

2025:PHHC:149921



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

CWP-28536-2025 (O&M)

Date of decision: 13.10.2025

Vinod Kumar and others

....Petitioners

Versus

Punjab and Haryana High Court, Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Bhupinder Malik, Advocate,
for the petitioners.

Mr. Kunal Dawar, Advocate,
for respondent No.1

KULDEEP TIWARI, J. (Oral)

1. The petitioners, who were amongst the unsuccessful candidates in the recruitment process initiated by respondent No.1, have approached this Court by way of instant writ petition, filed under Article 226 of the Constitution of India, challenging the condition of 'securing 35% marks in each paper/subject and 40% in aggregate to qualify for the next step of examination/appointment' as specified in the recruitment notice dated 04.12.2024 (Annexure P-2), and also the final result dated 01.09.2025 (Annexure P-7). Further, a writ of Mandamus is also sought for, commanding respondent No.1, to constitute a new Selection Committee to conduct the interviews under videography, and maintain proper record of questions asked in the interview.

2. The dominant ground raised in the present petition is that, no condition of prescribing minimum cut-off marks, either in written examinations or in interview, to qualify the subject/paper exists in the Service Rules. However, through the impugned recruitment notice, such an arbitrary condition was inserted. Further, incorporation of the condition in question is in contravention of, not only the Service Rules, but also the law settled by the Hon'ble Supreme Court in a catena of judgments.

3. The next issue in line, is that Practical Test (Oral), Oral Examination *Shikasta* reading, and Viva-voce, were not conducted in sync with the Service Rules and the recruitment notice. Further, the Selection Committee did not stick to the syllabus and criteria prescribed for the said examinations.

4. Learned counsel for the petitioners, while relying upon a decision of the Hon'ble Supreme Court in **Durgacharan Misra Vs. State of Orissa and others, 1987 (4) SCC 646**, submits that minimum qualifying marks cannot be prescribed by the selecting body, in the absence of any such provision in the Statutory Rules. So much so, no such rule is prescribed under the Services Rules, thereby authorizing the High Court to incorporate the impugned condition. He further submits that the selected candidates (private respondents) were awarded more marks in interview, despite being lower in merit in written examination, whereas, the toppers and exceptionally brilliant ones were granted disproportionately less marks in the interview. Hence, they could not succeed. By referring to some of the questions alleged to be asked during the Viva-voce, an attempt is made to set up a plea that the questions were either irrelevant, or not from the prescribed syllabus. He concludes by

submitting that the petitioners performed exceptionally well, still they were awarded disproportionately low marks. Accordingly, the present writ petition deserves to be allowed.

5. On the other hand, Mr. Kunal Dawar, learned counsel appearing for respondent No.1, submits that by virtue of relevant Services Rules, the High Court is empowered to evolve any procedure for conducting a competitive examination. Therefore, the plea, as raised in this regard, is totally misconceived, and is liable to be rejected outrightly. He further submits that the petitioner, after participating in the recruitment process, cannot lay challenge to the selection criteria, particularly when the process is over. He asserts that even earlier, the petitioners had participated in the selection process for the post in question, with the same conditions, therefore, they cannot raise a plea of ignorance of the conditions impugned herein. Further, for the petitioners failed to secure minimum marks in the Practical Test (Oral), Oral Examination *Shikasta* reading, and Viva-voce, they were declared ineligible. In such circumstances, the petitioners even lack locus to put the selection process to challenge. To lend credence to his submissions, he refers to a decision dated 18.03.2025, rendered by a Division Bench of this Court in **CWP-17640-2021 (Rajesh Gupta Vs. Punjab and Haryana High Court and others)**.

6. Taking his arguments further, he refers to the minutes of meeting, held in context of the selection process under scrutiny, and submits that even post publication of roll numbers of 69 candidates (in ascending order) on the website of the High Court, who had qualified the written examination, the result of written examinations of all the 174 candidates, was lying in a sealed cover. Therefore, it can be easily

gathered that the Selection/Interview Committee was not privy to the marks obtained by the candidates. In fact, marks of the written examination were disclosed, only once the Selection Committee awarded the marks of Practical Test (Oral), Oral Examination *Shikasta* reading, and Viva-voce, which too were lying in a separate sealed envelope. In this view of the matter, the allegations leveled against the Selection Committee, without knowing the rational of the recruitment process, are unfortunate.

7) Before embarking upon the rival submissions advanced on behalf of the petitioners as well as respondent No.1, a brief narration of facts, qua which there is no wrangle, shall be imperative.

8) A recruitment notice dated 04.12.2024 (Annexure P-2), was issued by this Court, inviting applications from the eligible candidates with respect to 15 posts of Reader, in terms of Rule 9 (i) of the High Court Establishment (Appointment and Conditions of Services) Rules, 1973 (for short, 'the Rules of 1973'). In response, 174 candidates, including the petitioners and private respondents, had applied. The written examination was slated for 09.03.2025. Eventually, 69 candidates were declared successful in the written examinations, inclusive of the parties herein. Thereafter, the abovesaid selected candidates were called for Practical Test (Oral), Oral Examination *Shikasta* reading, and Viva-voce, w.e.f. 25.08.2025 to 28.08.2025. However, since the petitioners could not reach the benchmark of minimum cut-off marks in the said examinations [except petitioner No.1, as he secured 04 marks against 3.5 cut-off marks in Practical Test (Oral)], they were declared unsuccessful. In this backdrop, the petitioners, through the instant writ petition, are beseeching indulgence of this Court.

9) Since the entire controversy revolves around Rule 9 of the Rules of 1973, it is inevitable to have a glance on the relevant Rules.

10) To begin with, Rule 9 (i), deals with the appointment to the post of Reader to a Judge. The consequential Sub-Rule (ii), postulates that a list of approved candidates, for the post of Reader, will be prepared as a result of Competitive Examination confined to the sources mentioned in Sub-Rule (i), and the appointment shall be made, in order of merit therefrom. Similarly, Sub-Rule (iii), empowers the Chief Justice, from time to time, to decide the number of candidates to be brought on the list as result of a single Competitive Examination, syllabus of which, is also prescribed. Albeit, the provisions (supra) are unambiguous and, as such, this Court may proceed further with the matter, but for the sake of clarity, the same are extracted hereinbelow:-

“9. Reader to Judge:-

“(i) Appointment to the post of Reader to a Judge shall be made from the following sources:-

¹9. (i)(a) From amongst the Law Graduates members of the High Court Establishment serving in the grade not lower than the grade of Senior Assistant or its equivalent for a minimum period of 5 years.

²9 (i)(b) From amongst the Law Graduates working in the Courts of the District Judge in Punjab & Haryana and in Subordinate Courts having five years experience in a grade not lower than of 'B' Grade Assistant, Judgment Writer (Senior Grade) and Judgment Writer (Junior Grade)/Stenographer to the District Judge in the State of Punjab and Haryana;

²9 (i)(c) Superintendents Grade-II, Senior Assistants, Revisors, Translators and Senior Scale Stenographers serving in the High Court and the employees of Lower Courts in the States of Punjab, Haryana and Chandigarh (U.T.), working in the grade of Assistant, Judgment Writer (Senior Grade) and Judgment Writer (Junior Grade)/Stenographer to the District Judge, who are graduate and have put in more than 20 years of service.

9 (ii) A list of approved candidates for the post of Reader will be prepared as a result of Competitive Examination confined to the sources mentioned in Sub-Rule (i) of this Rule and appointments shall be made in order of merit therefrom;

⁵9 (iii) The Chief Justice shall from time to time decide the number of candidates to be brought on the list as result of a single Competitive Examination. The syllabus for the examination shall be as follows:-

No.	Subject	Max Marks
³ 1.	Written paper relating to knowledge of law and procedure as laid down in Civil Procedure Code, Criminal Procedure Code, Limitation Act, Court Fees and Suits, Valuation Act and Stamp Act together with the rules made by Government and High Court under these Acts and High Court Rules and Orders, Volume I, Volume III and Volume V relating to procedure of Courts	100
2.	Practical Test (Oral) regarding familiarity with records of the High Court and lower Courts and Registers maintained in the Judicial Department and by Readers.	10
⁴ 3.	Oral examination Shikasta reading in languages of the lower Courts viz. Hindi and Punjabi, Special importance being attached to the ability of candidates to read shikasta.	10
4.	Viva Voce, including familiarity with law reports and other law books.	5
	Total	124

11) The term, ‘**Competitive Examination**’, as finds mention in the above extracted Rules, assumes significances, which is elaborated in Rule 2 of the Rules of 1973:-

"Competitive Examination" means the examination in such papers, such other practical tests like typing stenography etc. and such viva voca test or other tests as may be prescribed by the Chief Justice from time to time for different posts."

12) The term ‘**Competitive Examination**’ enshrines that under the authority of the Chief Justice, for the purpose of selection to various posts on the establishment of this High Court, a written examination is conducted in accordance with the prescribed procedure, or as may be prescribed by the Chief Justice, from time to time. Meaning thereby, the

Chief Justice of the High Court is empowered to carve out a selection process for recruiting meritorious candidates, for the post in question. Further, a conjoint reading of the Rules (*ibid*), articulates that prescription of minimum cut-off marks cannot be considered beyond the scope of the Service Rules. Instead, it is within the realm of the Chief Justice to adopt the procedures, which are rationale, to achieve the desired object, i.e. **to select suitable and meritorious candidates.**

13) The issue, which is being deliberated upon, is no more *res-integra*, as the law, in this regard, has already been settled by the Hon'ble Supreme Court in **Dr. Kavita Kamboj Vs. High Court of Punjab and Haryana and others (2024) 7 SCC 103**, wherein, the stipulation requiring minimum qualifying marks has been held to be consistent with the mandate of Service Rules:-

“65. In numerous decisions, this Court has emphasized the importance of the control which is wielded by the High Court over the District Judiciary. Undoubtedly, it is equally well-settled that when the Rules under Article 309 hold the field, these Rules have to be implemented. Where specific provisions are made in the Rules framed under Article 309, it would not be open to the High Court to issue administrative directions either in the form of the Full Court Resolution or otherwise, that are at inconsistent with the mandate of the Rules. On the other hand, in cases such as the one at hand, where the Rules were silent, it is open to the High Court to issue a Full Court Resolution.”

14) Similarly, in **K.H. Siraj Vs. High Court of Kerala and others, (2006) 6 SCC 395**, the Hon'ble Supreme Court has held that merit of a candidate and his suitability is always assessed with his performance at the examination. Further, prescription of minimum pass marks for the written or oral examinations, in any manner, cannot be considered as irrational or not having any nexus to the object sought to be

achieved. While scrutinizing the scope of Rule 7 of the Kerala Judicial Service Rules, 1991, the Hon'ble Supreme Court has held that when a high powered constitutional authority is bestowed with the power to evolve a procedure for conducting a competitive examination, which is germane and best suited to achieve the object, and it has evolved the same, it is not feasible to scuttle the said procedure, declaring the same as beyond its powers. The relevant observations appertaining to the context in issue, read as thus:-

“49. So far as the first submission is concerned, we have already extracted Rule 7 in paragraph supra. Rule 7 has to be read in this background and High Court's power conferred under Rule 7 has to be adjudged on this basis. The said Rule requires the High Court firstly to hold examinations written and oral. Secondly the mandate is to prepare a select list of candidates suitable for appointment as Munsif Magistrates. The very use of the word 'suitable' gives the nature and extent of the power conferred upon the High Court and the duty that it has to perform in the matter of selection of candidates. The High Court alone knows what are the requirements of the subordinate judiciary, what qualities the Judicial Officer should possess both on the judicial side and on the administrative side since the performance of duties as a Munsif or in the higher categories of subordinate Judge, Chief Judicial Magistrate or District Judge to which the candidates may get promoted require administrative abilities as well. Since the High Court is the best Judge of what should be the proper mode of selection, Rule 7 has left it to the High Court to follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected.

50. What the High Court has done by the Notification dated 26.3.2001 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not

*having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (I.A.S., I.A.F. etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the Notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as bench mark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high powered body like High Court to evolve its own procedure as it is the best Judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in **2006(1) SCC 779** wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.*

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*57. The qualities which a Judicial Officer would possess are delineated by this Court in **Delhi Bar Association vs. Union of India & Ors., (2002) 10 SCC 159**. A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff may be getting into the judiciary. Acceptance of the contention of the*

appellants/petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets 0 marks may still find it a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a bench mark for the oral interview, a bench mark which is actually low as it requires 30% for a pass. The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court.”

15) A Division Bench of this Court, in **Rushil Jindal Vs. Punjab and Haryana High Court and others, (CWP-18757-2025, decided on 22.09.2025)**, while following the ratio *decidendi*, as laid down in **Dr. Kavita Kamjob** and **K.H. Siraj (supra)**, has validated the minimum marks qualification, as the same are incorporated in exercise of the powers vested with High Court, envisaged under the Rules applicable thereto. The relevant observations are extracted hereinunder:-

17. Thus, in the light of the above discussion, it is observed that no illegality or arbitrariness could be observed in the High Court incorporating Clause 8.4 in the impugned notifications. There is consistent view taken by Hon’ble Apex Court to the fact that when the Rules are silent with regard to the manner in which the merit and suitability would be determined, then the administrative instructions can supplement the Rules in this regard, in order to fill up the gaps. Such instructions have a binding force providing their subservient to the statutory provisions. As has been held by Hon’ble the Apex Court in the judgments referred to above, applying the same to the facts of the present petition, undisputedly the basic procedure for direct recruitment has been envisaged in the Superior Judicial Services Rules of the respective States (Annexure P-3 and P-4), the High

Court while issuing the main notifications, by incorporating Clause 8.4 therein, has prescribed the syllabus and format of the examination wherein it has been specified that candidates merely securing 40% or more marks will be called for the viva-voce with the rider that merely securing 40% or more marks would not confer any right for being called for viva-voce and the discretion has been given to the High Court to short list the candidates equal to three times of the number of vacancies for viva-voce. Another condition imposed therein that any candidate shall be considered to have successfully qualified the examination unless he shall obtain 50% marks in aggregate out of total marks fixed for the written test and viva-voce (45% marks for the SC/BC-A/BC-B/PwD/ESM category candidates). It is also stipulated therein that candidates will be appointed strictly in the order of merit (category wise) in which they are placed after the result of written test and viva-voce.

*18. It is evident that the High Court by laying down the syllabus and format of examination, specified the scheme thereof by inserting the impugned Clauses in the notifications, has not done anything violative of the basic Rules but the same has been done in exercise of its powers in the light of the Constitutional Scheme so that the best available talent can be selected for performance of the duties as a Member of Superior Judicial Services and for that purpose imposition of “minimum marks qualification” in said written examination and viva-voce does not in any manner become irrelevant to adjudged the merit and suitability of any candidate for such post nor the same is in contravention of the basic Rules in any manner as has been envisaged under the Superior Judicial Services Rules of the respective States. Hon’ble Apex Court had categorically laid down in **K.H. Siraj’s case** (supra) that it is clearly open for the High Court to prescribe bench marks for the written test and oral test in order to achieve the purpose of getting the best available talent and there is nothing in the Rules barring such a procedure from being adopted. It is further been observed therein that the executive instructions can always supplement the Rules which may not deal with every aspect of a matter and for this purpose, it was always upon to the High Court to supplement Rules with a*

*view to effectively implement the same by prescribing relevant standards in the advertisement for selection. Similar view has been endorsed by the Hon'ble Apex Court in **Dr. Kavita Kamboj's case** (supra)."*

- 16) A similar has been expressed in **Rajesh Gupta (supra)**, wherein the issue for consideration was substantially alike:-

"The ratio decidendi of the above case-law unequivocally reflects that where the Rules framed under Article 309 of the Constitution are silent, as regards the manner in which the merit and suitability would be determined, administrative instructions can well supplement the Rules in that regard. Such an eventuality should not be one where the Rules have made a specific provision in which event the administrative instructions cannot transgress a Rule which has been made in pursuance of the power conferred under Article 309 of the Constitution of India. In other words, the appropriate concerned authority cannot amend or supersede a statutory Rule by administrative actions. However, it is open to it, to issue required instructions, to fill up the gaps and supplement the Rules, where they are silent on any particular point. Such instructions have a binding force provided they are subservient to the statutory provision and are not in violation thereof. It is, therefore, a jurisprudential canon that where the principal statutory provision(s) and the extant regulatory framework governing the selection process are silent on a particular aspect thereof, the High Court, in the exercise of its administrative authority as the appointing body, is imbued with the inherent power to supplement such deficiencies. In the absence of express legislative prescription, it is within the High Court's prerogative to fill the interstices of the law, by formulating necessary rules and modalities governing the conduct of examinations, the methodology for adjudging merit, and the criteria for assessing suitability, thereby ensuring integrity, fairness, and efficacy of the selection process. It thus cannot be said that in the absence of any explicit provision in the extant legal framework necessitating a minimum qualifying threshold, the introduction of such a criterion by an

administrative fiat amounts to a transgression of fundamental tenet(s) of jurisprudence, namely, that the selection bodies cannot engraft additional conditions that are neither contemplated nor envisaged by the extant rules.

Reverting to the factual matrix of the lis in hand; 2007 Rules, when scrutinized in the backdrop of Article 309 of the Constitution, manifest that current situation is not the one wherein the principal statutory provision(s) or extant regulation(s) has expressly stipulated a specific mandate thereby rendering Clause 15 repugnant to or in derogation thereof or any other overarching Constitutional or statutory framework. On the contrary, no explicit proscription emanates from these foundational provisions that would render the requirement prescribed therein ultra vires or in transgression of the governing legal regime. The expression “may further hold written examination and viva voce test for recruitment” as employed in Rule 7 of the 2007 Rules, confers upon the High Court an implied and inherent authority to regulate & prescribe the modalities governing the selection process. This plenary discretion encompasses the power to determine the mode and manner of conducting examinations, including the prerogative to stipulate minimum qualifying marks, should it deem such a prescription necessary to uphold the standards of merit and suitability. The phrase, by its very tenor, signifies a broad and enabling mandate, vesting the High Court, with the latitude to devise and implement measures that ensure integrity, fairness, and efficacy of the recruitment process, in consonance with the overarching constitutional and statutory framework.

It is thus indubitable that the criteria for securing minimum marks in the aggregate, out of the total marks fixed for the written test and the viva-voce, do not proscribe any lawful mandate. Ergo, the challenge made by the petitioner on this account deserves to meet failure.

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The ratio decidendi of this judgment reflects that, in case of appointment to judiciary, the prescription of minimum marks

in viva voce is in tandem with the tenets of law. The dicta would apply mutatis mutandis to a condition prescribing minimum qualifying marks in the written exam as also to aggregate of the written exam and the viva voce. There is no gainsaying that it may be necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected, as otherwise the standard of judiciary would get diluted and sub-standard candidates may get selected. It falls squarely within the prerogative of the selecting authority to stipulate criteria that ensures the recruitment of candidates of the highest caliber, particularly for a post of significant judicial responsibility since the power to determine the essential qualifications for a given position is an intrinsic attribute of the selecting authority. Interview may also be the best mode and most efficacious way for assessing the suitability of a candidate for a particular position, as it brings out overall intellectual qualities of the candidates and judicial temperament that they possess. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a Judicial officer. It is thus ineluctable that a condition, as is contained in Clause 15, is permissible for adjudging the qualities and capacities of the candidate seeking an appointment to judiciary. Thus, the challenge made by the petitioner in instant writ petition on this account, deserves to be rejected."

17) As this Court, while referring to the definition of term, 'Competitive Examinations' has already contemplated that it is well within the domain of the Chief Justice to inculcate the criteria of minimum cut-off marks, for conducting examinations, in order to select suitable and meritorious candidates for the institutions. Hence, the argument advanced on this issue carries no weight, and is dispelled. At

this juncture, it is pertinent to look at the marks secured by the petitioners, as supplied by learned counsel for respondent No.1 in a tabulated form, during the course of hearing:-

S. no.	Roll No.	Name of candidate	Written examination (maximum marks=100)	Practical test (oral) (maximum marks=10)	Oral shikasta reading (maximum marks=10)	Viva voce maximum marks =5	Grand total
1.	373	Petitioner no.1 Vinod Kumar	56	4	2	1	63
2.	250	Petitioner no.2 Gautam Makkar	53	3	2	1	59
3.	228	Petitioner no.3 Balkar Singh	51	3	2	1	57
4.	275	Petitioner no.4 Krishan Kumar	48	2	2	1	53

18) This gives rise to a crucial issue, ‘as to whether, the candidates (petitioners), having remained unsuccessful in the selection process, possess the right to assail the condition/qualifications thereof.

19) Indisputably, the petitioners participated in the selection process till its conclusion. Since inception, they were aware of the criteria of minimum cut-off marks. They qualified the written examinations, accepting the condition in question, but when they were declared fail, being not able to secure the minimum cut-off marks, they felt aggrieved. At this juncture, this Court is reminded to point out, as argued by learned counsel for respondent No.1, that earlier also, the petitioners had participated in the selection process for the post of Reader, with similar conditions embodied in the recruitment notice. Suffice it to say, even being acquiesced to the terms of the advertisement, they had subjected themselves to the prescribed criteria, therefore, they are estopped in law

from challenging the criteria, as referred to above. To conclude this, I find vigor from the ratio of judgment in **Rajesh Gupta (supra)**:-

“Re: An unsuccessful candidate’s right to challenge conditions/qualifications of a selection process after having voluntarily participated therein.

9. *The factual matrix of the case in hand reflects that the advertisement in question was issued on 16.07.2015, examination was conducted thereafter and provisional result of the written examination was declared on 31.07.2017, the viva-voce was conducted on 27.09.2017, the final result was declared on 16.08.2018 and the names of the selected candidate came to be recommended vide the impugned appointment order dated 21.12.2018. This factual backdrop unequivocally reflects that the petitioner had chosen to voluntarily participate in the selection process.*

*At this juncture, it would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court titled as **Tajvir Singh Sodi and others vs. The State of Jammu and Kashmir and others 2023(3) SCR 714**, relevant whereof reads as under:*

“13.1 It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the

amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.”

Indubitably, it is an ineluctable legal principle that once a candidate has voluntarily applied for and participated in a selection process, he is interdicted from subsequently challenging its legality or fairness of the process, based on the doctrine of estoppel. This principle operates to prevent a party from approbating and reprobating at the same time viz.; one cannot accept the benefits of a process while simultaneously disputing its validity. Such conduct would be contradictory and inconsistent, akin to blowing hot and cold simultaneously, undermining the integrity of the process and the principles of fairness that govern administrative procedures. The doctrine of estoppel by election is one among the species of estoppel, which essentially is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak for asserting a right which he would have otherwise had. The law is thus stated in Halsbury’s Laws of England, Vol.XIII, p.464, para 5412, reads thus:

“On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it.”

Ergo; having voluntarily participated in the

selection process with Clause 15 of the Advertisement in question being clearly in vogue and not raising any demur or protest to veracity thereof; the petitioner is precluded from disputing its fairness or legality, at this stage, by way of the writ petition in hand simply because the result of the selection process is not palatable to him. To put it differently, a challenge has been raised against the selection criteria only after the petitioner found himself unsuccessful in the selection process. The petitioner, in the factual matrix of the case in hand, having acquiesced to the terms of the advertisement and having subjected himself to the prescribed criteria, is estopped in law from challenging the requirement of minimum qualifying marks merely as an expedient recourse to secure a second opportunity at appointment. Such a challenge, post facto, is not only untenable but also reeks of an afterthought, at the end of the petitioner, aimed at circumventing the due process of selection. The writ petition in hand, thus, deserves dismissal on the score of the petitioner's challenge not being entertainable in the light of principle of waiver and acquiescence”

20) Therefore, on this account also, the instant petition deserves to fail.

21) As a sequel of the position, as sketched out above, the issue of *locus standi* of the petitioners to file the instant writ petition is equally important to be considered.

22) As already detailed out above, the petitioners failed to secure the prescribed minimum marks, and thus, were held ineligible for appointment. In this way, it is emphatically observed that the candidate, who stood disqualified for not being able to secure the minimum cut-off marks, ought to be precluded from challenging the selection process. In **Rajesh Gupta's case (supra)**, it was held that since the petitioner therein failed to get minimum qualified marks, he lacked locus to challenge the

selection process:-

“In such circumstances, the doctrine of locus standi assumes paramount importance. The litigant must first establish his legal standing to maintain such a challenge, for the invocation of certiorari and mandamus is not an exercise open to all and sundry, but a privilege contingent upon demonstrable eligibility and entitlement. Where a litigant is himself bereft of the requisite qualifications, he is correspondingly bereft of the locus necessary to call into question the selection process or the resultant appointments through certiorari or to seek mandamus in his own favour. The law does not lend itself to be wielded as an instrument of subterfuge by one who, by his own ineligibility, stands disentitled to the very relief he seeks. It is a well-settled tenet of our jurisprudence that one who has failed to surmount the threshold of eligibility cannot, in the same breath, seek to vitiate the appointment of those who have lawfully succeeded, nor can he aspire to don the mantle of an office through the indirect means of judicial intervention. The courts, acting in their extraordinary writ jurisdiction, do not permit the misuse of constitutional remedies as a stratagem to achieve what the law has expressly denied. To entertain such a claim would be to set at naught the sanctity of the selection process and to extend a remedy where none is warranted in law.

A litigant who lacks the foundational eligibility for appointment stands wholly disqualified from challenging the selection and appointment of others, particularly under the pretended invocation of quo warranto. The attempt to entwine quo warranto with certiorari and mandamus in pursuit of personal redress is not merely legally untenable but jurisprudentially perverse. The extraordinary jurisdiction of the court is a sanctuary for the enforcement of legal rights, not a forum for the redress of disqualified aspirations. The law, in its wisdom, does not grant standing to those who seek to accomplish by litigation what they could not secure by merit. To hold otherwise would be to subvert the very principles of fairness, legality, and due process that the writ jurisdiction exists to uphold.”

Court in K.H. Siraj, is as under:-

*“73. The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in paragraph 9 of **Madan Lal & Ors. Vs. State of J & K & Ors. , (1995) 3 SCC 486** as under:*

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitions as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla vs. Akhilesh Kumar Shukla, 1986 suppl SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

24) In conspectus of the above discussion, this Court is of the affirmed view that the petitioners have failed on all the aspects, and thus, the petition cannot succeed.

25) This Court also deems it apt to record that a post of Reader to a Judge performs a significant supporting role in judicial dispensation system. Some of the duties performed by the Reader, on a day to day basis, are: to diligently call the cases listed daily, including announcing name of the Advocates: to assist the Judge, whenever required. Further, a Reader also assists the Judge in locating the relevant documents and exhibits from the bulky files, including the lower court records. Not only that, he is also responsible for proper circulation of files, and to keep the relevant documents, including relevant judgments, handy, besides ensuring that the orders are duly signed. In nutshell, he acts like a bridge between the Court and other branches of High Court as regards judicial work.

26) Adverting to the core issues: the Selection Committee, which consists of Judges, is headed by a Senior Judge of the High Court, is well aware of the requirements of the post. So to say, they are the best authorities to adjudge the suitability of the candidates, and are always under the scanner to select the best available talent for the welfare of the institution. Therefore, this Court, only on the basis of bald aspersions raised by the petitioners, who remained unsuccessful in securing the appointment, cannot hold the Practical Test (Oral), Oral Examination Shikasta reading, and Viva-voce invalid, as the same were conducted in consonance with the Rules applicable thereto.

27) While recapitulating the position canvassed in the foregoing paragraphs, it merits mention that, had the petitioners been appointed,

they would not have approached this Court. Not only that, till the time they were passing through the examinations, i.e. written examination, they were quite satisfied with the terms and conditions of the selection process. As demonstrated above, ever earlier, the petitioners participated in the selection process for the same post, with alike stipulations, but did not raise any question. In this view of the matter, this Court is of the affirmed view that the instant petition is a speculative, and therefore, is liable to be dismissed.

28) In summa, the writ petition, being devoid of any merits, is **dismissed.**

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

(KULDEEP TIWARI)
JUDGE

13.10.2025
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No