

2025:PHHC:054383



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

JUDGMENTS RESERVED ON :01.03.2025
JUDGMENTS PRONOUNCED ON: 22.04.2025

(1) CWP-33762-2024 (O&M)
DR. MAHIPAL SINGH AND OTHERS Petitioners

Versus

STATE OF HARYANA AND OTHERS ... Respondents

(2) CWP-5153-2025

VIJENDER KUMAR AND ANOTHER Petitioners

Versus

STATE OF HARYANA AND ANOTHER ... Respondents

(3) CWP-4248-2025

MINAXI AND OTHERS Petitioners

Versus

STATE OF HARYANA AND OTHERS ... Respondents

(4) CWP-4912-2025

PARVEEN AND OTHERS Petitioners

Versus

STATE OF HARYANA AND OTHERS ... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Sardavinder Goyal, Advocate,
Mr. Nishant Sindhu, Advocate,
Mr. Sarwinder Goyal, Advocate and
Mr. J.S. Nagla, Advocate
for the petitioner(s) in CWP-5153-2025 and
CWP-33762-2024.

Mr. Mukesh Rao and Mr. Shubham Aneja,
Advocates for the petitioners in CWP-4912-2025.

Mr. Ravinder Singh Dhull, Advocate for the petitioners in
CWP-4248-2025

Mr. Tapan Kumar, DAG, Haryana.

Mr. Balwinder Sangwan and Mr. Krishan Mourya,
Advocates for the respondent-HPSC.

Mr. Gurnoor Sandhu, Advocate for respondent-HPSC
in CWP-33762-2024.

VINOD S. BHARDWAJ, J.

Whether prescribing a benchmark criteria for different stages of a selection process amounts to change of an “eligibility criteria” or is finalization of a “selection criteria/procedure” for selection, is the question which arises for consideration before this Court alongwith its ancillary issues.

2. Involving a common issue, these writ petitions are decided by a common judgment. For the facility of reference facts are, however, being extracted from *CWP-33762-2024* titled as “***Dr. Mahipal Singh and others versus State of Haryana and others***”.

3. Challenge in the aforesaid writ petition is to the impugned Clause 2 (c) and 2 (d) of the Public Announcement dated 18.07.2024 (Advt. No. 16 of 2024) issued by the respondent No.2-Haryana Public Service Commission (hereinafter referred to as “HPSC”) whereby a condition has

been imposed prescribing minimum 35% marks to be secured in subject knowledge test to qualify for interview/viva voce test on the ground that not only the same is illegal, arbitrary and unconstitutional but also that the same is not in conformity with the Haryana Ayurvedic Department, Group-B Service Rules, 1989 (hereinafter referred to as “Service Rules of 1989”). The said Clauses of the advertisement are extracted hereinafter below:-

Clause 2:-

- c) No candidate will be called for the interview viva-voce test unless she/he secures a minimum of 35% marks in the test.*
- d) The number of the candidates called for interview will be two times, alongwith bracketed candidates if any, of the number of advertised posts provided that they have secured the minimum cut-off marks of 35%.*

4. A further prayer has also been made to direct the HPSC to invite 2 times the number of posts advertised under the reserved category after giving relaxation in the minimum percentage of marks in the Subject Knowledge Test.

FACTS

5. Briefly, the facts of the case are that the respondent-HPSC had issued an advertisement No. 16 of 2024 dated 21.06.2024 for filling up the 805 posts of Ayurvedic Medical Officers (Group ‘B’) in the Health and Ayush Department, Haryana. The last date for submission of the application was 12.07.2024 which such date was extended to 30.08.2024. Out of the total 805 number of posts advertised, 161 posts were reserved for the SC

category. The Haryana Public Service Commission thereafter issued a public announcement on 18.07.2024 for information of all the candidates whereby both the above conditions under challenge were notified. Vide the above public announcement, the HPSC published about the scheme/pattern of the exam which was to comprise of a screening test of 100 marks, to be held on 22.09.2024. Each candidate was required to secure a minimum of 25% marks to clear the screening test and candidates only 4 times the number of posts advertised were to be called for the next stage of selection process, subject to scoring minimum cut-off marks. Thereafter a subject knowledge test of the candidate(s), who passed the screening test, was to be held. A minimum cut off 35% marks was prescribed to be called for interview provided they fell within twice the number of posts advertised. The weightage of marks scored in the subject knowledge test was 87.5% while 12.5% weightage was assigned for the interview.

6. The petitioners submitted their application and participated in the screening test. Having cleared the same, they also appeared in the subject knowledge test i.e. second stage of the recruitment process. The result of the subject knowledge test was declared on 03.12.2024. The petitioners are the candidates who have been shown to have failed to secure the minimum 35% marks to qualify for being shortlisted for the interview. It is contended that notwithstanding the posts lying vacant and the respondent-HPSC notifying two times candidates to be called for the interview, the petitioners have not been called to participate in the interview process, even though 2 times a number of candidates failed to score above the cut-off marks of 35%.

7. Aggrieved thereof the present writ petitions have been filed on various grounds to be advertised during arguments being noticed.

8. The respondent-Haryana Public Service Commission was duly represented since advance copy of the writ petition had been served upon them and a short reply was filed in the above writ and the Counsel made a statement that the same be read as the response by the Commission in all the writ petitions and there would be no necessity for filing of a separate reply in each case as the factual aspects are not in dispute.

9. The Commission has relied on certain provisions of the advertisement and as contained in Clause 6, Note 2, which is extracted as under:-

Clause 6, Note 2:-

xxx xxx xxx xxx xxx xxx xxx

(vi) In the event of number of application being large, Commission will adopt shortlisting criteria to restrict the number of candidates to be called for interview to a reasonable number by any or more of the following methods:-

(a) On the basis of percentage of marks of the candidates in the minimum educational qualification prescribed in the advertisement.

(b) On the basis of percentage of marks of the candidates in different educational qualifications, with weightage as decided by the Commission.

(c) On the basis of desirable qualifications or any one or all of the desirable qualifications if more than one desirable qualification is prescribed.

(d) On the basis of higher educational qualifications than the minimum/essential qualification prescribed in the advertisement.

(e) On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement.

(f) By counting experience before or after the acquisition of minimum/essential qualifications.

(g) By holding a Recruitment Test.

The candidate should, therefore, mention all his/her qualifications and experience in the relevant field over and above the minimum qualifications.

10. It is averred that the Haryana Public Service Commission had thus provided for a stipulation in the advertisement about resorting to any one or more of the seven methods of short listing prescribed therein. It is also averred that the writ petition would not be maintainable as the petitioners had acquiesced themselves with all the terms and conditions

before-hand and had participated in the selection process without any challenge or protest. It is also stated that Rules of 1989 are silent about the selection process for direct recruitment and hence it cannot be said that the procedure adopted is violative of the rule, when none exists. Further the stand taken is that the recruitment agency can always devise an appropriate procedure for recruitment and the maxim “rule of game” does not apply for the method or process of selection.

ARGUMENTS BY THE COUNSEL FOR THE PETITIONERS

11. Learned Counsel appearing on behalf of the petitioners have argued that the respondent-HPSC could not have prescribed a minimum qualifying marks to be eligible for appearing in the interview since in doing so, the HPSC has prescribed an ‘eligibility’ which is otherwise not provided for under the Service Rules, 1989. The petitioners have thus been rendered ineligible to continue with their consideration for the posts of Ayurvedic Medical Officers. Any such condition amounts to an alteration in the ‘eligibility’ conditions beyond those prescribed as per the Service Rules of 1989 and before any such exercise is undertaken by the HPSC, a consultation is required to be done with the State Government and an appropriate amendment is required to be carried out in the service rules, which have otherwise been framed in exercise of the powers under Article 309 of the Constitution of India. He makes a reference to Rule 9 of the Service Rules of 1989 which provide for modes of recruitment and to Appendix ‘B’ thereof which prescribes the qualification to be possessed by a candidate. The same being a regular degree in Ayurvedic Medicine and Hindi upto Matric level, it is argued that prescribing a minimum cut-off marks of 35% in Subject Knowledge Test (SKT) effectually amounts to

prescribing a minimum percentile score which is otherwise not stipulated in the Rules of 1989.

12. In support of his arguments, Counsel for the petitioners relied upon the judgment of Hon'ble the Supreme Court in the matter of ***“State of Punjab and others versus Manjit Singh and others”*** reported as **2003 (11) SCC 559**. The relevant extract thereof reads thus:-

“1.The main question for our consideration in these appeals is as to whether it was competent for the Punjab Public Service Commission (for short 'the Commission') to resort to screening test with a view to short list the number of candidates to bring it to the ratio of three to five candidates per vacancy and further, whether keeping in view the efficiency required for the services in respect of which selection and appointments was to be made, could a written test be held to fix some minimum cut off marks, where process of selection was by interview of eligible candidates belonging to reserve category.

2. The High Court, in the judgments impugned in the above noted appeals, held that the action of the Commission in holding the screening test and prescribing the minimum qualifying marks was unreasonable, arbitrary and discriminatory. Hence, gave a direction that the Commission would interview the petitioners if not already interviewed

and declared the result of the selection as per their merit within the time specified. The Commission has preferred the above noted appeals along with the State of Punjab as one of the appellants. The main thrust of the learned counsel appearing on behalf of the Commission is that the Commission is a constitutional and independent authority and it is its duty to make an endeavour to secure efficiency in the public administration by selecting the suitable candidates for the public services. While discharging such a duty, it is submitted that it would not be subservient to the direction of the Government unless permissible under the law. Thus, to the extent indicated above, there may be some conflict in the stand between the State Government and the Commission. But both are impleaded as appellants. The lead was taken by the learned counsel appearing for the Commission, who virtually alone, made his submissions.

3. The brief facts of the case are that Advertisement No. 4 of 1997 was issued by the Commission for recruitment of 500 Medical officers in PCMS (Class-I). In all, 303 Scheduled Castes (General) (for short S.C.) candidates applied.

xxx xxx xxx xxx xxx xxx xxx

The Commission fixed 45% cut-off marks for

general category candidates and 40% cut off marks for S.C. candidates for their consideration for the selection. The prescribed mode of selection was only interview of eligible candidates on the basis of their educational qualifications.

xxx xxx xxx xxx xxx xxx xxx

5. *The Resolution of the Public Service Commission upon which main thrust has been provided, reads as follows:*

"21.10.1991

A meeting of the Commission was held today, the 21st October, 1991, at 12.30 P.M. to discuss the criteria for screening the candidates for various posts advertised from time to time.

The Commission decided to take screening test for various posts in order to short list the candidates.

It has also been decided that the number of candidates to be called for interviews shall be limited to 3-5 times the number of vacancies notified by the Government category-wise.

But in order to ensure minimum norms of efficiency and standards in public administration, the Commission examined the matter in depth and decided that in future, no candidate belonging to the general category, shall be called for interview unless he obtains 45% marks in the screening test

and in the case of Scheduled Caste/Scheduled Tribes and Backward Classes no candidate shall be called for interview unless he obtains 40% marks, in the said test.

Sd/-

Chairman, Member &

Secretary.

(Emphasis supplied)

The other resolution on which emphasis has been laid and which is also reflected in the tenor of the arguments of the learned counsel for the Commission, reads as under :-

“15.4.1997

The Commission placed on record that it is a constitutional and independent authority and plays a pivotal role in selections and appointments of persons to public service. It endeavors to secure efficiency in public administration by selecting suitable persons for appointment of public service. It has to perform its duty in an independent and objective manner without any influence or direction of any other authority. It is not subservient to the directions of the Government unless such directions are permissible by law. The Commission is fully competent and duty-bound to hold competitive examinations and conduct

interviews for selecting suitable candidates as per the criteria fixed by it as long as it does not militate against the law."

xxx xxx xxx xxx xxx xxx xxx

8. But for such shortlisting as indicated above, it is not necessary to fix any minimum qualifying marks. Any candidate on the top of the list at number 1 down upto 500 would obviously constitute the shortlisted zone of consideration for selection. For the purpose of elaboration it may be observed that in case some cut-off marks is fixed in the name of shortlisting of the candidates and the number of candidates obtaining such minimum marks, suppose is less than 100, in that event screening test itself will amount to a selection by excluding those who though possess the prescribed qualification and are eligible for consideration but they would be out of the field of consideration by reason of not crossing the cut-off marks as may be fixed by the recruiting body. This would not be a case of shortlisting. In shortlisting, as observed above, any number of candidates required in certain proportion of the number of vacancies, may be shortlisted in order of merit from serial No. 1 up to the number of candidates required.

9. In the present case, the stand of the appellant

Commission is that for medical services where the members of service have to deal with the health and life of the people, they must have some minimum standard of efficiency and it is the bounden duty of the Commission to ensure the same. It is perhaps with this view in mind that the Commission fixed 45% minimum qualifying cut off marks for general category candidates and 40% cut-off marks for Scheduled Caste candidates. We feel, here lies the fallacy in the whole reasoning of the Commission. It is no doubt true that the Commission is an independent and autonomous body and has to work without influence of any authority or the Government. It is rather under duty to act independently. But at the same time the fact cannot be lost sight of that the State Government is competent to lay down the qualifications for different posts, and frame rules for the purpose or take policy decisions which may of course not be against the law. In this context, we may refer to the provisions contained under Article 320 of the Constitution. It reads as under :-

"320. Functions of Public Service Commissions –

1. It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of

the Union and the services of the State respectively.

xxx xxx xxx xxx xxx xxx xxx

3. The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted -

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

xxx xxx xxx xxx xxx xxx xxx

It is to be noted that under clause (3), the Union Public Service Commission or the State Public Service Commission, has to be consulted by the Government relating to methods of recruitment in civil services and for civil posts, promotions and transfers as well as about suitability of candidates etc. The consultation may also be in regard to disciplinary matters affecting a person serving under the Government. We then find that clause (4) particularly provides that nothing in clause (3) shall require consultation of the Commission in respect to the manner in which any provision

referred to in Article 16(4) may be made or the manner in which the effect may be given to the provisions of Article 335. We may peruse clause (4) of Article 16 and Article 335. They read as follows:

"Article 16(4) Nothing in the article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

xxx xxx xxx xxx xxx xxx xxx

11. In the case in hand, it was not for the Commission to have fixed any cut-off marks in respect of reserved category candidates. The result has evidently been that candidates otherwise qualified for interview stand rejected on the basis of merit say, they do not have up-to-the-mark merit as prescribed by the Commission. The selection was by interview of the eligible candidates. It is certainly the responsibility of the Commission to make the selection of efficient people amongst those who are eligible for consideration. The unsuitable candidates could well be rejected in the selection by interview. It is not the question of subservience but there are certain matters of

policies, on which the decision is to be taken by the Government. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the government, as submitted on behalf of the appellant Commission. But at the same time it has to conform to the provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.

*12. The appellant has also placed reliance upon a decision reported in *Sadhna Devi (Dr) v. State of U.P.* [(1997) 3 SCC 90] It, however, deals with an entirely different situation. The matter pertains to the admission to postgraduate course in the medical colleges. An entrance test was prescribed which also prescribed minimum qualifying marks. But so far as the candidates belonging to Scheduled Castes and Scheduled Tribes are concerned, the condition of obtaining the minimum qualifying marks was removed by means of a circular issued by the State Government. The*

circular of the State Government was challenged by the other candidates, pleading discrimination. It was found that though regulating the selection procedure was within the competence of the State Government but prescribing the eligibility criteria for maintaining proper standards, fell within the competence of the Medical Council of India. In that view of the matter, it was held that the State Government had decided to hold the entrance examination for selection instead of merit of MBBS examination and thus having prescribed the minimum qualifying marks, it was not open to it to do away with that criteria for the reserved category candidates altogether. It was thus found that once a decision was taken to prescribe the minimum qualifying marks, it could not be said by the State Government that there would be none for the reserved category candidates since it was within the competence of the Medical Council of India to have prescribed the criteria for maintaining proper standards. Therefore, the stand of the appellant Commission in this case that, it being an independent body, is not subservient to any authority or the State Government, hence it is competent for it to lay down the minimum efficiency standards including in the matters which

may fall within the purview of Article 335 of the Constitution, is erroneous.

13. Reliance is also placed on the judgment in the matter of **“Durgacharan Misra versus State of Orissa & Ors.”** reported as **1987 (4) SCC 646**. The relevant extract thereof reads thus:-

10. The closest to the facts of this case is the recent decision of this Court in Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721]. There the scope of Delhi Judicial Service Rules, 1970 came up for consideration. Rules 17 and 18 of the Delhi Judicial Service Rules, 1970 are similar to Rules 16 and 18 of Orissa Judicial Service Rules, 1964. The Selection Committee constituted under these Rules consisted among others of Judges of the High Court of Delhi. The Selection Committee apparently thought that it has got power to exclude candidates securing less than 600 marks in the aggregate as not being suitable for appointment to the Judicial Service. Accordingly it excluded all such candidates from the select list. It was contended before this Court that the Selection Committee would be competent to prescribe a minimum standard to be crossed by candidates at the viva voce test in order to be suitable for appointment to judicial posts.

Repelling that contention this Court observed (pp. 382-83) :

“With regard to the second contention, namely, that the High Court had no power to eliminate the names of candidates who had secured less than 600 marks in the aggregate after the viva voce test, reference has to be made to Rules 17 and 18 of the Rules which provide that the Selection Committee shall call for viva voce test only such candidates who are qualified at the written test as provided in the Appendix and that the Selection Committee shall prepare the list of candidates in order of merit after the viva voce test. There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in para 7 of the counter-affidavit filed in Writ Petition No. 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should obtain in the aggregate in order to get into the Delhi Judicial Service. It is not necessary to consider in this case whether any other reason such as character, antecedents, physical fitness which may disqualify a candidate from being

appointed to the Delhi Judicial Service may be taken into consideration by the Selection Committee while preparing the final list. But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an additional requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix. The question whether a candidate included in the final list prepared and forwarded by the Selection Committee may be appointed or not is a matter to be considered by the appointing authority. In the instant case the decision that a candidate should have secured a minimum of 600 marks in the aggregate in order to be included in the final select list is not even taken by the High Court but by the Selection Committee. Moreover recruitment of persons other than District Judges

to the Judicial Service is required to be made under Article 234 of the Constitution in accordance with the Rules made by the Governor as provided therein, in consultation with the High Court. Article 235 which vests in the High Court the control over the District Courts and courts subordinate thereto, cannot include the power of making rules with regard to recruitment of persons other than District Judges to the Judicial Service as it has been expressly dealt with in Article 234 of the Constitution. We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal.”

xxx xxx xxx xxx xxx xxx xxx

15. The Rules have been framed under the proviso to Article 309 read with the Article 234 of the Constitution. Article 234 requires that the appointment of persons other than District Judge to the Judicial Service of State shall be made by the

Governor of the State. It shall be in accordance with the Rules made by the Governor in that behalf after consultation with the State Service Commission and with the State High Court. The Rules in question have been made after consultation with the Commission and the State High Court. The Commission which has been constituted under the Rules must, therefore faithfully follow the Rules. It must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva voce test would, therefore, be illegal and without authority.

14. Reliance is also placed on the judgment of Hon'ble the Supreme Court in the matter of **“Dr. Krushan Chandra Sahu & Ors. versus State of Orissa & Ors.”** reported as **1995 (6) SCC 1**. The relevant extract thereof reads thus:-

31. Now, power to make rules regulating the conditions of service of persons appointed on Government posts is available to the Governor of the State under the proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory rules, in a given case, have not been made, either by Parliament or the

State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. (See: Sant Ram Sharma v. State of Rajasthan [AIR 1967 SC 1910])

32. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers, as the basis for determining their suitability.

33. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the rule-making

authority to provide the basis for selection. This Court in State of A.P. v. V. Sadanandam [1989 Supp (1) SCC 574] observed as under: (SCC pp. 583-84, para 17)

“We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive.”

(emphasis supplied)

34. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In P.K. Ramachandra

Iyer v. Union of India [(1984) 2 SCC 141] , it was observed: (SCC pp. 180-81, para 44)

“By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.”

35. Similarly, in Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721], it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646] and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce.

36. It may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this Court in B.S. Yadav v. State of Haryana [1980 Supp SCC 524] . For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay

down any standard or basis for selection as it would amount to legislating a rule of selection.

15. A further reference is made to the judgment of Hon'ble the Supreme Court in the matter of ***“Sushil Kumar Pandey and others versus the High Court of Jharkhand and another”*** reported as **2024 (6) SCC 162**.

The relevant extract thereof reads thus:-

22. We find from Rule 18 of the 2001 Rules, the task of setting cut-off marks has been vested in the High Court but this has to be done before the start of the examination. Thus, we are also dealing with a situation in which the High Court administration is seeking to deviate from the Rules guiding the selection process itself. We have considered the High Court's reasoning for such deviation, but such departure from statutory rules is impermissible. We accept the High Court administration's argument that a candidate being on the select list acquired no vested legal right for being appointed to the post in question. But if precluding a candidate from appointment is in violation of the recruitment rules without there being a finding on such candidate's unsuitability, such an action would fail the Article 14 test and shall be held to be arbitrary. The reason behind the Full Court Resolution is that better candidates ought to be found. That is different from a

candidate excluded from the appointment process being found to be unsuitable.

16. Further reference is made to the judgment in the matter of “**Goa Public Service Commission versus Pankaj Rane and others**” reported as 2022 (11) SCC 742. The relevant extract thereof reads thus:-

17. Bearing considerable resemblance as we shall presently see with the law in the facts is the decision of this Court starting with P.K. Ramachandra Iyer [P.K. Ramachandra Iyer v. Union of India, (1984) 2 SCC 141] , Rule 12 declares that the Commission is duty-bound to forward to the Government the select list. The select list is to be arranged in the order of merit of the candidates. The select list is to be sent arranged in the order of merit which, in turn, is to be determined in accordance with the aggregate marks obtained by each candidate at the competitive written examination and oral interview.

18. The rule maker was conscious of the fact that it has prescribed a separate minimum to be obtained by candidate in the written examination. It also contemplated the holding of an interview but as regards the interview a separate minimum was not stipulated. But at the same time, the law giver has contemplated that the Commission is to prepare a

select list wherein merit would dictate the order in which the select list is to be prepared and all that it is to do is to total up the marks obtained by the candidate in the competitive written examination and the oral interview. In other words, the merit list would be dictated by the performance in the competitive examination and interview subject only, no doubt, to the qualification that only those candidates who have obtained 65 marks in the written examination would be qualified. We need not be detained by the proviso to Rule 12.

17. Learned Counsel for the petitioner(s) contends that the respondents had published the advertisement No. 16 of 2024 on 21.06.2024 and that as per the same, the closing date was 12.07.2024. No such eligibility conditions had been prescribed in the original document, hence, the respondent-HPSC has altered the rules of the game after the same has already begun. The criteria of the eligibility and the scheme/pattern of exam could not have been changed after the cut-off date for submission of the applications. Hence, said conditions could not have read to the detriment of the petitioners.

18. Reliance is also placed on the judgment of Hon'ble the Supreme Court in the matter ***“Amrit Yadav versus the State of Jharkhand and others”*** reported as ***2025 SCC OnLine SC 280***. The relevant extract thereof reads thus:

18. A three-Judge Bench of this Court in Renu v. District and Sessions Judge, Tis Hazari

Courts, Delhi [2014 (14) SCC 50], discussed in detail the requirements of a valid advertisement and observed thus:—

“16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.”

(emphasis supplied)

19. Thus, the advertisements which fail to mention the number of posts available for selection are invalid and illegal due to lack of transparency. This Court further expounded in Renu (supra) that any appointment in violation of the mandate of Articles 14 and 16 of the Constitution of India is

not only irregular but also illegal and cannot be sustained. It is a trite law that a valid advertisement inviting applications for public employment must include the total number of seats, the ratio of reserved and unreserved seats, minimum qualification for the posts and procedural clarity with respect to the type and manner of selection stages, i.e., written, oral examination and interviews.

19. It is further submitted that Article 320 (3) of the Constitution of India provides that the State Public Service Commission is to be consulted on all matters relating to methods of recruitment to civil services and for civil posts. The power is thus with the State Government to frame the conditions or methodology of recruitment. The Public Service Commission is only to be consulted and does not have substantive power. In the present case, there is nothing on record to establish that the respondent-HPSC has been directed by the State Government to incorporate any such condition of eligibility or procedure for recruitment.

20. Learned Counsel for the petitioner further contends that as per the Clause 6 of the advertisement a detailed procedure about restricting the number of candidates to be called for interview had been prescribed. It allowed the Commission to adopt short listing of the candidates but the said power cannot be deemed to confer or empower prescription of an eligibility. The above Clause is extracted as under:-

“vi) In the event of number of applications being large, Commission will adopt shortlisting criteria

to restrict the number of candidates to be called for interview to a reasonable number by any or more of the following methods:-

(a) On the basis of percentage of marks of the candidates in the minimum educational qualification prescribed in the advertisement.

(b) On the basis of percentage of marks of the candidates in different educational qualifications, with weightage as decided by the Commission.

(c) On the basis of desirable qualifications or any one or all of the desirable qualifications if more than one desirable qualification is prescribed.

(d) On the basis of higher educational qualifications than the minimum/essential qualification prescribed in the advertisement.

e) On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement.

(f) By counting experience before or after the acquisition of minimum/essential qualifications

(g) By holding a Recruitment Test.

The candidate should, therefore, mention all his/her qualifications and experience in the

relevant field over and above the minimum qualifications.”

21. He contends that the short listing criteria could have been adopted only on the basis of educational qualification i.e. weightage, experience etc. and only when the number of candidates were large. Once the respondents have failed to short list even the minimum times the number of candidates to be called, the enforcement of such conditions, that have been notified belatedly and after the commencement of recruitment process, need to be struck down.

22. Learned Counsel for the petitioner further contends that the respondent-HPSC is required to provide a relaxation to the candidates belonging to the reserved categories to the extent of 5% of the marks. He submits that no such concession has been extended to the petitioners and that the minimum percentage of 35% had been made universally applicable to all candidates. The above step defeats the very object of prescribing reservation and in-equals are being tested on a universal parameter which itself is antithetical to the sacrosanct principles of equality of opportunity enshrined under Article 15 and 16 of the Constitution of India. In enforcing standard merit criteria for all the applicants, the respondent-HPSC has taken away a level playing field and the candidates belonging to the reserved categories are being forced to be at par with the candidates belonging to the reserved classes. The aforesaid practice is thus discriminatory with the petitioners.

23. Reliance has been placed by the Counsel for the petitioners on the judgment of Hon'ble the Supreme Court in the matter of **“Chattar Singh versus State of Rajasthan”** reported as **1996 (11) SCC 742**. The relevant extract thereof reads thus:-

17. The next question is whether the OBCs are to be treated alike Scheduled Castes and Scheduled Tribes and given the 5% cut-off marks in the Preliminary Examination under proviso to Rule 13 and whether omission thereof prohibits the right to equality envisaged in Article 14? Article 14 provides right to equality of opportunity and equal protection of law. Articles 15 and 16 are species of Article 14. Article 16(1) prohibits discrimination and gives equality of opportunity to every citizen in matters relating to employment or appointment to any office under the State. Article 16(4) elongates the equality of opportunity to unequals by affirmative action by enjoining upon the State to make provision for reservation of appointments for posts in favour of “any backward class of citizens” which in the opinion of the State is not adequately represented in the service under the State. It is now a well settled legal position that Article 16(4) is not an exception but a facet of Articles 14 and 16(1). It gives power to the State to effectuate the opportunity of equality to any backward class of citizens. Article 366(24) defines “Scheduled Castes” and Article 366(25) defines “Scheduled Tribes”.

The expression “Backward Classes” has not been defined under the Constitution but the President has been empowered to appoint a Commission to investigate into the conditions of Backward Classes for recommendation with regard to steps to be taken by the Union or the State Governments to remove difficulties and to improve their conditions. Commissions like Kaka Kelekar Commission and Mandal Commission were appointed by the President who identified the backward classes. On identification of social and educational backwardness and acceptance thereof by the appropriate Government, the President or the Governor of the State Government would issue public notification extending the benefits to improve their conditions. Until such a notification is published, Backward Classes are not entitled to the benefit of reservation under Article 15(4) or 16(4) of the Constitution. Articles 14 and 16 read with the Preamble gives equality of opportunity in matters relating to employment or appointment to any office under the State. By hierarchical unequal social status and denial of opportunities and facilities due to untouchability, a practice against Scheduled Castes and Scheduled Tribes living in the forest area require protective measures to

remove handicaps and disadvantages suffered by the members belonging to the Scheduled Castes and Scheduled Tribes so as to enable them to compete for selection. The appearance of injustice is denial of justice. In Madhu Kishwar v. State of Bihar [(1996) 5 SCC 125] (SCC pp. 152-53, para 38), it was laid down that law is the manifestation of principles of justice. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual should exercise his rights to his best advantage to achieve excellence, subject to the protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality. Therefore, law is the foundation on which the potential of the society stands. If the law is to adapt itself to the needs of the changing society, it must be flexible and adaptable. The constitutional objective of socio-economic democracy cannot be realised unless all sections of the society participate in the State power equally

irrespective of their caste, community, race, religion and sex. All discriminations in sharing the State power made on these grounds and those discriminations are to be removed by positive measures. The concept of equality, therefore, requires that law should be adaptable to meet equality. Article 38 mandates to minimise inequality in income and to eliminate the inequality in status, facilities and opportunities not only among the individual but also among the groups of people to secure to them adequate means to improve excellence in all walks of life. Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Equal protection clause, therefore, requires affirmative action for those placed unequally. Equality for unequals is secured by treating them unequally. Affirmative action or positive discrimination, therefore, is inbuilt in equality of opportunity in status enshrined in Articles 14 and 16(1) of the Constitution. Therefore, Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand

apart.

18. The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the trinity of the Constitution to remove social, educational and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39-A, 46 etc. Article 335 enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish evidence of historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated as dissimilar

and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15(4). Obviously, therefore, proviso to Rule 13 confines the 5% further cut-off marks in the Preliminary Examination from the lowest range fixed for general candidates. So, it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure total aggregate marks on a par with the general candidates. The rule expressly confines the benefit of the proviso to Scheduled Castes and Scheduled Tribes. By process of interpretation, OBCs cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that in view of the doctrine of fusing “any backward class of citizen” in Article 16(4), further classification of Scheduled Castes and Scheduled Tribes and OBCs as distinct classes for the purpose of reservation and omission to extend the same benefits to OBCs violates Article 14 is devoid of substance. If the logic of equality as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of Article 334(a) of the Constitution with

a non obstante clause engrafted therein. The Founding Fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and other segments of the society have given them separate treatment in the Constitution. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Castes and Scheduled Tribes, was void under Articles 16(1) and 14 of the Constitution.

24. Reliance is also placed on the judgment of Hon'ble the Supreme Court in the matter of **“Ram Bhagat Singh and another versus State of Haryana and another”** reported as **1997 (11) SCC 417**. The relevant extract thereof reads thus:-

4. We are of the opinion that equality of opportunity should be striven for and ensured in public employment. Steps should be taken to see where unequals are competing, conditions must be created by relaxation or otherwise so that unequals compete in terms of equality with others in respect of jobs and employments of the State. Our Constitution so enjoins it. Article 38 of the

Constitution read with Articles 14, 15 and 16 so mandates it. In order, therefore, to give those who are unequals, and it is accepted that Scheduled Castes and Scheduled Tribes for reasons historical or otherwise, are unequal with the general members of the community in respect of ability and qualification for public employment. Hence, in order to make the unequals compete on conditions of equality certain relaxations and other factors ensuring equality are imperative. Those groups or segments of society which are by reasons of history or otherwise unable to compete in terms of absolute equality with the members of other communities or groups in the society, should be ensured and assured chances of competing in terms of equality. They must be helped to compete equally but it is important to emphasise that equality of opportunity is sought to be achieved for the public services or employment. The efficacy and efficiency of that service is of prime consideration. Equality must be there for all to compete for the public services. Public services and public employment do not exist for providing jobs in terms of equality or otherwise to all. Public services and public employment must serve only public purpose and anything that hampers or

impairs the efficiency or efficacy of public services cannot and should not be permitted in ensuring conditions of constitutional equality. These should be done objectively, rationally and reasonably. As is often said, it may be that need to ensure equality for Scheduled Castes and Scheduled Tribes should not be surrendered on the facile and value-based perception of efficiency. Yet efficiency must be ensured. Real equality must be accorded.

5. As mentioned hereinbefore, the contention of the petitioners is that 55 per cent marks in aggregate in all papers including viva voce constitute rather a high standard for qualification and eligibility. They contend that for most of the Scheduled Caste and Scheduled Tribe aspirants for the job it is difficult to achieve that standard. It is said that in other parts of this vast land of ours the standard is not as high as that. Shri Venkatramani, advocate for the petitioners, contended that in other States on an all-India basis such a high standard of marks is not envisaged. Shri Mahabir Singh, learned advocate appearing for the State of Haryana and Shri C.M. Nayar, learned advocate for the Public Service Commission, contend that it must be presumed that the minimum percentage desirable for the purpose of efficiency has been prescribed. It was further

submitted by Shri Nayar that in respect of candidates other than Scheduled Castes and Scheduled Tribes, normally those obtaining far higher than 55 per cent marks become eligible for consideration. That may or may not be so but what is required is that we must ensure efficiency in administration. We must, therefore, objectively, rationally and by a conscious process — conscious in the sense by application of mind to the relevant factors arrive at a percentage which should be considered to be a minimum one in order to ensure the efficiency of the administration. We are conscious that high efficiency is required because the recruitment is in the judicial branch, that is to say, for prospective judicial officers who will be in charge of administration of justice in the country. But at the same time, if possible, in order to ensure that there is equality of opportunity, a percentage should be fixed without, in any way, compromising with the efficiency required for the job which will be attainable by backward communities, that is to say, Scheduled Castes and Scheduled Tribes. Unless such a percentage is fixed on the aforesaid basis and a percentage is fixed for qualification which would normally be unattainable by the Scheduled Castes and Scheduled Tribes determined

on an objective basis, it would not be possible to ensure equality of opportunity. Both Shri Mahabir Singh and Shri Nayar have urged that the minimum must be presumed to have been so fixed in the Haryana Service. However, that fact is not apparent and there is nothing on record to indicate that this percentage was fixed deliberately on an analysis and careful examination and determination on the lines and the principles indicated above.

25. He further contends that an advertisement of the public employment is required to disclose all specifications including the number of posts, qualifications as well as eligibility criteria to ensure transparency and to prevent arbitrariness and that where an advertisement does not conform to the aforesaid requirements, the entire selection process stands vitiated and is liable to be set aside.

ARGUMENTS BY THE COUNSEL FOR THE RESPONDENTS

26. Learned Counsel appearing on behalf of the respondents, however, contends that the submissions by the petitioners are grossly misconceived and not based upon correct and proper appreciation of the facts of the present case and as also the position in law. He contends that the petitioners have misunderstood the clause and its nature and have failed to comprehend that there has been no alteration or change of the eligibility as prescribed under the statutory rules. All candidates who fulfill the eligibility as prescribed in the statutory rules are entitled to participate and were allowed by the Commission to compete with other candidates in the

selection process. The 'criteria' prescribed by the Commission for making a meritorious selection cannot be equated to altering the eligibility condition. The respondent-HPSC being the recruiting agency is required to make recommendations of meritorious candidates in a fair and transparent selection process by affording equality of opportunity. The relaxations available to the candidates belonging to the reserved categories have already been prescribed in the advertisement including relaxation in the upper age and such benefits have also been extended to those candidates.

27. He further contends that the shortlisting criteria for recommendation of the meritorious candidate in a process of selection to be conducted through different phases cannot be impugned at the instance of a person/candidate who could not cross over to the next stage by alleging it to be prescribing a different eligibility. The selection process in the present case was in a phased manner and in order to move on to the next stage, a candidate was required to clear the minimum prescribed standards at the previous stage. Hence, each candidate is required to clear the screening test with minimum 25% marks and fall within the number of times the candidates to be called to participate in the subject knowledge test i.e stage two of the selection process. To be called for the Viva Voce i.e. the phase-III of the selection process, each candidate was again required to cross the minimum threshold of 35% marks and to fall in twice the number of times of the number of posts advertised. Every candidate would lose a right to move to the next stages of the selection process in case he/she failed to meet the minimum qualifying criteria. The petitioners in the present case could not cross the threshold of the minimum eligibility prescribed for moving to the next phase, hence, they have no right to be called for the Viva Voce to be

conducted by the respondent-HPSC. He submits that there is no mandate that in the event of the total number of qualified candidates being less than the number of times the candidates who could be called, the minimum qualifying standard could be relaxed. The criteria of calling the number of times of the candidates, proportionate to the vacancies, prescribes the maximum number of candidates and not the minimum number of candidates who must necessarily be called. Hence, if a lesser number of candidates qualify the benchmark criteria of merit, the persons who could not attain the benchmark merit cannot claim that a right would thereafter accrue in their favour to be called for interview.

28. Learned Counsel further argues that there being no change in the Service Rules or the eligibility conditions, hence, it cannot be alleged that the Public Service Commission has violated the statutory rules and thus stepped on to the terrain of the State Government or that in doing so, it has carried out an amendment of the notified Service Rules under Article 309 of the Constitution of India or that its act is in violation of Article 320 of the Constitution of India.

29. Learned Counsel for the respondent further contends that the submissions advanced by the Counsel for the petitioners that the Rules of the game have been changed after the publication of advertisement is misconceived. He submits that even though originally the advertisement dated 21.06.2024 prescribed the cut-off date as **05.07.2024**, however, a Corrigendum was issued on 05.07.2024 whereby the last date for submission of the application was extended to 30.08.2024. The Public Announcement disclosing the selection criteria was published on 20.07.2024 i.e. well before the last date of submission of the application. It is thus not a case where any

changes/alterations in the selection process has been undertaken by the Commission after the last date of submission of the application forms. The arguments of the petitioner against the same do not refer to the effect of extension of the last date and hence would not stand merit.

30. Learned Counsel further argues that merely because certain posts remain vacant cannot also be the basis to accept the plea of the petitioners. The Commission is required to maintain a minimum standard of merit and that benchmark requirement of 35% marks in the subject knowledge test, especially when the petitioners are required to provide medical facilities to the patients, cannot be said to be an onerous condition. The said percentage is even lower than the minimum pass percentage which each candidate is required to obtain for being awarded the degree itself. The situation may have been somewhat different where the subject knowledge test prescribed a much higher percentage of marks to be secured in the subject knowledge test than the qualifying marks required for acquiring the degree/eligibility. The prescription of having a benchmark percentage in the subject knowledge test to be called for Viva Voce hence cannot be held as arbitrary or discriminatory or to be violative of Articles 14, 15 or 16 of the Constitution of India.

31. He further submits that mere prescribing of minimum benchmark knowledge for all the candidates should not be construed as if each candidate is being forced to compete with persons belonging to the General Category. So far as his or her merit is concerned, the same has to be drawn only from amongst the candidates belonging to the respective category. Thus, while the candidates belonging to the General Category may have an overall higher merit, the candidate belonging to the reserved

category is to be recommended on the basis of the *inter se* merit of the candidates from the said category alone. They are thus not being made to compete with the General Category candidates.

32. In support of his arguments, he places reliance on the following judgment of Hon'ble the Supreme Court in the matter of ***“Tej Prakash Pathak and others versus Rajasthan High Court and others”*** reported as ***2025 (2) SCC 1***. The constitutional Bench of Hon'ble the Supreme Court has considered the entire law including the judgment of *“K. Manjushree versus State of Andhra Pradesh”* reported as *(2008) 3 SCC 512* relied upon by the respondent. The relevant extract thereof reads thus:-

49. The ultimate object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services. [Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159, para 4] It is now well settled that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities.

50. While written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. [See Lila Dhar case, (1981) 4 SCC 159, para 5] Thus, the written examination assesses the man's intellect and the interview test the man himself and “the twain shall meet” for a proper selection. [See Lila Dhar case, (1981) 4 SCC 159, para 6]

51. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the rules/statute governing service and reservation.

52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

53. The decision in *K. Manjusree* does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation

of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.

(D) Rule does not apply with equal strictness to steps for selection

54. As already noticed in Section (A), a recruitment process inter alia comprises of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Subject to the rule against arbitrariness, how tests or viva voce are to be conducted, what questions are to be put, in what manner evaluation is to be done, whether a shortlisting exercise is needed are all matters of procedure which, in absence of rules to the contrary, may be devised by the competent authority. Often advertisement(s) inviting applications are open-ended in terms of these steps and leave it to the discretion of the competent authority to adopt such steps as may be considered necessary in the circumstances albeit subject to the overarching principle of rule against arbitrariness enshrined in Article 14 of the Constitution.

XXX XXX XXX XXX XXX XXX XXX

56. In M.P. Public Service Commission v. Navnit Kumar Potdar [M.P. Public Service Commission v. Navnit Kumar Potdar, (1994) 6 SCC 293] the question which arose before this Court was as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. In that context it was observed : (SCC pp. 296-97, para 6)

“6. ... It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview.

XXX XXX XXX XXX XXX XXX XXX

57. Likewise in Union of India v. T. Sundararaman [Union of India v. T. Sundararaman, (1997) 4 SCC 664] where the eligibility conditions referred to a minimum of 5 years' experience, the selection committee was held justified in shortlisting those candidates with more than 7 years' experience having regard to the large number of applicants compared to the vacancies to be filled. The relevant observations are being extracted below : (SCC pp. 665-66, para 4)

“4. ... Note 21 to the advertisement expressly provides that if a large number of applications are received the Commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In M.P. Public Service Commission v. Navnit Kumar Potdar [M.P. Public Service Commission v. Navnit Kumar Potdar, (1994) 6 SCC 293] this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for calling candidates for an interview. This was upheld by this Court. In State of A.P. v. P. Dilip Kumar [State of

A.P. v. P. Dilip Kumar, (1993) 2 SCC 310] also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate.”

58. Similarly, in Tridip Kumar Dingal v. State of W.B. [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768] it was held that shortlisting is permissible on the basis of administrative instructions provided the action is bona fide and reasonable. The relevant observations in the judgment are extracted below : (SCC p. 779, para 38)

“38. ... The contention on behalf of the State Government that written examination was for shortlisting the candidates and was in the nature of “elimination test” has no doubt substance in it in view of the fact that the records disclose that there were about 80 posts of Medical Technologists and a huge number of candidates, approximately 4000

applied for appointment. The State authorities had, therefore, no other option but to “screen” candidates by holding written examination. It was observed that no recruitment rules were framed in exercise of the power under the proviso to Article 309 of the Constitution and hence no such action could be taken. In our opinion, however, even in absence of statutory provision, such an action can always be taken on the basis of administrative instructions—for the purpose of “elimination” and “shortlisting” of huge number of candidates provided the action is otherwise bona fide and reasonable.”

59. Another example is in respect of fixing different cut-offs for different subjects having regard to the relative importance of the subjects and their degree of relevance. [Banking Service Recruitment Board v. V. Ramalingam, (1998) 8 SCC 523] These instances make it clear that this Court has been lenient in letting recruiting bodies devise an appropriate procedure for successfully concluding the recruitment process provided the procedure adopted has been transparent, non-discriminatory/non-arbitrary and having a rational nexus to the object sought to be achieved.

(emphasis supplied)

33. He further makes a reference to the judgment of this Court in the matter of **“Ajay Pal Singh and others versus State of Punjab and others”** reported as (2014) SCC OnLine P&H 23766. The relevant extract thereof reads thus:-

2. The question of law raised by the petitioner is as to whether a test can be prescribed for judging the suitability of scheduled caste candidates along with the general category candidates who possess the minimum prescribed educational qualification or whether scheduled caste candidates are to be tested on their ability which have been issued by the Punjab Government. In other words, the issue raised is that the scheduled caste candidates when are tested along with general category candidates, then they should be tested and appointed by lowering their merit against the posts which were meant for reserved category, otherwise it would make the reservation meaningless. This argument is based on the assumption that as a matter of long practice of lowering the threshold marks for scheduled caste candidates vis-a-vis the open general category candidates for selection and appointment on public posts.

XXX XXX XXX XXX XXX XXX XXX

7.The moot note in the advertisement on which this case turns reads as follows:

“Note: Minimum qualifying marks for candidates of all categories will be 35% (Thirty-Five Percent) of the total marks. In case some qualifying candidates obtain equal marks then for selection, preference will be given to a candidate with higher score in the Graduation degree.”

xxx xxx xxx xxx xxx xxx xxx

12. The position which emerges from shortlisting and lowering the marks for reserved category is to treat them as a separate class to bring them to the stage of the main selection and in this manner, the purpose of shortlisting would be achieved without prescribing any minimum cut-off marks but these principles are not extended to the main selection or written examination from which will come the pantheon of the successful.

xxx xxx xxx xxx xxx xxx xxx

14..... For the posts which are to be filled in through the exclusive competitive examination process, the candidates belonging to the scheduled caste and backward class categories who will secure the minimum prescribed standard of merit will be considered against the reserved posts and

the competition of their suitability will be held amongst themselves. This is the subtle difference that stands culled out of the 1969 instructions by the policy maker which were once good but have fallen into disuse or desuetude. The State remain well within its rights to determine the suitability of candidates in a selection process and once it has set the rules of the game, the same has to be adhered to it, otherwise, it would be snubbed for having acted arbitrarily and in a discriminatory manner. It also remains within its jurisdiction to test the suitability for appointments to public service to build efficiency in administration. I find nothing unconstitutional, irrational, unfair or arbitrary in State action in adhering to the cut off percentage of marks for eligibility to successfully run its administration or that the prescription tends to treat unequals unequally. The State can be seen only guarding and watching its impersonal interests not aimed at a class or classes of persons. Besides, if the petitioners were aggrieved by the prescription of 35% marks they should have laid the challenge in a court of law before entering the examination hall. If they failed in their attempt they cannot be allowed to usurp unfilled vacancies for no valid rhyme or reason.

(emphasis supplied)

34. He submits that even though the aforesaid judgment was challenged in the LPA No. 347 of 2015, however, there is no stay on the said judgment and the Letters Patent Appeal has been admitted.

35. A reliance is also placed on the judgment of Hon'ble the Supreme Court in the matter of "***KH Siraj versus High Court of Kerala and others***" reported as (2006) 6 SCC 395. The relevant extract thereof reads thus:-

48. In this background, two questions raised by Mr L.N. Rao have to be considered:

1. The prescription of minimum mark for the oral examination as a condition of eligibility for selection as Munsif Magistrate is not authorised by Rule 7 of the Kerala Judicial Service Rules, 1991;

2. The select list has not been prepared in accordance with Rules 14 to 17 of the KSSSR, 1958.

xxx xxx xxx xxx xxx xxx xxx

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 (IAS, IFS, 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 benchmark 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 the 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 Union of India v. Kali Dass Batish [(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.

XXX XXX XXX XXX XXX XXX XXX

73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-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 para 9 of Madan Lal v. State of J&K [(1995) 3 SCC 486] as under: (SCC p. 493)

“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 petitioners 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 *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp 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.”*

(emphasis supplied)

36. He also places reliance on the judgment of the Gauhati High Court in the ***Writ Petition (Civil) No.5284 of 2011*** decided on 21.06.2023 titled as ***“Ranjit Kumar Basumatary versus State of Assam and others”***. The relevant extract thereof reads thus:-

3.....It further reveals that the Rules of 1995 was

amended vide the Assam Taxation Service (Amendment) Rules, 2005 (hereinafter referred to as the “Amending Rules”). Rule 3(ii) of the Amending Rules stipulates that a Note shall be inserted to Rule 11(f). In terms with the said amendment therefore, the Note so inserted reads as under:

“Note :- The rules for Departmental Written Test are given in Schedule III”.

4. In the said Amending Rules, there is Schedule III. In Schedule III, Clause 4(i) stipulates that the written test shall be taken on one paper of total 100 marks consisting of various subjects. Clause 4(ii) stipulates that the duration of the written test shall be 3 (three) hours. Clause 4(iii) stipulates that the qualifying marks to be secured by the candidate in the written test to be eligible for consideration for promotion shall be 45% marks.

5. In the backdrop of the above, it is therefore relevant to take note of that the Petitioner herein admittedly got 42 marks and did not have the qualifying marks of 45%. It is under such circumstances the instant writ petition has been filed seeking a Writ of Mandamus upon the State Respondents to give relaxation to the Petitioner as the Petitioner belongs to the Schedule Tribe

(Plains) category on the basis of the proviso to Article 335 of the Constitution.

xxx xxx xxx xxx xxx xxx xxx

7. Now, the question therefore arises as to whether this Court in exercise of powers under Article 226 of the Constitution can issue a Writ in the nature of Mandamus directing the State to make any provision in terms with the proviso to Article 335 of the Constitution thereby granting relaxation in the instant case. This Court finds it relevant at this stage to take note of the judgment of the Supreme Court in the case of Chairman and Managing Director, Central Bank of India and Others Vs. Central Bank of India SC/ST Employees Welfare Association and Others reported in (2015) 12 SCC 308 wherein the Supreme Court was dealing with a question as to whether the Court can issue a Mandamus directing the State to grant benefits in terms with Clauses (4) or (4A) of Article 16 of the Constitution which are enabling provisions. The Supreme Court at paragraph No.26 categorically observed that it is for the State to act in a given situation and to take such affirmative action. It was further held that though the power lies with the State but the Courts cannot issue a Mandamus to the State to necessarily make such a provision. Paragraph No.26 of the said judgment being

relevant is quoted hereinunder:

“26. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as well. At the same time, it is also to be borne in mind that clauses (4) and (4-A) of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately

represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise.”

8. In the instant case as the proviso to Article 335 of the Constitution is an enabling provision whereby power has been exclusively reserved to the Union or the State, this Court is of the opinion that the Mandamus so sought for by way of the

instant writ petition cannot be issued.

(emphasis supplied)

37. A further reliance is also placed on the judgment of Hon'ble the Supreme Court in the matter of ***“State of Uttar Pradesh versus Karunesh Kumar and others”*** reported as ***(2022) SCC ONLINE SC 1706*** to contend that the petitioners, despite being fully aware of the selection criteria never challenge the same till the result of subject knowledge test was declared. He thus contends that challenge at the behest of a candidate who participate in the selection process despite being fully aware of all the terms and conditions and declaration of a result is uncalled for and such writ petitions deserves to be dismissed. The relevant extract thereof reads thus:

21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

“55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10-

2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9)

“9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners 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.”

57. In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395], it was held as under : (SCC p. 426, para 73)

“73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-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.”

58. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100], it was held as under : (SCC p. 107, para 19)

“19. In Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127]

xxx xxx xxx xxx xxx xxx xxx

It was further observed : (SCC p. 149, para 34)

‘34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process.”

59. Same principle was reiterated in Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619] wherein, it was held as under : (SCC pp. 645-46, para 59)

“59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100] The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise.”

38. A reliance is also placed on the Division Bench judgment of the Allahabad High Court passed in **“Noor Ali Ansari versus State of U.P. and**

others” reported as **2008 (21) SCT 868** The relevant extract thereof reads thus:-

18. Thus, only in exceptional cases, for compelling interest of the reserved category candidates, the State may relax the qualifying marks after identification by weighing the comparable data, without affecting general efficiency of service as mandated under Article 335 of the Constitution.

19. In view of the above, the law can be summarised as that In order to make the appointments in higher judicial service, if the Legislature has conferred a discretion upon the High Court to evolve a procedure to find out the best suitable candidates and such a procedure Is evolved, It does not require any interference merely because the enabling provision providing for reservation or relaxation has not been put to use.

39. No other arguments has been advanced nor any other judgment cited by the Counsel for the respective parties.

40. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents as well as the judgments available on record.

CONSIDERATION

41. The core question that arises for consideration before this Court is as to whether providing a minimum qualifying benchmark for a Candidate

to move from one stage to the next in a process of selection amounts to prescription of an eligibility by the Public Service Commission or the same is only a 'criteria for recruitment' which is fully within the domain of the respective Public Service Commission.

42. It is well established that the fundamental aim of any recruitment process for public service positions is to ensure the selection of the most qualified and suitable candidate for the role. To achieve this objective, the appointing/recruiting agency is empowered to formulate a fair and appropriate selection methodology. This includes the discretion to prescribe the selection criteria so as to objectively assess the merit and suitability of candidates.

43. This brings us to the first critical issue that must be understood i.e. the difference between the 'eligibility and 'criteria' for a recruitment process'. While 'eligibility' refers to the minimum qualifications or conditions that a candidate must satisfy in order to be considered for participation in the recruitment process, a 'criteria' pertains to the performance standards prescribed at different stages—such as written tests, interviews, or other evaluations—to assess a candidate's relative merit. Understanding this distinction is essential, as it clarifies the scope of authority exercised by the recruiting body.

44. While one may loosely forget the subtle distinction between the two and assume a criteria to be an eligibility but the same are distinct in their meaning, scope and application. In a layman's understanding an "eligibility" prescribes "who can apply" pursuant to an advertisement while a "criteria" is the "prescription" of a procedure which paves way for who gets selected from amongst the eligible candidates.

45. The casual layman's understanding reflecting an interchangeable use of the expression "eligibility" and "criteria" is not the way in which a Court of law would apply the same. While failure to fulfill the "eligibility" would lead to outright rejection of a candidate, but the failure to steer through the criteria would have a consequence that a candidate does not get selected, for being lower in merit. In the said background and legal understanding of the expression it is now required to examine whether prescription of a qualifying bench-mark for moving on to the next phase in a selection process is an eligibility or a criteria.

46. Undeniably, the candidature of the petitioner has not been rejected outrightly for not meeting the prescribed eligibility conditions. As a matter of fact, the petitioners were issued the roll numbers and were issued the admit cards to appear in the screening test. A minimum qualifying score of 25% was prescribed therein. The petitioners cleared the same and were issued fresh roll numbers to appear for the subject knowledge test. They appeared for the same as well but failed to secure the qualifying 35% marks to reach to the last phase i.e. viva-voce. Thus, in an essentiality the petitioners got shot down for failing to meet the minimum prescribed criteria for being called in for the interview, hence, it is not akin to petitioners having been held ineligible. This now leads to the next issue as to whether "eligibility" or "criteria" can be changed and if so, at what stage.

47. The position in law is well settled that an "eligibility" cannot be changed arbitrarily once the recruitment process has commenced. The selection has to be from amongst eligible candidates as per prescribed eligibility as per the judgment in the matter of ***"Madan Mohan Sharma and***

another versus State of Rajasthan and others” reported as **2008 (3) SCC 724**. The relevant extract is as under:-

“11. We have heard learned counsel for the parties and perused the records. Mr M.R. Calla, learned Senior Counsel appearing for the appellants has strenuously urged that during the pendency of the selection process, the eligibility criteria were changed and the date for submission of the application in pursuance to the advertisement was extended and Rule 266 of the Rules of 1996 came into being on 30-12-1996 whereby it was provided that Higher Secondary Examination shall be the criteria for preparing the merit list. As such, as per the service rules, the selection should have been made on the basis of Higher Secondary Examination marks and not on the basis of Secondary Examination marks. We regret this cannot be accepted. Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.

(Emphasis Supplied)

48. That being a position well settled so far as the eligibility is concerned, the position in law with respect to selection criteria is fluid. The Courts have, through judicial pronouncements have upheld the modifications in the selection criteria provided it is reasonable, non-arbitrary and is universally applied and subserves a larger public interest. Since the criteria for selection is recognized as a yardstick for selection/assessment, hence, judicial pronouncements have extended a leverage to the recruiting agency to apply universal, non-discriminate bona fide evaluation methodology to short-list meritorious candidates. The said aspect has been dealt with

extensively by five judges bench of the Hon'ble Supreme Court in the matter of "Tej Prakash Pathak (supra). The Hon'ble Supreme Court noticed the judgment of K. Manjusree (supra) as well as K.H. Siraj (supra) observed that the recruiting agency has the latitude to devise its procedure for selection subject to the rule against arbitrariness. The process of selection being aimed at securing the best suitable person, the discretion needs to be vested with the agency to devise its methodology. It also upheld that the agency may also set benchmarks. By referring to the judgment of the K. Manjusree (supra) it was held that there is no proscription to setting benchmarks for various stages of the recruitment process but it should not be set after the stage is over.

49. Before proceeding further, it is essential to take note of the observations made by the Hon'ble Supreme Court in the case of ***Tej Prakash Pathak v. Rajasthan High Court & Ors. (supra)***, particularly with respect to the authority of the Commission to establish benchmarks within the recruitment process. The Court's remarks in this context are of significant relevance to the issue at hand and provide critical guidance on the extent and limits of the Commission's powers in setting criteria for selection. The relevant paragraphs are herein under:

52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and

interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

(Emphasis supplied)

50. Whilst the stage for an eligibility criteria is fixed as commencement of recruitment process, the stage for the procedure for bringing recruitment process to an end is only transparency, fairness, non-discriminatory/non arbitrary universally applied methodology for advancing large public interest.

51. Even though, the prescription of the benchmark is a selection criteria/procedure to finalize selection and is not an eligibility, yet, even on the said principle, it has remained undisputed that even though the advertisement was issued on 21.06.2024 fixing the last date as 12.07.2024, however, the last date was extended to 30.08.2024 while the corrigendum dated 18.07.2024 was published in the newspapers providing the selection procedure/criteria and requiring the minimum benchmark. Hence, the said aspect was made known to all candidates at the stage of advertisement itself and much before the closing date for submission of the applications. The

same would thus not fall in the category of change of rules after the game has begun and is rather a notification of the rule before the process of selection had taken-off and it was only at an application stage. The expression used in the judgment being “.....the benchmark may be set anytime before the stage is reached so that neither the candidate nor the evaluator is taken by a surprise”, rather grants a much farther discretion to the recruitment agency.

52. Furthermore, the ruling in **K. Manjusree v. State of Andhra Pradesh (supra)** does not preclude the setting of such benchmarks. Instead, it affirms that while authorities are free to establish qualifying standards, these must be set prior to the commencement of each stage of the recruitment process. In other words, the criteria cannot be introduced or modified after a particular phase has concluded—essentially, the rules of the game must be defined before it begins, not after it has been played. The relevant observations are as follows:

33.....We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated

above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

(Emphasis supplied)

53. I find myself in full agreement with the law laid down in **K. Manjushree (supra)** as well as the judicial precedents cited by the learned counsel for the petitioner, which clearly establish that while the eligibility criteria for a recruitment process must be predetermined and cannot be altered or prescribed mid-process, the recruiting commission is well within its authority to set performance benchmarks for various stages of the selection process. These benchmarks—unlike eligibility criteria—serve as evaluative standards to determine merit and may be formulated by the competent authority, provided they are established prior to the commencement of the relevant stage.

54. The stage in the present bunch of cases was set much before the stage of screening test or subject knowledge test was reached. The arguments of the petitioner thus lacks merit in view of the above and the larger bench judgment in the matter of Tej Prakash Pathak (supra).

55. The judgments relied upon by the Counsel for the petitioner being of a bench strength lesser than in Tej Prakash Pathak (supra) would thus not be laying down any more binding law to the extent of the subject rules therein.

56. Further, the principles of natural justice, particularly the right to fair notice and the opportunity to compete on equal terms, are preserved in the present case. The candidates were not caught unaware, nor were they subjected to any retrospective change adversely affecting their prospects. On the contrary, the three-month gap between the issuance of the impugned order and the scheduled date of the written examination allowed ample time for candidates to prepare accordingly. The Commission's decision, therefore, not only complies with the legal framework governing public recruitment but also maintains fidelity to the broader constitutional values of fairness, transparency, and equality of opportunity under Article 14. In light of these considerations, the Commission's actions appear to be legally sound, reasonable, and consistent with established principles of administrative law.

57. The judgment in the matter of Manjit Singh (supra) being by a Division Bench cannot be read above Tej Prakash Pathak (supra). Similarly placed is the judgment in the matter of Durgacharan Misra (supra) which has even been considered by the larger bench. Dr. Krushan Chandra Sahu (supra) is also a division bench judgment which relied upon Durgacharan Misra (supra). The position is no different in the matter of Sushil Kumar

Pandey (supra) or in the matter of Pankaj Rane (supra). They would thus need no further discussion. The next argument which arises is as to whether the Commission could change the eligibility contrary to what has been prescribed under the statutory Rules framed under Article 309 of the Constitution of India or the power lay exclusively with the appointing authority.

58. In so far as the above is concerned, since this Court has already held that the prescription of the benchmarks in a phased selection process does not tantamount to prescribing an eligibility and is only selection procedure/criteria, hence, it would not be hit by Article 309 of the Constitution of India or the limitation/functions prescribed under Article 320 of the Constitution of India. The position of law having been settled that unless the law prescribes to the contrary. The recruiting agency has a discretion to devise a universal non-discriminatory methodology for short-listing meritorious candidates. It needs no further discussion that carrying out selection through a phased manner bench-mark criteria that had been applied universally cannot be said to be illegal, arbitrary, perverse, discriminatory or perpetrated by malice. The arguments of the petitioners are thus found to be lacking in merit in this regard.

59. The next argument that candidates belonging to reserved categories are not being extended any relaxation in bench mark criteria and hence are being unfairly discriminated is also held to be without any merit. The provisions of Articles 14, 15 and 16 entitle the State to extend relaxation of standards to the members belonging to the reserved communities, however, the nature of relaxation to be extended is entirely within the domain of the employer. It does not lie in the mouth of a candidate to

demand any specific nature of relaxation. In the present case, relaxation of age by five years has been deemed sufficient by the government and the same cannot be said to be illegal. Needless to mention that 'reservation' is a mode to achieve equality of opportunity as enshrined under Article 16 (1) of the Constitution of India and concession or relaxation in age or fee are an aid to reservation and to place them at par with general category candidates. The upper age limit having been extended by 05 years in the advertisement has been deemed adequate equalizer by the Government and in exercise of power of judicial review, it does not lie with the High Court to determine what further concession/relaxation ought to be extended.

60. Although reference has been made by the petitioners to the judgment in the case of the Chattar Singh (supra), however, in the said case the rules provided a relaxation of 5% marks to the members of reserved category and the same was upheld. In the present case, the statutory service rules do not provide any relaxation in the percentage of marks and hence the judgment does not come to the aid of the petitioners. They have also failed to make any reference to the Government instruction or Circulars which entitle them to such a relief. In the absence thereof, the High Court cannot grant relaxation over and above what the Government deems just and appropriate as in doing so, it is deciding the criteria and procedure to be adopted for determining merit, which is beyond the competence of the Constitutional court. High Court sits in review of the legality of the process of decision making and not on the decision itself. The decision of Govt. cannot be held arbitrary/discriminatory or violative of Article 16 merely because it does not fix a lower merit criteria for persons belonging to the reserved categories.

61. The judgment in the matter of Ram Bhagat Singh (supra) would also not be applicable to the facts of the instant case since a benchmark of 55% marks had been prescribed. Significantly the said judgment was in the context of the prevailing socio-economic conditions in the 80's. The socio-economic disparities are not as wide as they were more than four and half decades earlier. The advancements in socio-economic structure and the narrowing gap in the disparities may often be a valid reason to examine/re-examine the concession to be extended. Even otherwise, as against a benchmark of 55% prescribed then, a benchmark of 35% cannot be held as excessively high more-so when a candidate is required to obtain 50% marks to be awarded the degree of BAMS. The benchmark thus is reasonable and cannot be held as irrational or lacking objectivity.

62. The prescribing of minimum benchmark does not mean that a candidate belonging to a reserved category has to compete with general category candidate. He/she still competes only in his specific category and the benchmark is only a minimum cut-off. The inter-se merit is prepared from amongst members belonging to the said category, in the respective quota. The argument is thus a fictional figment of discrimination that is non-existent. This Court also does not find any merit in the argument of petitioner that at least twice the number of candidates should be called and if the candidates securing the benchmark is less than the number of times the candidates to be called or because the vacancies remain unfilled, the benchmark be relaxed and other candidates be called for interview.

63. The advertisement provided twin conditions for moving forward from one stage to the other viz.

- a. A minimum benchmark performance i.e. 25% in screening test and 35% in Subject Knowledge Test; and
- b. Candidate should fall in 4 times/ 2 times respectively at the stage of screening test and Subject Knowledge Test to move to the next stage.

64. In the event of a candidate not fulfilling either of the said condition, his further consideration gets ousted and he can claim no further right to himself either on the ground of vacancies having been left unfilled or on account that the total number of candidates were less than the number of times prescribed.

65. Apposite also to add that the aforesaid number of times candidates to be called is the maximum number and not a minimum number. Thus, for any person to claim consideration, both the conditions are to be met.

66. I would find support in my above view also from the judgment in the matter of ***“Bhanu Pratap versus State of Haryana and others”*** reported as **2011 (15) SCC 304**. In the said case, minimum qualifying mark was prescribed. The agency allowed rounding of the marks to the nearest round figure. The Hon’ble Supreme Court set aside the decision as allowing relaxation below the minimum qualifying marks being in violation of the norms. The relevant extract thereof reads thus:-

15. In the light of the records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The relevant Rules have already been extracted above. A bare reading of the aforesaid Rules would make it

crystal clear that in order to qualify in the written examination a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers.

16. The further mandate of the Rules is that a candidate would not be considered as qualified in the examination unless he obtains at least 50% marks in the aggregate including the viva voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off as sought to be submitted by the counsel appearing for the appellant.

17. There is no power provided in the statute nor was any such stipulation made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory Rules for providing or

giving the benefit of rounding off or relaxation.

18. We may also draw support in this connection from a decision of this Court in Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655]. In the said judgment this Court has laid down that: (SCC p. 658, para 6)

“6. ... when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, [then] it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.”

19. In Umrao Singh v. Punjabi University [(2005) 13 SCC 365] this Court while dealing with the power of Selection Committee for relaxation of norms held thus: (SCC p. 369, para 12)

“12. Another aspect which this Court has highlighted is the scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most

satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141] this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.”

20. *Let us also examine the issue from another angle. If rounding off is given to the appellant as sought for by him there has to be similar rounding off for a person who has missed 33% in one of the papers just by a whisker. To him and to such a person who could not get 50% in aggregate in the written test, if this rule of rounding off is offered then they would also get qualified. In that event, there would be no meaning of having a rule wherein it is provided that a person must at least have the minimum marks as provided for thereunder. Somewhere a line has to be drawn and that line has to be strictly observed which is like*

a Lakshman Rekha and no variation of the same is possible unless it is so provided under the Rules itself. Both the Selection Committee as also the appointing authority are bound to act within the parameters of the Rules which are statutory in nature and any violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which would be illegal.

67. Having dealt with the arguments of the petitioner, I also find that the petitioners have approached this Court challenging the criteria after having unsuccessfully participated in the selection process. The Hon'ble Supreme Court has held in a plethora of judgments that a selection criteria cannot be challenged after an unsuccessful participation without any protest. The judgments cited by the respondents lay down the position in law. Reliance can also be placed on the judgment in the matter of ***"Tajvir Singh Sodhi and Others versus State of Jammu & Kashmir and others"*** reported as **2023 (17) SCC 147**. Hon'ble Supreme Court upon examining a series of judgments concerning the doctrines of waiver and estoppel, declined to entertain the challenge, stating that it was not maintainable due to the participation in the selection process. The relevant extract thereof reads thus:-

39. 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.

40. This Court in Sadananda Halo [Sadananda Halo v. Momtaz Ali Sheikh, (2008) 4 SCC 619] has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fides or arbitrariness in the selection process and therefore the said exception cannot be invoked.

68. It is also significant to hold herein that existence of vacancies alone is no basis to relax the minimum qualifying criteria. No one can claim that the qualifying criteria ought to be given a go-by merely to accommodate people who do not possess/fulfill the minimum yardstick. Public appointment has to be made from amongst those who attain a minimum level of merit and such necessity should not be diluted by assuming that no harm would be caused to the standards of public duty owed by filling up vacant posts even with people who are severely lacking in minimum merit. The State owes a public duty to provide a minimum standard in public appointment and larger public interest cannot be compromised for the well being of few.

69. Consequently, the writ petitions are wanting in merit and hence dismissed.

APRIL 22, 2025
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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