



CWP-36259-2025

-1-

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

105

CWP-36259-2025

Date of Decision: 14.01.2026

Hemant Kumar**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: - Mr. Munish Bhardwaj, Advocate for the petitioner

Mr. Aman Dhir, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. Reply by way of additional affidavit dated 13.01.2026 of Mr. Charanjit Singh, I.P.S., Assistant Inspector General of Police, Intelligence, Headquarter, Punjab is taken on record. Registry is directed to tag the same at an appropriate place.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking quashing of Clause 28(b) of Standing Order No.10 of 2016 dated 06.09.2016 which provides that relative merit of candidates having equal marks shall be determined on the basis of percentage of marks obtained in graduation. He is further seeking directions to respondents to revise merit list of candidates selected as Intelligence Officer in the Intelligence Cadre of Punjab Police against Advertisement No.2 of 2016 dated 08.09.2016.



3. The petitioner, pursuant to Advertisement No.2 of 2016 dated 08.09.2016, applied for the post of Intelligence Officer. He cleared all the prescribed stages of recruitment. The respondent issued provisional list of selected candidates on 26.12.2016. Few candidates preferred *CWP No.365 of 2017* before this Court. On account of interim orders of this Court, the respondent could not fill vacancies, out of waiting list candidates, arising on account of non-joining of selected candidates. The petitioner preferred *CWP No.19529 of 2017* before this Court which was disposed of vide order dated 19.07.2019. In view of orders of this Court, the petitioner was issued appointment letter dated 22.01.2020. He joined service on 30.01.2020. The selection process of 2016 was based upon Standing Order No.10 of 2016 issued by respondent No.4. As per Clause 28(b) of Standing Order, if there are equal marks of candidates, their relative merit shall be prepared on the basis of percentage of marks obtained in graduation. The respondent has determined merit list on the basis of marks in the graduation where candidates have obtained equal marks. The petitioner is elder to candidates who figured at Serial Nos.41 to 58, however, his seniority has been determined on the basis of marks of graduation.

4. Learned counsel for the petitioner submits that Clause 28(b) of Standing Order is contrary to Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 (for short '**1994 Rules**'). As per Punjab Intelligence Cadre (Group 'C') Services Rules, 2015 (for short '**Intelligence Cadre Rules**'), matters which are not specifically provided in the Rules are governed by 1994 Rules. As per Rule 8 of 1994 Rules, in case persons recruited by direct recruitment obtain equal marks, their inter se seniority is



determined on the basis of their age. The respondent could not determine merit on the basis of marks obtained in graduation. 1994 Rules clearly provide that where two candidates have scored equal marks, their merit shall be determined on the basis of age. The standing order cannot run contrary to statutory provisions. Director General of Police, Punjab has power to issue Standing Order with respect to recruitment of subordinates, however, Standing Order must flow within the banks of Punjab Police Act, 2007 (for short '**2007 Act**') as well as Rules made thereunder. The aforesaid clause was contrary to 1994 Rules, thus, is liable to be declared invalid. The respondent in subsequent recruitments has adopted criteria of age which vindicates stand of the petitioner.

5. *Per contra*, learned State counsel submits that as per terms and conditions of the advertisement particularly Clauses 10 & 17(iv), the petitioner was supposed to go through instructions enumerated in Standing Order No.10/2016. He cannot challenge terms and conditions underscored in the Standing Order after participating in the selection process and joining service. He joined service in 2020 against advertisement of 2016. He remained silent for five years even after joining service. There is no contradiction between impugned clause and 1994 Rules. The recruitment of petitioner was further governed by Punjab Police Rules, 1934 (for short '**PPR**') and as per Rule 12.2(3) of the said Rules, the department is bound by order of merit determined by Recruitment Board. Rule 8 of 1994 Rules as pointed out by petitioner is inapplicable.

6. Heard the arguments and perused the record.



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

- i. Whether challenge to terms and conditions of Standing Order after participating in the selection process is permissible?
- ii. Whether Clause 28(b) of Standing Order No.10/2016 issued by Director General of Police, Punjab is contrary to Punjab Civil Services (General and Common Conditions of Services) Rules, 1994?

Question No.1 Whether challenge to terms and conditions of Standing Order after participating in the selection process is permissible?

8. A two Judge Bench of Apex Court in *Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others* 2023 SCC OnLine SC 344 has held 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. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

9. The petitioner indubitably participated in the selection process which was initiated in terms of advertisement. As laid down by Supreme Court in above noted judgment, no one after participating in the selection process can be heard to challenge advertisement, however, it is settled law



that no candidate can be stopped from challenging validity of the rules or instructions made thereunder on the ground that rules/instructions are arbitrary and violative of Article 14 of the Constitution of India.

10. The Supreme Court in ***Somesh Thapliyal and another v. Vice Chancellor, H.N.B. Garhwal University and another, (2021) 10 SCC 116*** has adverted to challenge to terms and conditions of advertisement or appointment letter by a candidate after his selection. The Court opined that employer is always in a dominating position, thus, in case of public employment, terms and conditions are subject to judicial scrutiny. The relevant extracts of the said judgment read as:

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”



11. A two Judge Bench of Supreme Court in ***Munindra Kumar and others v. Rajiv Govil and others, (1991) 3 SCC 368*** has held that candidates who have remained unsuccessful in the selection process cannot be estopped from challenging the Rules which are arbitrary and violative of Article 14 of Constitution of India. The relevant extracts of the judgment read as:

“10. It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations.”

12. A two-Judge Bench of Supreme Court in ***Abhimeet Sinha and others v. High Court of Judicature at Patna and others, (2024) 7 SCC 262*** has adverted to question of maintainability of writ petition after participating in the selection process. The Court has clearly held that principle of estoppel cannot override the law. To non-suit the writ petitioner at the threshold would hardly be reasonable particularly when the alleged deficiency in the process could be gauged only by participating in the selection process. The relevant extracts of the judgment read as under:

“IV. Maintainability

35. At the outset, it is apposite to address the issue of the maintainability of the writ petitions. It is argued by Mr. Gautam Narayan and Mr. Purvish Jitendra Malkan, learned counsel that after having participated in the recruitment process, the writ petitioners having not succeeded, cannot turn around and challenge the recruitment process or the



vires of the Recruitment Rules. It is submitted that all candidates knew about the prescription of minimum marks for viva voce, well before the selection process commenced and the principle of estoppel will operate against the unsuccessful challengers. On the other hand, the learned counsel representing the writ petitioners argued that the principle of estoppel would have no application when there are glaring illegalities in the selection process. Further, estoppel is not applicable when the arbitrariness affects fundamental rights under Articles 14 and 16 of the Constitution of India.

36. *As argued by the learned counsel for the High Courts, the legal position is that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process. However, it is also settled that the principle of estoppel cannot override the law. Such legal principle was reiterated by the Supreme Court in Meeta Sahai v. State of Bihar (2019) 20 SCC 17 wherein it was observed as under:*

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.

37. *Guided by the above ratio, in matters like this, to non-suit the writ petitioners at the threshold would hardly be reasonable particularly when the alleged deficiencies in the process could be gauged only by participation in the selection process.”*



13. From the perusal of above-quoted judgments, it is quite evident that a candidate cannot be estopped from assailing clause(s) of advertisement which are arbitrary and violative of Article 14 of the Constitution of India. The petitioner in the present case is assailing one clause of the Standing Order on the ground that it is contrary to applicable Rules, meaning thereby, question of validity of the clause is involved. As he is assailing one clause of the Standing Order which *prima facie* seems to be contrary to 1994 Rules, the petition cannot be rejected at threshold. The matter needs to be examined on merits. It is further apposite to record that petitioner is assailing one clause of Standing Order which in no circumstance could be challenged before his selection. Cause of action arose after selection of candidates. The petitioner prior to his selection could not conceive or contemplate that he would score marks equal to other candidates and question of seniority would arise. Thus, writ petition is maintainable.

Question No.2 Whether Clause 28(b) of Standing Order No.10/2016 issued by Director General of Police, Punjab is contrary to Punjab Civil Services (General and Common Conditions of Services) Rules, 1994?

14. Concededly, the petitioner pursuant to advertisement of 2016 applied for the post of Intelligence Officer. The respondent issued provisional list of selected candidates on 26.12.2016. Name of petitioner figured in the waiting list. On account of writ petitions filed by different candidates, the waiting list could not be effectuated. The petitioner preferred writ petition before this Court which was disposed of vide order dated 19.07.2019. In view of orders of this Court, he was issued appointment letter dated 22.01.2020. He joined service on 30.01.2020. The respondent



determined merit list on the basis of marks in the graduation where candidates scored equal marks. The petitioner is elder to candidates who figured at Serial Nos.41 to 58, however, has been made junior in the merit list on the basis of marks of graduation. The respondent on the basis of Clause 28 (b) of aforesaid Standing Order has considered marks of graduation instead of age where candidates scored equal marks. For the ready reference, Clause 28 of the Standing Order is reproduced as below:

“28. While preparing the Final Merit List, in the event of two candidates securing equal marks, the following tie-resolution criteria shall be adopted:

- (a) In the event of the candidates having equal total marks their relative merit shall be prepared on the basis of marks obtained in the Written Examination and the candidate having higher marks in the Written examination shall be placed higher in the Final Merit List.*
- (b) In the event of the candidates having equal total marks, equal marks in Written Examination (and consequently in the Interview-cum-Personality Test), then their relative merit shall be prepared on the basis of percentage of marks obtained in graduation.***
- (c) In the event of the candidate having equal total marks, equal marks in the Written Examination and Interview-cum-Personality Test, equal percentage of marks obtained in graduation, then the candidate senior in age shall be put higher in merit.*
- (d) In the event of all of above being the same, candidate having smaller Roll Number shall be placed higher in the Merit List.”*

[Emphasis Supplied]



15. The petitioner is claiming that aforesaid clause is contrary to Rule 8 of 1994 Rules. The Governor of the Punjab in exercise of power conferred by Article 309 of the Constitution of India read with Section 80 of 2007 Act has framed Intelligence Cadre Rules. These Rules govern different aspects of service including recruitment, promotion, discipline, punishment. Expression 'Service' has been defined under Rule 2(j) of these rules. As per said rule, 'Service' means Punjab Intelligence Cadre (Group 'C') Service. Rule 14 provides that 1994 Rules shall be applicable in respect of matters which are not specifically provided in these Rules. Rule 15 provides that PPR shall be applicable to the members of service except Rules 13.21 and 21.25. Section 85 of 2007 Act provides that PPR shall remain in force. Rules 14 and 15 of Intelligence Cadre Rules and Sections 80 & 85 of 2007 Act read as:

Rules 14 and 15 of Intelligence Cadre Rules

"14. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.- (1) In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.

(2) The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, at present in force, are contained in Appendix 'E'.

15. Application of the rules.- For all other aspects the Punjab Police Rules, 1934 shall be applicable to the members of Service except rules 13.21 and 21.25.

Provided that any order issued or any action taken under the aforesaid rules, shall be deemed to have been made or taken under the provisions of these rules."

**Section 80 of 2007 Act**

“80. (1) The State Government shall, by notification in the Official Gazette, make rules for carrying out the purposes of this Act, within one year from the date on which this Act, come into force.

(2) Every rule made under this Act, shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rules, or the House agrees, that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.”

Section 85 of 2007 Act

“85. The Punjab Police Rules, 1934, framed under the Police Act, 1861 (Central Act 5 of 1861), shall remain in force, unless those rules are specifically superseded.”

16. In view of Rule 14 of Intelligence Cadre Rules, Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 are applicable to members of Intelligence Cadre. The petitioner is relying upon Rule 8 of 1994 Rules to contend that impugned clause is contrary to 1994 Rules which reads as:

“8. Seniority - The seniority inter se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service.

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order



of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four Months from the date of order of appointment the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise;*
- (b) a person appointed by promotion shall be senior to a person appointed by transfer;*
- (c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and*
- (d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then*



by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person:

Provided further that in the case of persons recruited by direct appointment in the same cadre obtaining equal marks during same selection process, their inter-se-seniority shall be determined on the basis of their age. That is, an older person shall be senior to the younger person.

Note:- Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.”

[Emphasis Supplied]

17. The respondent is relying upon Rule 12.2(3) of PPR in support of its contention that impugned clause is not invalid and 1994 Rules are inapplicable. Rule 12.2(3) of PPR is reproduced as below:

“(3) Seniority:- The Seniority inter se of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such post in that cadre of the service:

Provided that in the case of persons recruited by direct appointment, who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commissioner or the Board, as the case may be, shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:



Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso, joins, the person so referred shall be placed below all the persons of the next selection, who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the date, their seniority shall be determined as follows :-

- (a) A person appointed by direct appointment shall be senior to a person appointed otherwise;*
- (b) A person appointed by promotion shall be senior to a person appointed by transfer;*
- (c) In the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and*
- (d) In the case of persons appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment, and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to younger person.*

Note:- Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.”

18. Perusal of above-cited provisions which counsel for the parties, during the course of hearing, vehemently relied upon reveals that in case of persons recruited by direct recruitment who join service within the period



specified in the order of appointment or within such period as may be extended from time to time by the appointing authority, the order of merit determined by the Commission or Board shall not be disturbed. It means decision of Commission or Board with respect to initial seniority shall be final.

19. The State Government by notification dated 19.01.2016 inserted proviso in Rule 8 of 1994 Rules which provides that in case persons recruited by direct appointment in the same cadre obtain equal marks during same selection process, their inter se seniority shall be determined on the basis of their age. At the cost of repetition, said proviso is reproduced as below:

“Provided further that in the case of persons recruited by direct appointment in the same cadre obtaining equal marks during same selection process, their inter-se-seniority shall be determined on the basis of their age. That is, an older person shall be senior to the younger person.”

The aforesaid proviso is entirely different from Rule 12.2(3) of PPR. As per said proviso, it is evident beyond the pale of doubt that persons recruited by direct appointment obtaining equal marks would be subjected to inter se seniority on the basis of their age. An older person shall be senior to younger one . Main Rule 8 provides that seniority inter se of persons shall be determined by the length of continuous service on such post in that cadre of the service. It means if two persons join on different dates, the one who joins earlier in time would be senior. Proviso to said Rule makes it clear that if two persons who have been issued appointment letter with respect to same selection process join on different dates, however, within specified period, their seniority would be determined on the basis of merit determined by



Commission or Board, meaning thereby, if a senior in merit joins later in time, however within prescribed period, he would remain senior in the seniority list. Last proviso inserted by notification dated 19.01.2016 made it clear that inter se seniority of candidates who have obtained equal marks shall be determined on the basis of their age. The impugned clause is contrary to aforesaid proviso if it is held that 1994 Rules are applicable to recruitment of Intelligence Officers.

20. The respondent is claiming that Rule 12.2(3) of PPR is applicable and 1994 Rules are inapplicable because Rule 12.2(3) specifically deals with the situation. 1994 Rules are applicable where PPR is silent. PPR is applicable even after introduction of 2007 Act. As per Section 85 of 2007 Act, PPR is applicable to police officers. Intelligence Cadre Rules are also providing that PPR shall be applicable. In such circumstances, 1994 Rules cannot be given preference over PPR. The impugned clause deals with manner of determination of merit whereas proviso inserted by notification dated 19.01.2016 deals with seniority. Merit entails selection whereas seniority is determined as per length of service.

21. Contention of the State that 1994 Rules are inapplicable cannot be countenanced. Rule 14 of Intelligence Cadre Rules specifically provides that 1994 Rules shall be applicable in respect of matters which are not specifically provided in Intelligence Cadre Rules. 1994 Rules are applicable to members of Intelligence Cadre. PPR is applicable with respect to matters which are not provided in Intelligence Cadre Rules as well as 1994 Rules. Proviso inserted by notification dated 19.01.2016 in Rule 8 categorically provides that age would be criteria for determination of seniority where two

candidates have scored equal marks in the same selection process. In the Standing Order, the respondent has provided that merit would be prepared on the basis of marks obtained in graduation where two candidates have scored equal marks. Merit determined by Commission or Board forms basis of determination of seniority. Candidates shown in the merit list get seniority as per their serial number in the merit list. The impugned clause is in direct contradiction to proviso inserted by notification dated 19.01.2016. It is settled proposition of law that Government Instructions cannot be contrary to Rules. Section 45 of 2007 Act itself provides that Standing Order shall not be inconsistent with the Act as well as Rules made thereunder. The State Government has issued Intelligence Cadre Rules in terms of Section 80 of 2007 Act and further made 1994 Rules applicable to members of Intelligence Cadre. Indubitably, Intelligence Cadre Rules are silent with respect to determination of seniority of candidates who have scored equal marks in the direct selection process, thus, 1994 Rules are required to be invoked. These Rules cannot be ignored. There is no question to rely upon Rule 12.2 of PPR and ignore 1994 Rules. A conspectus of Rules 14 & 15 of Intelligence Cadre Rules reveal that 1994 Rules are applicable to members of Intelligence Cadre with respect to matters which are not covered by Intelligence Cadre Rules.

22. Sub-rule (3) of Rule 12.2 which was substituted by Punjab Government vide notification dated 28.02.2003 is *pari materia* to Rule 8 of 1994 Rules. The State Government consciously inserted proviso to Rule 8 of 1994 Rules by way of notification dated 19.01.2016. Proviso inserted in the 1994 Rules cannot be ignored. Rule 12.2(3) is silent with respect to seniority

of candidates who have scored equal marks in the same selection process. Proviso to Rule 8 of 1994 Rules has made the things clear beyond the iota of doubt. In view of Rule 14 read with 15 of Intelligence Cadre Rules, proviso inserted in Rule 8 of 1994 Rules cannot be ignored. It is applicable to members of service with equal force as applicable to other Government servants.

23. It is true that order of merit determined by Commission or Board cannot be disturbed by department concerned, however, Board/Commission cannot be permitted to act contrary to Rules in force. In the case in hand, the petitioner is assailing one clause of Standing Order which was issued by Director General of Police, Punjab in exercise of power conferred by Section 45 of 2007 Act. Standing Order cannot be issued contrary to statutory provisions. The impugned clause is contrary to proviso to Rule 8 of 1994 Rules, thus, deserves to be declared invalid.

24. In the wake of above discussion and findings, this Court is of the considered opinion that instant petition deserves to be allowed and accordingly allowed. Clause 28(b) of Standing Order No.10 of 2016 dated 06.09.2016 is hereby declared invalid. The respondent shall re-determine merit of the petitioner in the light of proviso inserted in Rule 8 of Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 by notification dated 19.01.2016.

(JAGMOHAN BANSAL)
JUDGE

14.01.2026
Mohit Kumar

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