Before H.S. Bedi & Swatanter Kumar, JJ.

RAJINDER PAL SINGH,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 16902 of 2000

24th September, 2003

Constitution of India, 1950—Arts. 16, 226, 234 & 235—Haryana Civil Services (Judicial Branch) Rules, 1951 (as amended)—Rls. 4, 7 & 8—Appointment to the posts of H.C.S. (J.B.)—Govt, fowarding the list of selected candidates to the High Court for empanelment on the High Court Register and for posting—High Court taking decision not to appoint candidates who had secured less than 50% of aggregate marks in written as well viva voce *test—High Court letter providing higher standard to achieve excellence in State Judicial Services neither lacked jurisdiction nor competence on the part of High Court—It is not necessary to amend rules prior to the enforcement of such a condition—However, unanimity of the view is a condition precedent for such an enforcement—State Govt. not accepting decision of High Court and deciding to give appointment to selected candidates—No fault in the stand of the Government—Petitioners entitled to be governed by the Rules without enforcement of the condition stipulated by the High Court as the same could not be enforced retrospectively—Neither the petitions suffer from the infirmity of laches nor the conduct of petitioners disentitles them from claiming the relief—State Govt. directed to consider the case of the petitioners for appointment.*

Held, that the letter of the High Court enforcing condition of obtaining 50% of aggregate marks in the written and viva voce test does not lack any inherent jurisdiction or competence. The infirmity has resulted from the inaction of the Government in not accepting the suggestion of the High Court and implementing the same as policy. In fact they raise specific objections to the implementation of contents of the said letter and it was too late in the day before the rules were amended by the State. The lack of unanimity of view is the reason which tilts the law in favour of the petitioners and not lack of legislative amendments in the relevant rules.

(Para 35)

Further held, that the said higher cut off can be sustained only if it is result of a unanimous view and is not in conflict with the provisions of the Rules in Part 'C' of the Rules. The provisions of Part 'D' operate in a different field and are intended to provide and cover the conditions of service rather then selection. The posting order, training, its duration, service during probation are the matters falling under the control and supervision of the High Court exclusively and the State Government is bound by the opinion of the High Court in that behalf. But provisions and powers under Part 'D' can affect empanelled candidates to the extent of de-empanelment from the register of the High Court in terms of Rule 4 of Part 'D'.

(Para 37)

Further held, that the entire process of selection had concluded before issuance of the impugned letter of the High Court. At all relevant times, the existing rules were never altered. The doubts about the consequences of enforcing the conditions stipulated in the High Court letter were also expressed in no uncertain terms by the Government including that it may result in discrimination and would be violative of the rules. We are unable to find any fault in the stand of the Government that as no other candidates were available and there were vacancies the Government had taken a decision to give appointment to the selected candidates. High Court also took the same stand in another case relating to Punjab State. Unanimity of the institutional components as contemplated in Article 234 of the Constitution intended not to enforce this condition at least for those batches. After the amendment of the Rules all these questions are rendered ineffective. Thus, this letter cannot be taken adverse to the interest of the petitioners, whose names were sent by the Government for empanelment on the High Court Register prior to the issuance of the letter.

(Paras 39, 40 and 43)

R.K. Malik, Advocate for the petitioners in CWP 16902 of 2000.

P.S. Patwalia, Senior Advocate with Asheem Rai, Advocate for the petitioner in CWP 979 of 2001.

Hari Pal Verma, Advocate for petitioner in CWP 4923 of 2001.

Rajbir Sehrawat, DAG, Haryana.

Rajive Atma Ram, Senior Advocate with Ms. Madhu Dayal, Advocate for the Punjab and Haryana High Court.

H.N. Mehtani, Advocate for the Commissioner.

N.D. Achint, Advocate.

JUDGMENT

Swatanter Kumar, J.

(1) The ambit and scope of authority, functioning and consultation of the tri—constituents specified under Articles 234 read with 235 of the Constitution of India (hereinafter referred to as the **Constitution)** in relation to appointment of the persons other than the District Judge to the Judicial Services of the State has been a matter of consistent debate, which invited pronouncements at regular intervals from different courts in the judicial hierarchy of the country. These writ petitions again raise same issues, however, with regard to the extent to which the view of the High Court must attained precedence amongst three components involved in the process of selection and appointment to the State Judicial Services. The view of the courts have been quiet consistent in this regard. However, because of frequent litigation emanating from various amendments of the rules applicable to the field of appointment and conditions of service, it has attained an idiopathic status, rather than laying down of general principle of law in that regard.

(2) Law essentially is mutable and tends to change where need of society and the system which it controls demands Pre-requisite of proper administration of justice is independence of the judiciary in its express terms achievable at the grass-root of the judicial system. Fixation of higher standard of performance and capability in the entrance examination or other level of the selection process can no way be construed as violative of equality or equal treatment before law. Further, the pertinent question that needs to be considered is which

of the three components has the jurisdiction to prescribe such standard and what is the correct process to be adopted by the authorities which would culminate in issuance of appropriate notification and implementation thereof in consonance with the object of the law.

3. In a recent judgement (of five judges Bench), in the case of **State of Bihar and another** *versus* **Bal Mukand Sah and others (1)** the Hon'ble Supreme Court, making a reference to the independence of the judiciary and power of the High Court and compliance in definite terms to the ingredients/essentially stated under the Articles 234 and 235 of the Constitution, held as under :—

> earlier contra-indicates this contention. So far as Dr. Dhavan's submission that second part of Articles 235, despite the full control of District Judiciary being vested in the High Court permits enactment of suitable provisions under Article 309 also, cannot be of any real assistance. As we have already seen above, the second part of Article 235 deals with the topic of other conditions of service including the right of appeal which might be guaranteed to judical officers by appropriate legislation enacted by the authorities acting under Article 309 but that is an operation on the limited field permittd by the second part of Article 235 at second level of the pyramid of Subordinate judiciary and nothing more. Dr. Dhavan was right when he contended that on the scheme of Articles 233 to 235 it is not as if other legislation is a total taboo. However, the said submission ignores the fact that it is the limited field earmarked by second part of Article 235 regarding permissible regulation of conditions of service that is reserved for operation of Article 309 through its appropriate authorities. But, save and except this limited aspect which is permitted, the rest of the control totally vests in the High Court under Article 235 first part. What is permitted by Article 235 cannot be considered as a blanket power entrusted to the Legislature or to the Governor under Article 309 by the Constitutional makers dehors the complete net of Constitutional Scheme Controlling recruitment and

(1) J.T. 2000 (3) S.C. 221

appointment to District Judiciary and the Subordinate Judiciary under Articles 233 and 234 of the Constitution of India. These twin Articles conspicuously do not envisage even the limited independent field for operation of Article 309 as is permitted by Article 235 second part. That shows the clear intention of the Constitutional makers that so far as question of recruitment and appointment to available vacancies in the cadre of District Judges and Judges of the Subordinate Judiciary is concerned, neither the Legislature nor the Governor, dehors any consultation with the High Court, can have any independent say.

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47. Dr. Dhavan next contended that on the express language of Article 233, only the rule making power of the Governor is fettered but not the legislative power of the State. This submission is mis-conceived as the legislative power is co-terminus with the Governor's rule making power. For regulating the conditions of Service of Members of public service as found in Article 309, as the proviso to Article 309 itself shows, what the legislature can enact in connection with the topic mentioned therein can be done by the Governor in exercise of his rule making power as a stop-gap arrangement till the very same field is covered by the statutory enactment. Thus the earmarked field is the same, namely conditions of Service of employees of State Public Service Employees of a Public Service are a genus of which Members of Judicial Service are a species. So far as the appointment to Judicial Service is concerned, the said topic is carved out from the general sweep of Article 309 on account of the words in its opening part, read with Articles 233 and 234. The Governor's rule making power in this connection is separately dealt with under Article 234 and it is the prodecure laid down therein which will govern the said rule making power of the Governor and cannot draw

any sustenance independently from Article 309 which gets excluded in its own terms so far as Members of Judicial Service are concerned. A limited play available to the Legislature to deal with unexcepted and open categories of conditions of Service of Judicial Officers as found in Second Part of Article 235, therefore, cannot be read backwards to govern even by implication the method of appointment of Members of Subordinate Judiciary even at the grass-root level. For that purpose Article 234 is the only repository of the power available to the concerned Constitutional authority which has to follow the gamut of the procedure laid down therein. Dr. Dhavan tried to salvage the situation by submitting that if this view is taken, the greatest anomaly that would arise is that there would be total ouster of legislative interference as per Articles 234. There will be definite permissible interference of legislative power on topic mentioned in second part of Article 235. While so far as appointments of District Judges under article 233 are concerned, there is no express ouster of legislative interference at all. He, therefore, submitted that a totally anomalous situation would emerge as at the grass-root level i.e. lowest rung of regulating the recruitment and appointment of judiciary, there will be total exclusion of legislative interference while at the apex level i.e. at the district level there will be no ouster of legislative interference. Even this argument of despair cannot be countenanced for the simple reason that on the topic of appointment of direct recruits to the District Judiciary at the district court level of even at the grass-root level of Munsiffs and Civil Judges-junior division or senior division, as the case may be, both under Article 234 as well as under Article 233 interference by the State Legislature is totally excluded. If appointments at the grass-root level in Subordinate judiciary is taken as base level No. 1 in the pyramid of Subordinate Judiciary, as indicated earlier, then the express language of Article 234 lays down a complete procedure which cannot be tinkered with by any outside agency like the legislature. For regulating the service conditions

of already appointed Judicial officers which will be treated as level No. 2, to the extent to which the conditions of service can be regulated by law as laid down by second part of Articles 235 a limited field is kept open for legislative play. It is only because of the permissible field indicated by the very same Article that the Governor under Article 309 or even the State Legislature can be permitted to operate in that field. While at the apex level of the pyramid of Subordinate Judiciary, which is level No. 3, for recruiting District Judges a complete Code is furnished by Article 233 excluding outside interference, as indicated earlier. Thus neither at the base level i.e. at the grass-root level of controlling entry point to Subordinate Judiciary nor at the entry point at the apex level of the pyramid for appointing District Judges any State Legislature's interference is contemplated or countenanced. On the contrary, it is contra-indicated by necessary implication. Thus, neither at the first level nor at the third level, both dealing with entry points to Subordinate Judiciary, the State Legislature has any say and at the second level it has a limited say to the extent permitted by the very same Article 235 second part and which does not pertain to recruitment or appointments at all. Thus, it cannot mean that because of this limited independent play at the joint is available to the authorities functioning under Article 309 at the second level to frame rules or legislation for permissively regulating the conditions of service of the members of the judiciary who have already entered the judicial Service at the grass-root level, or even at the district level, any anomalous situation emerges.

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In cases where reservations are made after consultation with the High Court, the situation stands entirely on a different footing as the High Court itself agrees with the rule making authority under Article 234 or for that

matter under Article 233 to recommend reserved category candidates on earmarked vacancies in the already created posts in a cadre. But the question is as to whether bypassing the High Court such an exercise can be under taken by the State Legislature or by the Governor under Article 309. As seen earlier, such an exercise is not countenanced by the relevant Constitutional scheme. It is also not possible to agree with the contention that in the absence of express exclusion of any law made by the Legislature, the legislative power remains untouched by Articles 233 and 234. On the contrary, as seen earlier because of the opening words of Article 309 as well as Article 245 what is provided by Articles 233 and 234 is a complete Code. Which cannot be touched independently of the High Court's consultation either by the Legislature or by the rule making authority. Reliance placed on the observations in paras 16 & 17 in the case of **M.M. Gupta and Ors. etc.** *versus* **State of Jammu & Kashmir and Ors.** *(Supra)* to the effect that appointing authority is the Governor also cannot advance the case or Shri Dwivedi for the simple reason that under the scheme of Articles 234 and 233 once effective consultation is made with the High Court and rules are framed as per Article 234 and selections are made as per these rules or when the High Court recommends appointments under Article 233, the selection process is over, only the ministerial work of issuing actual appointment orders may be carried out by the Governor. But that would not, in any case, interfere with the independence of judiciary and the power of the High Court, the Governor, acting as per Article 234 while framing rules in consultation with the High Court and the Public Service Commission and also while acting on the recommendation of the High Court under Article 233, only performs the ultimate act of issuing actual appointment orders to the selectees but these selectees have undergone the process of filtering by the High Court as per Article 233 (2) or in cases governed by

Article 234, as per the procedure laid down in the rules framed under that Article, after consultation with the High Court. It is not as if the Council of Ministers or the Legislature has anything independently to say to the Governor in this connection by passing the High Court. Reference to the case of **Shamsher Singh etc.** *versus* **State of Punjab and another etc.** AIR 1974 SC 2192 about Cabinet's responsibility to Legislature is totally besides the point while considering the moot question with which we are concerned. It is difficult to appreciate on the scheme of Articles 233 to 235 the contention of Shri Dwivedi that recruitment procedure could be laid down either by the Legislative enactment or rules under Article 309 without having consultation with the High Court. Further contention of Shri Dwivedi that Parliamentary system of governance is also a basic feature of the Constitution also cannot advance his case for the simple reason that Article 235 itself read with Article 309 furnishes restraints on the legislative power so far as topics of recruitment and appointement to District Judiciary and Subordinate Judiciary are concerned being covered by the complete code of Articles 233 and 235, as seen earlier".

(4) The above judgment not only re-affirmed with approval the law enunciated by the Court in the case of **the State of Haryana** *versus* **Subhash Chander Marwaha and others (2),** but also expanded the control and authority of the High Court. However, basic features in relation to the scope of the constitutional provisions of Articles 234 and 235 of the Constitution related to the provisions of the rules relating to the same State with which we are concerned with in the present case. The Court held as under :—

"....Once the State Government has selected the names of the candidates strictly in accordance with the list, such selection for appointment is intimated to the High Court and the candidates so selected by Government for appointment are to be entered by the High Court in a Register in the order of the selection ..... Obviously

(2) 1973 (2) S.L.R. 137

the Register is to be kept by the High Court because the High Court knows in its administrative capacity what vacancies have occurred and which are the courts to which the appointments have to be made. The service Rules have been made in consultation with the Public Service Commission and the High Court and; therefore, they are binding on all. They show that the examination is the final test, apart from medical examination as per rule 11 in part C for a candidate's appointment to the post of the Subordinate Judge and once the list is prepared by the Public Service Commission strictly in order of merit, neither the Public Service Commission nor the State nor the High Court can depart from the order of merit given in the list except where reservations have been made in favour of backward classes and Scheduled Castes and tribes in accordance with rule 10 (ii)."

(5) Still in another case (of three judges Bench) titled as **Ram Bhagat Singh and another** *versus* **State of Haryana and another (3)**, the Court emphasising the need for proper application of mind and a considered conclusion to be arrived at by the concerned authority, the Court held as under :—

"....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 others factors ensuring equality are imperative. Those groups or segments of society which are by reasons

(3) 1990 (2) R.S.J. 52

of history or otherwise unable to compete in terms of absolute equality with the members of others 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 emphasis that equality of opportunity is sought to be achieved for the public services or employment. The efficacy and efficiency of that services of prime consideration. Equality must be there for all to compete for the public services.

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We are conscious that the high efficacy 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 which 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 caste and scheduled tribes determined on an objective basis, it would not be possible to ensure equality of opportunity.

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In our opinion, in the interest of justice and our constitutional mandates and in the light of the efficiency of the services and with a view to create a sense of justice, it is necessary for the Government concerned to consider this question as to what should be the minimum percentage of marks necessary for the administration. We direct that the Government will make a conscious decision objectively before the next selections for the post in Haryana

Judicial Service take place, and determine a minimum percentage of marks consistent with efficiency and the need for ensuring equality of opportunity to scheduled castes and scheduled tribes".

(6) Further in the case of **Neelima Shangla (Miss) Ph. D candidate** *versus* **State of Haryana (4),** the Hon'ble Supreme Court in all probability declared beyond doubt the manner and process of formation of rules and their implementation in relation to selection and appointment to judicial services of the State by holding as under :—

"All candidates securing 55 per cent of the marks in the aggregate in the written and viva-voce test are considered as qualified for appointment, their merit being determined strictly in accordance with the marks obtained by them. The result of the examination is required to be published in the Haryana Gazette and the selection for appointment is to be made strictly in the order in which they have been placed by the Service Commission in the list of candidates qualified under rule 8 of Part-C. The names of the selected candidates are to be entered in a Register maintained by the High Court in the order of their selection and appointments are to be made from the names entered in the Register in that order. The number of names to be entered in the Register maintained by the High Court may be sufficient to fill vacancies anticipated to occur within two years from the date of selection of candidates as a result of the examination. Therefore, it appears that the duty of the Public Service Commission is confined to holding the written examination, holding the viva-voce test and arranging the order of merit according to marks among the candidates who have qualified as a result of the written and the viva-voce tests. Thereafter the Public Service Commission is required to publish the result in the Gazette and, apparently, to make the result available to the Government. The Public Service Commission is not required to make any further selection

(4) 1986 (3) S.L.R. 389

from the qualified candidates and is, therefore, not expected to withhold the names of any qualified candidates. The duty of the Public Service Commission is to make available to the Government a complete list of qualifed candidates arranged in order of merit. Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the Register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55 per cent is the minimum qualifying mark, in the interests of higher standards, they would not appoint any one who has obtained less than 60 per cent of the marks. Something of that nature happened in **State of Haryana** *versus* **Subash Chander Marwah and others.** In that case, though the rules prescribed a minimum of the 45 per cent of the aggregate marks to be qualified for appointment as a Subordinate Judge, the High Court and the Government decided not to appoint candidates who had secured less than 55 per cent marks. The result was that although there were a large number of vacancies, only a few candidates were selected for appointment. The selection was challenged on the ground that it could not be so restricted when qualified candidates were available. This Court rejected the submission and upheld the selection. However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the Government and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make rule 8 of Part-D meaningless. In the present case, though the

rules required the Public Service Commission to publish the result of the examination and, apparently, also to communicate the result to the Governemnt, the Public Service Commission did not publish the result in the first instance and sent only the names of 17 candidates belonging to general category to the Government, though many more had qualified. That was wrong. The names of all the qualified candidates had to be sent to the Government. The reason given by the Public Service Commission for not communicating the entire list of qualified candidates to the Government, is that they were originally informed that there were only 28 vacancies. That is not a sound reason at all. Under the "Rules relating to the appointment of Subordinate Judges in Haryana", the Public Service Commission is not concerned with the number of vacancies at all. Nor is it expected to without the full list of successful candidates on the ground that only a limited number of vacancies are available. The Government of Haryana has taken the stand that they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the Public Service Commission. It now transpires that even before the Public Service Commission sent its truncated list to the Government, the High Court had already informed the Government that there were more vacancies which required to be filled. The Government not knowing that the names of several candidates who were qualified had been withheld from the Government by the Service Commission, wrote to the Service Commission to hold a fresh competitive examination. If the Government has been aware that there were qualified candidates available, they would have surely applied rule 8 or Part-D and made the necessary selection to be communicated to the High Court. The net result is that qualified candidates, though available, were not selected and were not appointed. Miss Neelima Shangla is one of them. In the view that we have taken of the rules. Miss Neelima Shangla is entitled to be selected for

appointment as Subordinate Judge in the Haryana Civil Service (Judicial) Branch. By an interim of this Court, one post of Subordinate Judge has been kept vacant for her".

(7) The above judgments of the Hon'ble Apex Court enunciated a clear law in regard to the scope of power and role of each of the component in the process of making final decision in relation to the rules controlling the appointment to the services. The selection and appointment of persons to the judicial services of the State must essentially be in conformity with, the rules framed and pre-dominant constitutional provisions (under Articles 234 and 235 of the Constitution). The State of Haryana framed the rules called as Haryana Civil Services (Judicial Branch) Rule 1951, which has been subject to different amendments at least on 22 occasions. In the present case, we would be concerned with the said rules as they stood in 1997. Mainly, we would be concerned with the said rules as they were amended till 1997, as admittedly those were the rules applicable to the appointments in question before us.

(8) The imperative consequence and irresistible result of the above enunciated principle of law is that power of the government to make appointment and frame rules is controlled by clear constitutional directive that such rules would be framed after consultation with the State Public Service Commission and the High Court exercising the jurisdiction in relation to such State. Role of the Commission is primarily in relation to holding of examination, *viva-voce* test and preparation of the merit list. The High Court is expected to play a determining and effective role in the *viva-voce* test at the stage when the candidate is subjected to *viva-voce* test in terms of rule 4 Part C of the Rules. Opinion of the Judge, member of the Selection Committee, in regard to suitability cannot be disregarded, unless there was strong cogent reason supported by record. Even in that event non-acceptance of such view are to be recorded into writing. Thereafter, the government performs the administrative functions of verification etc and has to send the list to the High Court. The High Court then is to place the name of the selected candidates on the Register maintained by it in order of merits and subject to its satisfaction and if the name of the candidates is not removed by the High Court from the Register,

recommend to the State Government for appointment of the selected candidates, depending on the vacancies available. Meeting of minds, effective and purposeful consultation between the three components with a particular emphasis on the view of the High Court, as it is the only authority, which has control over the subordinate courts, in terms of Article 235 of the Constitution and conditions of service. Collective wisdom of the three authorities with definite preference to the suggestion of the High Court appears to be the formidable basis for framing of rules, controlling selection and appointments of the persons to the judicial services. The view of the High Court has to be placed at a higher pedestal even than that of an expert body because on the one hand, the High Court participates effectively in the formation of rules, regulations and selection of candidates, while on the other hand, it monitors the functioning of the judicial services in the State right from the grass-root level to the apex finality of judgments in the State. The view of the High Court is based upon objective process of thinkings founded on practical realities of the judicial administration in the States. Such is the scheme of the provisions and methodology to be adopted by the concerned constituents for proper achievements and implementation of constitutional mandate and enforcement of the rules so framed to achieve and optimum maintenance of higher standard in the service, which is responsible for administration of justice at the grass-root level.

(9) Having considered the principle of basic question of law that arises for our consideration in these writ petitions, now we would proceed to refer to the ancillary legal questions by reference to the factual matrix of the case.

(10) In these four writ petitions, we are concerned with the selection and appointments of the petitioners to the judicial services for the batches of 1999 and 2000 respectively.

(11) First of all, we would refer to the facts in Rajinderpal Singh's case.

(12) Haryana Public Service Commission advertised 23 posts of Haryana Civil Services Judicial Branch on 15th March, 1999. The last date for submission of application was 15th April, 1999. However, on 27th May, 1999, the Commissioner issued a corrigendum increasing

the number of posts from 23 to 46, but the last date for submission of the application remained 27th May, 1999. Written test was held between 30th June, 1999 to 2nd of July, 1999. Result was declared on 29th October, 1999 and after holding of interview, final result was declared on 27th December, 1999. The character verification and medical formalities of the selected candidates including the petitioner was completed in January, 2000. *Vide* letter dated 10th March, 2000, the government forwarded the list to the High Court for empanelment in the High Court Register and for posting such selected candidates. According to the petitioner, in May, 2000, 24 persons were appointed, while remaining selected candidates were not appointed for the reasons that in the meanwhile, the High Court had taken a decision not to appoint the candidates who had secured less than 50% of aggregate marks in the written as well as *viva-voce*. As a result of this decision of the High Court, the petitioner was not issued letter of appointment and as such he approached this Court, challenging the decision of the High Court and further praying for direction to the State Government and the High Court to issue letter of appointment and posting orders of the petitioner.

(13) Petitioner—Rajinderpal Singh belongs to reserved category of backward class and according to him total 46 posts were advertised out of which 4 posts were reserved for backward class, 12 for scheduled castes category, 3 posts for ex-serviceman, 2 posts for handicapped and 25 meant for general category.

Facts of CWP No. 4923 of 2001

(14) **Facts of Parveen Kumar Lal's** case are more or less similar to the facts of Rajinderpal Singh's case except to the extent that he was a candidate belonging to general category for 1999 batch, while Rajinderpal was a candidate for the backward class category.

Facts of CWP No. 979 of 2001

(15) Mahesh Kumar was candidate for batch of 2000. In this case advertisement was issued by the Commission on 12th March, 2000 intending to fill up 12 vacancies in the Haryana Civil Service (Judicial Branch). Written test was held during 21st to 25th May, 2000. The candidates including the petitioner were called for interview on 20th July, 2000. The petitioner claims to have secured 469 marks out of 900 and as such the petitioner became entitled to appointment under the category of Schedule Caste A Category. The name of the

petitioner was forwarded by the State Government on 5th August, 2000. The character antecedent and medical examination of the petitioner was completed by Ist of September, 2000 and he was recommended. The petitioner was not issued letter of appointment and posting in view of the decision of the High Court afore-referred, as the petitioner fell short by one mark to make 50% of the standard prescribed by the High Court. This compelled the petitioner to title the writ petition in relation to the batch of 2000.

(16) **Facts of Civil Writ Petition No. 19940 of 2001 Balwant Singh** are somewhat similar to the case of Mahesh Kumar.

(17) Upon notice, the Commission and the State Government filed their respective written statement. The State Government is emphathic its stand that the decision of the High Court is not enforceable against the petitioner. According to the State Government, after receiving the recommendation of the Haryana Public Service Commission and after completion of all formalities, the State Government had appointed 31 candidates on the basis of the existing rules and the High Court was requested to issue their posting orders. Two more candidates were appointed subsequently and name of the petitioner Rajinderpal Singh stand at servial No. 25 on the merit list against the post reserved for the backward class candidates. However, *vide* letter dated 5th May, 2003, the Registrar of the Punjab and Haryana High Court had intimated the State Administration about the decision taken by the High Court not to appoint the candidates to the Judicial Services who has secured less than 50% marks in aggregate in written as well as *vive-voce* unless there were compelling reasons. The State Government requested the High Court to reconsider its decision, *vide* letter dated 20th June, 2000, which was not accepted and,—*vide* letter dated 20th July, 2000, the High Court reiterated it stand informing the government as well as Haryana Public Service Commission of the decision of the High Court.

(18) As is evident from the above narrated facts, the challenge in these writ petitions is to the letter of the High Court dated 20th July, 2000. Thus it would be appropriate to refer to the contents of

the letter sent by the Registrar of the High Court to the State Administration as well as the Commission :—

"No. 441 Gaz. 1/VI.E34

Nirmal Yadav,
Registrar, Punjab & Haryana High Court,
Chandigarh.

To

Shri L.D. Mehta, Chairman,
Haryana Public Service Commission,
Chandigarh.

Dated 20th July, 2000.

Ref. :—H.C.S. (Judicial)

Ref :—Your D.D. No. HPSC (PA)-2K/10, dated 20th July, 2000.

Honble the Chief Justice and Judges have been pleased to decide that a candidate who had secured less than 50% marks in the aggregate of written examination and *viva-voce* may not be appointed to H.C.S. (Judicial Branch) unless there are very compelling reasons to lower the standard.

(Sd.) . . .,

Registrar."

(19) Challenge to the impugned letter by the learned counsel appearing for the respective petitioners, *inter alia,* is on the following grounds that :—

(a) the decision of the High Court dated 20th July, 2000 tentamounts to amendment of the relevant rules unilaterally, which is impermissible under Article 234 of the Constitution. The imposition of condition of obtaining 50% of aggregate marks in the written and *viva-voce* test has the effect of divesting the petitioner of the right to appointment which he has accrued in their favour, as the rules lawfully in force at the relevant time ;

(b) the decision of the High Court was not accepted by the government and no notification in furtherance thereto was issued;

(c) the stand of the government and the Commission before the Court is in conflict with the stand of the High Court in any case, the unilateral decision of the High Court dated 20th July, 2000 cannot have retrospective effect;

(d) the enforcement of the decision has resulted in an inbuilt discrimination between the candidates selected in the past year as well as for the current year. The decision of the High Court necessarily over-looked the decision of the High Court in Ram Bhagat Singh's case (supra), as it does not provide for relaxation in the case of reserved category for appointment to the judicial services;

(e) this violates the Article 16 of the Constitution; and

(f) lastly it is contended in the form of numerical example that a candidate belonging to reserved category would have to obtain unachievable high marks in the interview (i.e. 105 out of 120) despite the fact that he had cleared the written examination with the prescribed qualifying marks of 45%. Thus, the enforcement of the letter of the High Court results in creation of anomalous or impractical situation and defeats the very object of the rules in force.

The stand of the State and the Commission is entirely supportive of the case of the petitioner and the arguments addressed on that behalf can be noticed only to further the cause of the petitioners.

(20) On the other hand, the stand of the High Court is unambiguous and definite with a prayer that the writ petition deserves to be dismissed. The stand of the High Court is that to maintain the higher standard in the appointment and performance of the judicial services is the abundant duty of the High Court under Articles 234 and 235 of the Constitution. The State is duty bound by the decision and even a suggestion issued by the High Court in exercise of such authority is binding on the State. It is further argued

on behalf of the High Court that the decision of the High Court dated 20th July, 2000 requires no amendment of the rules inasmuch as it is a decision primarily administrative in nature to prescribe high standard in appointment to the judicial services. The provisions of the relevant rules under part C part D of the rules are to be read in harmony as they operate in different and distinct fields. While making the appointment under part D of the rules, the High Court is within its jurisdiction to provide standard or cut off beyond which it would not permit the respondent—State to make appointment.

(21) Learned counsel for the High Court relied on different judgments of the Hon'ble Supreme Court as well as this Court in support of his submissions.

(22) In the written statement filed on behalf of the High Court, there is not much dispute to the facts giving rise to the present writ petitions. The controversies raised therein relate to the interpretation and meaning of the legal issues involved in the present case.

(23) Relying upon Subash Chander Marwaha case, it is contended that the petitioners cannot seek mandamus in their favour for appointment in judicial services, as they have secured less than 50% marks in aggregate which is impermissible. The decision of the Full Court of the High Court was based on the recommendations of the Committee of a Judges, which was approved in the meeting dated 15th August, 1998 in relation to Punjab and similar administrative decision was taken by the High Court on 19th April, 2000, which was finally conveyed to the State administration and the Commission on 5th May, 2000 and reiterated the view.—vide letter issued on 20th July, 2000, which has been annexed by the petitioner to the writ petition and is impugned.

(24) It is stated by the High Court that once the persons namely Basruddin belonging to Backward Class category of 1999 batch has already been given posting as he had secured more than 50% aggregate marks in consonance with the decision of the High Court, the said candidate was appointed under general category though he was from backward class category. On these premises, it is prayed on behalf of the High Court that the writ petition should be dismissed.

(25) Before we proceed to discuss the merits or otherwise of the contentions raised before us, we must notice that it was stated on behalf of the State in furtherance to the facts averred in the written statement that the suggestion of the High Court as made,—*vide* letter dated 20th July, 2000 has been accepted by the State administration and the relevant rules have been amended by notification No. G.S.R.6/ Const./Arts. 234 and 309/2003, dated 17th April, 2003, which is prospective.

(26) Effective consultation between three incidental authorities being the essence of valid legislation, it is difficult for us to hold that the letter of the High Court dated 5th May, 2000 or 20th July, 2000 had the legislative effect of amending the rules as contended by the petitioners. It was a suggestion made by the High Court to the Governor who is the competent authority for appointment to judicial services of the State. After exchange of correspondence between the Government and the High Court, the High Court has already amended the rules to give effect to its suggestions. The impugned letter of the High Court, thus, neither lacks jurisdiction nor competence. In fact the Government ought to have acted upon the contents of the letter with greater expedition. In the case of **State of Jammu and Kashmir** *versus* **A. R. Zakki, (5)** a case which related to the appointment of judicial services of the State, explained the expression "consultation" participation of the different constituents in framing of rules applicable to judicial service, while observing as under :-

> "Although normally the recommendations made by the High Court for any amendment in the rules should be accepted by the State Government, but, if in any particular case, the State Government, for good and weighty reason, finds it difficult to accept the recommendations of the High Court and the State Government communicates its view to the High Court, the High Court must undoubtedly reconsider the matter. The High Court as well as the State Government must approach the question in a detached manner for achieving the true objective of framing rules which would secure appointment of proper persons to Judicial Service of the State for proper and efficient administration of justice.

(5) 1992 (1) S.C.T. 499

If the matter is thus approached, there should not be any difficulty. It need hardly be emphasised that while considering the recommendations of the High Court the State Government would proceed on the basis that in such matters the opinion of the High Courts is entitled to the highest regard."

"We hope and trust that the recommendations that are made by the High Court after such consideration would receive due weight and regard from the State Government and a solution would be devised which would meet the aspirations of the staff and would also be acceptable to the Government."

Similar view was expressed in the case of **State of Himachal Pradesh** *versus* **Shri P. D. Attri and others, (6).**

(27) Rules 4, 7, 8 and 10 of Part C of the Rules are the relevant rules which control the holding of examination, selection of the candidates and preparation of the merit list by the Haryana Public Service Commission. Rule 7 requires that no candidate shall be credited with any marks in any papers unless he obtains 33% marks in it. In terms of Rule 7(2), no candidate shall be called for *viva voca* test unless he obtains 50% qualifying marks in the aggregate of all the written papers and 33% marks in the language paper. Relaxation has been provided under the proviso to this Rule in the case of Scheduled Castes, Scheduled Tribes and Backward Classes. They could get 45% marks in aggregate. Under Rule 8 merit of the qualifying candidates shall be determined by the Haryana Public Service Commission strictly in accordance with the aggregate marks obtained in written papers and *viva voca*. The result has to be published and after examination a candidate has to obtain medical fitness and after verification of his antecedents the Government has to forward the list to the High Court. This entire process is dealt with under Part C of the Rules. Part D relates to a different chapter i.e. appointments. In terms of Rule 1 of this Part, the names of the selected candidates by the Government for appointment as Subordinate Judges under Rules 10 and 11 shall be entered upon the register of their selection. However, these names could be removed in terms of Rule 4 of Part D. Under Rule 5, a

(6) J.T. 1999(1) S.C. 441

candidate has to pass the departmental examination and complete the period of training and then be on probation under Rule 7, who could be removed from service without assigning any cause on recommendation of the High Court by the State Government. Rule 8 of this Part was amended,—*vide* amendment dated 5th February, 1993. To restrict the number of names borne on the High Court Register shall not be more than the vacancies advertised by the Haryana Public Service Commission plus five additional names, keeping in view the reservation policy for the filling up of unforeseen vacancies that may occur within one year from the date of selection of the candidates as a result of examination.

(28) We are primarily concerned whether in addition to the eligibility conditions and restrictions specified under Rules 7 and 8 of Part C of the Rules, duly selected candidate could be denied his appointment on the basis of the letter of the High Court dated 5th May, 2000 or 20th July, 2000. The learned counsel appearing for the High Court strenuously contended that the letter of the High Court does not amount to change of any criteria or even as an implied effect of altering the essence of the conditions provided under the Rules. It is contended that appointment is an aspect controlled under part D of the Rules and the High Court has merely provided a higher mark for appointment of persons of higher merit to maintain the required excellence in service within the restrictions of the relevant rules. It was also contended that Rule 7 of Part D is silent with regard to any such cut off and providing of such restriction does not offend the Rules. In support of his submission, the learned counsel relied upon the judgments in the cases of **Sant Lal and others** *versus* **The State of Haryana and others, (7) The State of Haryana** *versus* **Subash Chander Marwaha and others, (supra) and Neelima Shangla (Miss)** *versus* **State of Haryana and others, (8).**

29. In the case of Subhash Chander Marwaha *(supra)* the principle laid down by the apex Court is that where appointments are made by **selection from a number of eligible candidates,** it is open to Government to maintain higher standards of competence and to fix a score which is much higher than the one required for mere

(7) 1978 (1) S.L.R. 133
(8) 1986 (3) S.L.R. 389 = AIR 1987 S.C. 169

eligibility. Their Lordships also held that the candidates who had obtained 45% marks in the examination and the Government raised the marks to 55% to maintain higher standard does not offend any right of the candidates who secured less than 55% marks. In the case of Neelima Shangla (supra) the Court held that the Commission has no jurisdiction to make a further selection from the candidates who have qualified the written examination and *viva voce* test.

(30) As far as **Neelima Shangla's case** (supra) is concerned, this is hardly of any help to the respondents. Fixation of higher standard was the decision by the competent authority after consultation with the appropriate constituents. However, in the present case the Government did not give its consent specifically or even impliedly so as to conclude that there was concurrence between the High Court and the Government in fixing such higher standard marks. Even on facts, it may become difficult for us to hold that there were more eligible candidates than the vacant advertised. It has come on record that in the year 1999 the advertised vacancies were 46 and 23 candidates were appointed under different categories leaving 23 vacancies, while in the year 2000 advertised vacancies were 12 and only 9 candidates be appointed, leaving 3 vacancies.

(31) The essence of fixation of such higher standards would normally be done by the prescriptions and standards made in the Rules. Higher standard could be introduced even at a subsequent stage provided the competent authority takes a conscious decision in the interest of service administration. The Government took a conscious decision,—*vide* its letter dated 20th June, 2000 raising certain objections including that of discrimination for consideration of the High Court. However, the High Court reiterated its stand,—*vide* its letter dated 15th December, 2000. Selections had already been made and list sent to the High Court, even before the High Court took the decision of prescribing higher merit for appointment. What the Government has done by issuing a notice subsequently ? It would have been in the interest of all concerned that such notification was issued much earlier and view of the High Court enforced by amendment of the Rules. The petitioners cannot contend that they have any vested right merely because they have cleared the written examination and viva voca test in terms of the rules in existence.

(32) In the above judgments it has been clearly stated that the higher marks than the eligibility criteria provided under the rules can always be provided by the competent authority. Short-listing is one of the other criteria well accepted in service jurisprudence. In the case of **Ashok Kumar Yadav** *versus* **State of Haryana, (9)** the Apex Court clearly approved such action on the part of the Public Service Commission and the Government. The Court held as under :—

> "We have already referred to Regulation 3 in an earlier part of the judgment and we need not reproduce it again. It is clear on a plain natural construction of Regulation 3 that what it prescribes is merely a minimum qualification for eligibility to appear at the viva voce test. Every candidate to be eligible for appearing at the viva voce test must obtain atleast 45 per cent marks in the aggregate in the written examination. But obtaining of minimum 45 per cent marks does not by itself entitle a candidate to insist that he should be called for the viva voce test. There is no obligation on the Haryana Public Service Commission to call for the viva voce test all candidates who satisfy the minimum eligibility requirement. It is open to the Haryana Public Service Commission to say that out of the candidates the eligibility criterion of minimum 45 per cent marks in the written examination, only a limited number of candidates at the top of the list shall be called for interview.
>
> "It has, therefore, always been the practice of the Union Public Service Commission to call for interview candidates representing not more than twice or thrice the number of available vacancies. Kothari Committees Report on the Recruitment Policy and Selection Methods for the Civil Services Examination also points out after an in-depth examination of the question as to what should be the number of candidates to be called for interview.

(9) AIR 1987 S.C. 454

"The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled . . . . .

Otherwise the written examination which is definitely more objective in its assessment than the viva voce test will lose all meaning and credibility and the viva voce test which is to some extent subjective and discretionary in its evaluation will become the decisive factors in the process of selection."

(33) The proposal for short-listing even for qualified candidates for the purposes of interview and appointment in direct proportion to the vacancies to be filled, was also held to be a correct method for appointment to services by the Apex Court. Reference in this regard can be made to the judgments in the cases of **Madhya Pradesh Public Service Commission** *versus* **Navnit Kumar Potdar and another, (10) and Union of India and another** *versus* **T. Sundrararaman and others, (11).**

(34) The cumulative effect of analysis of the above judgment clearly shows that the fact that a candidate has qualified in the written or viva voce test by satisfying the eligibility condition *per se* in all cases provides him no indefeasible right in law for appointment to the post. In the case of **Dr. K. Kamulu and another** *versus* **Dr. S. Suryaprakash Rao and others, (12)** the Hon'ble Supreme Court clearly held that the candidates who have qualified, do not acquire any vested right for being considered for promotion in accordance with the repealed rules in view of the fact that the Government had taken a policy decision not to fill up such vacancies. In other words, th' satisfaction of eligibility criteria or passing a competitive examination only renders a candidate liable for consideration for appointment if the competent authority so decides and does not vest him with any indefeasible right. However, the hope of the candidate for appointment can safely be termed as legitimate expectancy. There is a clear line of distinction between legitimate expectancy and legal right. The legal right is enforceable in law while an expectancy legally is a matter of mere consideration, depending on various factors which the State Government may decide as a matter of policy or otherwise.

(10) J.T. 1994 (6) S.C. 302
(11) J.T. 1997 (5) S.C. 48
(12) (1997) 3 S.C.C. 59

(35) Analytical examination of the provisions contained in the rules and judgments afore-cited leave no doubt in our mind that it was not mandatory for the concerned quarters to amend the rules before enforcing the clause contained in the letter of the High Court dated 5th May, 2000 or 20th July, 2000. It was only a parameter for the purposes of appointment of plea of higher merit. The law is consistent in this regard that higher marks than the eligibility conditions can always be introduced by the competent authority for the purposes of maintenance of higher standards in service and in furtherance to its policy decision taken in the interest of administrative excellence. We have already held that the letter of the High Court does not lack any inherent jurisdiction or competence. The infirmity has resulted from the inaction of the Government in not accepting the suggestion of the High Court and implementing the same as policy. In fact they raise specific objections to the implementation of contents of the said letter and it was too late in the day before the rules were amended by the State. The lack of unanimity of view is the reason which tilts the law in favour of the petitioners and not lack of legislative amendments in the relevant rules.

(36) Another argument which has been raised on behalf of the petitioners is that it is not competent for any authority to affect moderation in qualifying marks once the test is held. In the case of **Umesh Chandra Shukla** *versus* **Union of India and others, (13)** the Hon'ble Apex Court while dealing with the appiontments to the Delhi Judicial Services, where the competitive examination was held by Delhi High Court for the purposes of recruiting candidates to the Delhi Judicial Services and moderation of marks was made to enlarge the list for appointments was held to be not proper. Their Lordships held as under :—

> "On, reading R. 16 of the Rules which merely lays down that after the written test the High Court shall arrange the names in order of merit and these names shall be sent to the Selection Committee, we are of the view that the High Court has no power to include the names of candidates who had not initially secured the minimum qualifying marks by resorting to the devise of moderation, particularly when there was no complaint

(13) AIR 1985 S.C. 1351

either about the question papers or about the mode of valuation. Exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court has no such power under the Rules. We are of the opinion that the list prepared by the High Court after adding the moderation marks is liable to be struck down. The first contention urged on behalf of the petitioners has, therefore, to be upheld. We, however, make it clear that the error committed by the High Court in this case following its past practice is a *bona fide* one and is not prompted by any sinister consideration."

(37) Still in another case titled **Durgacharas Misra** *versus* **State of Orissa and others (14)** while dealing with Rules 16, 17 and 18 of the Orissa Judicial Services Rules, 1964, the Hon'ble Supreme Court did not accept the practice that Public Service Commission could prescribe a minimum standard or marks to be obtained in the viva-voce test for determining the suitability of the candidates and an advice rendered by the High Court Judge, which was contrary to statutory rules, was not proper. It was held as under :—

"The Rule making authorities have provided a scheme for selection of candidates for appointment to judicial posts. Rule 16 prescribes the minimum qualifying marks to be secured by candidates in the written examination. It is 30% of the total marks in all the papers. The candidates who have secured more than that minimum would alone be called for viva-voce test. The Rules do not prescribe any such minimum marks to be secured at the viva-voce test. After the viva-voce test, the Commission shall add the marks of the viva-voce test

(14) 1987 (5) S.L.R. 276

to the marks in the written examination. There then Rule 18 States :

"The names of candidates will then be arranged by the Commission in the order of merit."

This is the mandate of Rule 18. The Commission shall add the two marks together, no matter what these marks at the viva-voce test. On the basis of the aggregate marks in both the tests, the names of candidates will have to be arranged in order of merits. The list so prepared shall be forwarded to the Government. The Commission has no power to exclude the name of any candidate from the select list merely because he has secured less marks, at the viva-voce test."

Similar view was taken by the Hon'ble Apex Court in the case of Ram Bhagat Singh *(supra)*. Even in the case of **Prakash Chandra Aggarwal** *versus* **State of Bihar and others (15)** where the Commission, in consultation with the High Court, had fixed the cut off marks at 38% for inclusion of the names of the candidates in the select list, later the Commission denied inclusion of the name of a candidate who had secured 38.8 marks, on the ground that the High Court had earlier recommended 40% as cut off percentage marks, this was also held to be an improper act on the part of the Commission. Thus, the judgment of the High Court in that case was set aside by the Hon'ble Apex Court on this ground alone, obvious impediment for appointment of the candidates duly selected in accordance with the rules. The submission on behalf of the High Court that the letter merely provides a higher standard simplicitor cannot be justified in the facts and circumstances of the present case. The principles enunciated by the Courts in the above cases show that the said higher cut off can be sustained only if it is result of a unanimous view and is not in conflict with the provisions of the Rules in Part 'C' of the Rules. The provisions of Part 'D' operate in a different field and are intended to provide and cover the conditions of service rather than selection. The posting order, training, its duration, service during probation, are the matters falling under the control and supervision of the High Court exclusively and the State Government is bound by

(15) AIR 1985 S.C. 1709

the opinion of the High Court in that behalf. But provisions and powers under Part 'D' can affect empanelled candidates to the extent of de-empanelment from the register of the High Court in terms of Rule 4 of Part 'D'.

(38) Learned counsel for the petitioners with certain emphasis argued that even if for the sake of arguments it is assumed that the letter dated 5th May, 2000/20th July, 2000 issued by the High Court is otherwise permissible in law, then it has to take effect prospectively and cannot adversely affect the selections made in the years 1999 and 2000. It is not disputed before us that the examinations for these batches were held in the respective years; viva-voce tests were also held prior thereto; the selection lists were sent to the Government by the Commission and in turn by the Government to the High Court for empanelment of their names on the High Court register. All this exercise was done prior to the issuance and re-confirmation of the view of the High Court which was firstly in May, 2000 and then in December, 2000 respectively. In other words, the entire process of selection had concluded before issuance of the impugned letter of the High Court. At all relevant times, the existing Rules were never altered. A Division Bench of this Court in the case of **Jatinder Kumar** *versus* **State of Haryana and another (16)** held that the candidates who had applied by the last date of the advertisement to the Higher Civil Services (Judicial Branch) have a right to be considered for selection and appointment in terms of the eligibility conditions which existed at that date. If further held that merely because the Rules have been amended with effect from 24th August, 1993, the advertisement being of 1st May, 1993, would take effect prospectively. The Division Bench of the Court while expressing the said view, held as under :-

> "A look at the amendment, quoted above, shows that Rule regarding age has not been amended with retrospective effect and Rule regarding requirement of three years practice at the Bar as well as the Rule requiring association of a representative of the High Court have been amended with effect from the 24th day of August, 1993. This amendment notification also shows that the Rule-making authority has not thought it proper to bring about any amendment in the Rules so as to be effective from a date earlier than 24th August, 1993.

(16) 1995 (1) R.S.J. 752

The issue which now requires to be determined is as to whether these amendments could have been applied in respect of the vacancies which had occurred prior to 24th August, 1993 and in any case in respect of the vacancies which had already been advertised by the Commission on 1st May, 1993 and when the last date for receipt of the application forms had expired on 31st May, 1993. The entire source-material from which the selection was required to be made by the Commission had become available to it by 31st May, 1993. It is also to be kept in mind that the Punjab Public Service Commission had initiated the process of selection for recruitment to the Punjab Civil Service (Judicial Branch) and had in fact continued with the process of selection on the basis of that advertisement. It is given out that appointments have also been made on the basis of such selection.

Question relating to the applicability of the amendment made in the Rules to the vacancies which had become available prior to the amendment was considered by the Supreme Court in **Y. V. Rangaiah** *versus* **J. Sreenivasa Rao** *(supra).* That was a case in which some vacancies had become available for promotion to the post of Sub-Registrar Grade-II prior to an amendment made in the Rules and some became available after the amendment. The Supreme Court held that the amended Rules cannot be applied to the vacancies which had become available prior to the amendment."

Somewhat similar view was also taken by the Hon'ble Supreme Court in the case of **State of Haryana and others** *versus* **Shamsher Jang Bahadur and others, (17).**

(39) At this stage it would be appropriate to revert back to the contents of the impugned letter. The view of the High Court clearly depicted a proviso to implementation of the conditions stated in the letter. The conditions obviously left the scope for decision to be taken

(17) 1972 S.L.R. 441

by the authorities and not enforced the suggestion in case, "there were very compelling reasons to lower the standard." Use of this expression in this letter sufficiently indicates that the final decision was left to the Government and strict enforcement or adherence of the principal conditions was not absolutely mandatory. In its counter the Government has taken the stand that as no other candidates were available and there were vacancies, the Government had taken a decision to give appointment to the selected candidates. The doubts about the consequences of enforcing the conditions stipulated in the High Court letter were also expressed in no uncertain terms by the Government including that it may result in discrimination and would be violative of the Rules. We are unable to find any fault in the stand of the Government as the High Court also took the same stand in another writ petition being CWP No. 13486 of 1999, **Amrish Kumar Jain** *versus* **The High Court of Punjab and Haryana and another** (which was listed with this bunch, but was segregated on request of the counsel, it being a case of Punjab State). The relevant paragraph of the counter affidavit filed on behalf of the High Court is reproduced as under :—

> "As regards the appointment of 4 candidates, namely, Surinder Singh, Rajiv Kalra, Navjot Kaur and Surinder Kumar, referrred to in Para 12 of the writ petition, it may be stated that these canddiates had secured less than 50% marks in the PCS(JB) examination held in February, 1995. During that session, very few candidates had qualified the written examination by securing 50% marks and the vacancies were much more than the qualified persons available and it was under the circumstances of dire need to fill the vacancies as the judicial work was suffering that the said four candidates were appointed despite their having not obtained 50% or more marks in the aggregate of written and *viva voce* tests. Moreover, the appointment of these candidates had been made long back, i.e. in August, 1995."

(40) In view of the above pleadings of the parties and the stand taken by the Government, we are constrained to observe that unanimity of the institutional components as contemplated in

Article 234 of the Constitution intended not to enforce this condition at least for those batches. After the amendment of the Rules all these questions are rendered ineffective. We may also refer to the Division Benches judgments of this Court in the cases of **Babita Rani** *versus* **State of Haryana and others, (18)** and **Er. Kulbir Singh** *versus* **State of Punjab, (19)** where it was held that unamended rules would apply for filling up the vacancies particularly in the cases where the process of selection has commenced. Thus, we are of the view that the petitioners in the present case would be governed by the Rules without enforcement of the conditions stipulated in the impugned letter.

(41) Learned counsel appearing for the High Court also contended that the petitioners cannot claim for issuance of a writ in the nature of *mandamus* for appointment to the posts in question and furthermore, the relief claimed by the petitioners suffers from laches at this stage now. We are not impressed with this submission. The petitioners have approached this Court without any undue delay. In fact, they were pursuing their matter with the State Government which in turn is supporting the claim of the petitioners and it is only because of the issuance of the letter dated 20th July, 2000 that the petitioners were denied appointment. Their selection is not in violation of any statutory rules or instructions. In the facts and circumstances of the case, we are of the considered view that neither the petitions filed by the petitioners suffer from the infirmity of laches nor conduct of the petitioners is such that should disentitle them from claiming the relief from this Court. The petitioners have been vigilant and pursuing their lawful remedies.

(42) High standard of performance of excellence in discharge of its functioning are the twin essential for proper administration of justice.To achieve this object, the constitutional authorities enumerated under article 234 of the Constitution essentially must arrive at a unanimous view in regard to rational behind and proper enforcement of the rules for competitive selection and appointment to the judicial services of the State. We have expressly held that the view of the High Court requires to be considered by the Government and the Commission objectively and with precedence. Prescription of high percentage to maintain excellence in service no way violates the right of equality

(18) 2002 (2) P.L.R. 636
(19) 2002 (1) S.C.T. 615

or equal opportunity for appointment. In view of the judgment of the Hon'ble Supreme Court in the case of Bal Mukand Sah (supra), it is not necessary for us to re-emphasis the role of the High Court and the requirement on the part of the State to adopt the suggestion made by the High Court. Purposeful consultation must essentially be result oriented, object achieving and its dcecision and conclusion must be given effect to with utmost expedition. That alone would be in the interest of proper administration of justice.

(43) In order to encapsulate conclusions of our above discussion, it is necessary to revert back to the contentions raised by the parties before us. We are of the considered view that the letter dated 5th May, 2000 (20th July, 2000) neither lacked jurisdiction nor competence on the part of the High Court. It was intended to provide higher standard to achieve excellence in State Judicial Services. It was not necessary that the rules ought to have been amended prior to the enforcement of this rule. However, unanimity of the view was a condition precedent to the enforcement of the stated condition. Most of the questions have been rendered academic as a result of the amendment of the rule,—*vide* notification dated 17th April, 2003. In the present case, the government had not accepted and implemented the view of the High Court view as contained in the impugned letter and in fact it had raised specific objections to its implementation. Thus, this letter cannot be taken adverse to the interest of the petitioners, whose names were sent by the Government for empanelment on the High Court Register prior to the issuance of the letter. On the contrary, the stand of the Commission and the Haryana Government before the Court only further the cause of the petitioners. The impact of the conditions sought to be imposed,—*vide* letter dated 20th July, 2000 has been diluted by the proviso of the letter itself and further more by the stand of the High Court taken in other connected matters. The petitioners have not been exposed to any hostile discrimination under Articles 14 and 16 of the Constitution of India, but certainly their interest have suffered a set back as the candidate selected under the same criteria and the rules for the previous year have been appointed and they have been denied the appointment despite their selection in accordance with the rules. The condition stipulated in the High Court letter, in the facts and circumstances of the case, at best could be enforced prospectively as the process of selection for the relevant year had already concluded prior to the issuance of the impugned letter.

(44) The contentions raised on behalf of the petitioners that they would have to achieve unachievably higher standard marks in the interview i.e. minimum 105 out of 120 despite the fact that they have qualified the written test with the prescribed out of percentage. This argument is without any merit. In fact, it is destructive of principle of merit and maintenance of higher excellence in the judicial services of the State. Why should a candidate who is taking competitive examination with all preparation should ensure to get only 45% marks in the written competitive examination. If he achieve that standard alone he is expected to do very well in the interview (vive-voce test). If he is unable to perform so well the candidate has none else to blame except himself. Effort and endure on the part of the candidate should be to do well and secure as high percentage as possible, rather than fixing the bench marks himself at 45% marks in the written examination. This numerical example given by the petitioners suffers from a basic fallacy of the argument being opposed to fundamental principle of merit and examination in service jurisprudence. The amendment of the rules clearly shows that even the expert body like the Public Service Commission, Government and the High Court are unanimous at this point. This further gives illucidation and a conscious conclusion of the view taken by us. Therefore, we have no hesitation in rejecting this argument of the petitioners.

(45) Ergo, for the reasons recorded by us, *supra*, we allow these writ petitions and hold that the letter dated 5th May, 2000 (20th July, 2003 Annexure P/5 to the writ petition) cannot be enforced against the petitioners. We further direct the State Government to consider the case of the petitioners for appointment to the Judicial Services of the State in accordance with the rules and without any unnecessary delay. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

R.N.R.