 which is arbitrary. The procedure established by law must be just, fair and right. Justice Bhagwati speaking for the Bench has held:



“7.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.”

From the above referred judgment, it is evident that absence of arbitrariness is essential for the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis of a decision taken in accordance with the Rule of law. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion must be governed by Rule. It must not be arbitrary, vague, and fanciful.

12.1. A Constitutional Bench in **‘Secretary, State of Karnataka Vs. Uma Devi’, (2006) 4 SCC 1**, while adverting to question of regularization of temporary, *ad hoc*, part-time employees has held that



adherence to the rule of equality in public employment is a basic feature of our Constitution. The Court has held:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee”.

12.2. A five Judge Constitution Bench in ***Sivanandan C.T. (supra)*** adverted to validity of appointment of District and Sessions Judges. High Court of Kerala in 2015 invited applications for appointment as District and Sessions Judges in the Kerala State Higher Judicial Services by direct recruitment from the Bar. The notification stipulated that the selection would be on the basis of a competitive examination consisting of a written examination and viva-voce. The total marks assigned for the written examination were 300 comprising of two papers, each carrying 150 marks. Paragraph 5 of the notification stipulated that “the merit list of successful candidates will be prepared on the basis of the total marks obtained in the written examination and viva voce.” After the viva-voce was conducted, the Administrative Committee of the High Court passed a resolution by which it decided to apply the same minimum cut-off marks which were prescribed for the written examination as qualifying criteria in the viva-voce. In coming to this conclusion, the Administrative Committee was of the view that since



appointments were being made to the Higher Judicial Service, it was necessary to select candidates with a requisite personality and knowledge which could be ensured by prescribing a cut-off for the viva-voce in terms similar to the cut-off which was prescribed for the written examination. The Full Court of the High Court of Kerala approved the resolution of the Administrative Committee. The final merit list of the successful candidates was also published on the same day. The decision of the Full Court to apply minimum cut-off marks for the viva voce and the resultant promulgation of the list of successful candidates came to be challenged before Apex Court under Article 32 of the Constitution. On account of application of cut off marks in the viva-voce, many candidates were ousted though they secured higher marks than many of the candidates who were selected on the consideration of the aggregate of marks in the written examination and the viva-voce. Hon'ble Court while adverting to the principle of legitimate expectation concluded that consistency and predictability are part of rule of law. The Court noticed its earlier judgments including judgment in ***State of Bihar v. Shyama Nandan Mishra, 2022 SCC OnLine SC 554*** wherein it was held that regularity, predictability, certainty and fairness are important facets of governance. These are necessary concomitants of government gestures. In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is therefore, arbitrary and antithetical to the rule of law. The rule of law promotes fairness by stabilizing expectation of citizens from public



authorities. Since, the citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.

12.3. Constitutional Bench of Supreme Court in '***Tej Prakash Pathak v. High Court of Rajasthan***', 2024 SCC OnLine SC 3184, has approved opinion in ***K Manjusree (supra)*** and 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.*

13. A conspectus of the afore-cited judgments reveals that recruitment agency after commencement of selection process cannot change eligibility criteria other than immaterial terms and conditions of the advertisement unless and until rules/advertisement permit and all the affected parties are informed well in advance. The terms and conditions of advertisement cannot be contrary to applicable rules. Amendment in advertisement or change in criteria after commencement of selection process is bad in the eye of law. Qualification other than jotted down in the advertisement or rules cannot be considered irrespective of higher or equivalent. Selection made on the basis of changed criteria needs to be set aside. In case selected candidates are working for quite a long time, their selection may not be disturbed.

If the selection can be set aside on the ground of change of rules after commencement of selection process, there is no doubt that selection should be set aside if it was tainted.

14. In the case in hand, the allegation against the selected candidates is that they have used fluid or scratched answer sheets. There are two candidates against whom there is allegation of impersonation and two candidates have not properly mentioned their roll number/date of exam.

15. During the course of hearing, the State counsel produced OMR sheets of all the candidates whose answers sheets are in question. From the perusal of answer sheets, it is evident that one candidate namely Gaurav Sharma scratched four questions. He changed his mind and circled options other than scratched. Particulars of said candidate are reproduced as below:-

<i>Name</i>	<i>Question No.</i>	<i>Scratched option</i>	<i>Option finally Circled</i>	<i>Correct answer</i>
<i>Gaurav Sharma</i>	<i>6</i>	<i>D</i>	<i>A</i>	<i>D</i>
	<i>32</i>	<i>C</i>	<i>A</i>	<i>C</i>
	<i>85</i>	<i>C</i>	<i>A</i>	<i>C</i>
	<i>93</i>	<i>C</i>	<i>A</i>	<i>C</i>

From the perusal of afore-stated table, it is evident that Gaurav Sharma initially selected correct answers whereas he finally selected incorrect answers. It conclusively indicates that it was not a case of connivance between Recruitment Board and the said candidate. One can understand if incorrect answers are substituted by correct answers by



scratching or use of fluid. However, it is highly improbable and difficult to believe that a candidate having connivance with Recruitment Board or access to illegal means would circle incorrect answers though he initially opted correct answers. It is also apt to notice that he has not completely circled the option which was later on scratched.

Another selected candidate namely Jai Prakash belongs to BC Category. He scratched two questions. After scratching, he circled other options which were correct as per answer key. He secured two marks on account those two questions. His total marks were 152 and if two marks are deleted, his remaining marks would be 150 and cut-off marks in his category was 138.

In the case of Deepak, who belongs to General Category, there are five questions where he used fluid. From the original answer sheet produced during the course of hearing and photocopy which was retained by the Commission before sending original record to Civil Court, it appears that Deepak had never used fluid. Another important aspect is that he has not secured any mark *qua* option marked by him. All the options marked by him *qua* five questions are incorrect.

16. From the above discussion of status of three candidates, it is evident that they have either not secured any benefit by using fluid or the marks awarded *qua* answers in questions are insignificant in view of total marks obtained by them and cut-off marks.

17. The next question arises whether answer sheets of six candidates who had used fluid or scratch mark could be evaluated or not. The petitioners are heavily placing reliance on instruction of question



booklet and OMR sheet. The Committee in its report has also relied upon Instructions No.4 and 5 of question booklet and Instructions No.1, 3, and 8 of OMR sheet. As per the petitioners and opinion of the Committee, as soon as any candidate used fluid or scratched OMR sheet, he became ineligible to participate. His OMR sheet could not be evaluated. The respondent-Commission concededly evaluated the sheets. The Commission before the aforesaid Committee as well as this Court has taken categorical stand that there was no specific instruction with respect to use of fluid. There was no human intervention in the evaluation of answer sheets. The sheets were fed in the computer and marks were generated. Not only selected but also many unselected candidates used fluid or scratched their answer sheets. From the perusal of instructions, it is evident that candidate was duty bound to use ball point/ink pen to fill the circle of the OMR Sheet. It means use of any writing instrument other than ball point/ink pen to circle the correct option was not permissible. The instructions further mandate that no candidate would tear, fold, scratch or use any sign on the answer sheet. In the normal course, it may be inferred that scratching of any option in the OMR sheet amounts to violation of instructions. In the case in hand, firstly the said instruction does not say that entire answer sheet would be outrightly rejected nor it particularly talks of multiple options of OMR sheets. The answer sheets were evaluated by electronic mode. The software used by respondent for evaluating the answer sheets did not object to use of fluid and scratch marks. The Commission is claiming that there was no restriction to use fluid or scratch a particular circle of the OMR sheet. It appears that intention of the said instruction was to keep the answer sheet intact so that it may be fed in the computer and optimal result may be obtained.



The respondent in subsequent exams has clarified that use of fluid is not permissible. Evaluation of OMR sheets of all the candidates irrespective of use of fluid or scratch mark, absence of specific instruction prohibiting use of fluid and stand of Commission that there was no prohibition to use of fluid, make it clear that OMR sheets of selected candidates despite use of fluid and having scratch mark were rightly evaluated.

18. The petitioners are further claiming that there are few candidates who have not filled their correct roll number and their answer sheets were liable to be rejected. From the report of the Committee, it is evident that there are two candidates who have made mistake with respect to their particulars to be filled in OMR sheet. Hardeep Singh did not mention date of examination in OMR sheet of first session. Vijay Kumar mentioned wrong roll number/date of exam and did not put signature on OMR sheet of first session. Indubitably, Vijay Kumar did not put his signature on OMR sheet of first session, however, Invigilator signed the OMR sheet of the said session. There is no use of fluid or scratch marks in the OMR sheet of said candidate. Hardeep Singh did not mention date of examination in OMR sheet of first session. Roll Number was to be filled in numerical form as well as circle form. There are minor mistakes though primarily particulars are correctly filled. The answer sheets of both the candidates were evaluated. The computer system did not raise objection. There is no fudging of record on their part. There is no evidence disclosing that they have connived with Recruitment Board. They have neither used fluid nor scratched OMR sheets. In these circumstances, it can be concluded that there were procedural irregularities or infirmities on the part of Hardeep Singh and Vijay



Kumar but there was neither fraud on their part nor connivance with Recruitment Board.

19. As per report of the Committee, there are two candidates against whom there are allegations of impersonation. The Committee has opined that appearance of the candidates in the examination could have been ascertained from the attendance sheet of the candidates and by examining the Invigilators who were on duty. Record of attendance sheets is not available as per opinion of the respondent-Commission. The Committee has formed an opinion that factum of actual appearance of candidates may be ascertained by forensic/scientific examination of signatures/handwriting of the selected candidates by obtaining their samples and comparing with their signatures/handwriting on OMR sheets. It means the Committee has not formed conclusive opinion. The Committee has not even *prima facie* formed an opinion that there is difference in handwriting/signatures of the candidates in both sessions. This Court cannot act as an Investigating Agency. The Commission was always free to ascertain the said fact by way of referring the matter to a Specialised Agency. The respondent-Commission has not chosen the said option. A period of 16 years from the date of exam has passed away. At this stage, this Court does not find it appropriate to refer the matter for forensic examination of handwriting/signature of these candidates.

20. From the above discussion, it can be gleaned that there was procedural infirmity or irregularity on the part of Commission, however, there is nothing on record to establish that there was fraud, suppression of facts or connivance on the part of candidates or Selection Commission. The report of the Committee does not disclose that there was either fraud



or the entire selection was tainted. From the perusal of opinion of the Committee and answer sheets, this Court concludes that there were irregularities but no illegality was committed which goes to roots of the selection process. In the absence of illegalities, this Court cannot set aside selection of candidates who are working with State Police for last 15 years and they have been promoted from the post of Inspector to Deputy Superintendent of Police. The respondent by promoting the private respondents from the post of Inspector to Deputy Superintendent of Police has made it clear that selected candidates are not involved in any criminal activity, are having good ACRs and are free from allegation of misconduct. In any case, on account of pendency of litigation before this Court, natural instincts and human tendency must have inhibited them from committing any misconduct. Cancellation of their selection would be worse than alleged irregularities. It is well-known that solution cannot be worse than problem.

The judgment of Supreme Court in *Sivanandan C.T. (supra)* is directly applicable to instant case. In the case in hand, the private respondents are working for last 15 years and they must have achieved good experience of maintenance of law & order. Substitution of their appointment by petitioners would not be in the interest of public at large. The petitioners, at present, are more than 40 years. Physical/mental fitness is of paramount consideration in the Police Force. The petitioners cannot be expected of having fitness as postulated for an Inspector of Police at the time of initial appointment.

21. Rohit Mann one of unsuccessful candidates on the earlier occasion filed Civil Writ Petition No.1651 of 2013 which was withdrawn



with liberty to file civil suit before Court of Competent Jurisdiction. The said candidate preferred civil suit titled as 'Rohit Mann Vs. State of Haryana and other'. In the said suit, the same prayers were made which are made herein. Civil Judge (Jr. Divn.), Karnal vide judgment dated 07.08.2018 dismissed suit of Rohit Mann with costs. The said candidate by way of CM No.11558 of 2019 in CWP No.13414 of 2011 became party to instant litigation. The Civil Court after examining evidence has turned down his prayer. The judgment of Civil Court has remained unassailed. Principle of constructive res-judicata needs to be taken care of as earlier writ as well as suit of said candidate stands dismissed. The Court is not oblivious of the fact that instant petitions were filed by candidates other than Rohit Mann.

22. In the wake of above discussion and findings, this Court is of the considered option that instant petitions deserve to be dismissed and accordingly dismissed.

23. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

11.03.2025

Ali

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No