

*Before Tejinder Singh Dhindsa, J.*

**AKASH DEEP AND OTHERS** -- *Petitioners*

*versus*

**STATE OF PUNJAB AND ANOTHER** -- *Respondents*

**CWP No. 19459 of 2011**

February 14, 2013

*Constitution of India, 1950 - Art. 226 & 227 - Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 - Rl. 15 - Amendment of Rules during process of selection and appointment to post of clerks - Amendment notified on 17.8.2011 - In relation to a process of recruitment initiated by issuance of an advertisement prior to amendment, last date for submission of applications was stipulated as 24.8.2011 - Public notice issued on 13.9.2011 requiring candidates to appear in Punjabi type test - Written test held on 1.10.2011 - All candidates including petitioners cautioned about amendment in rules and pre-requisite of qualifying Punjabi type test prior to holding written examination - Petitioners appeared in the written examination having been duly informed about the amendment in the Rules - No infirmity can be found in the action of the respondent-Board in calling upon all candidates including the petitioners upon having qualified the written test to even appear in a Punjabi type test as per the amended Rules which came into operation during the pendency of the recruitment process - Plea of discrimination also rejected.*

*Held*, that the initial advertisement had been issued by the Board on 27.7.2011 inviting applications for recruitment to 530 posts of Clerks. The educational qualifications were laid down in the advertisement and condition No.(4) clearly read in the following terms:

*"(4) Apart from the above-stated, the applicant is required to pass the type test conducted by the Government of Punjab from time to time."*

The last date for submission of applications was stipulated as 24.8.2011. In the detailed terms and conditions uploaded by the respondent-Board on the website, it was unequivocally laid down that the recruitment

would be based on the merit of the written test and there would be no marks assigned for the future and academic qualifications. The State Government issued notification dated 17.8.2011 carrying out the amendment in Rule 15 of the 1994 Rules requiring the passing of the requisite Punjabi type test prior to appointment on the post of Clerk. Such amendment in the Rules even though prospective in nature was prior in point of time to the last date of submission of application forms i.e. 24.8.2011 which, in turn, would be the relevant date to determine the eligibility of candidate for the post of Clerk. The written test was held on 1.10.2011. All the candidates including the petitioners were cautioned as regards the amendment in the Rules vide notification dated 17.8.2011 as regards the pre-requisite of qualifying the Punjabi type test in the light of public notice dated 13.9.2011, Annexure R3/T, i.e. even prior to the holding of the written examination.

Clearly, the petitioners appeared in the written examination having been duly informed about the amendment in the 1994 Rules carried out vide notification dated 17.8.2011 and having been put to notice as regards the pre-requisite of passing a Punjabi type test prior to appointment to the post of Clerk. Following the observations of the Hon'ble Apex Court in the case of P.Ganeshwar Rao (supra), no infirmity can be found in the action of the respondent-Board in calling upon all the candidates including the petitioners upon having qualified the written test to even appear in a Punjabi type test as per the amended 1994 Rules which came into operation during the pendency of the recruitment process.

(Paras 21 to 23)

*Held further*, that the petitioners herein, in the initial advertisement itself dated 27.7.2011 had been made aware of having to qualify a Punjabi type test to be held by the State Government as per instructions issued from time to time. The amended 1994 Rules mandating the passing of a Punjabi type test prior to appointment came into force prior to the last date for submission of application forms as stipulated in the advertisement and as such, the amended 1994 Rules issued vide notification dated 17.8.2011 would hold the field.

(Para 28)

Ramesh Goyal, Advocate for the petitioners in Civil Writ Petition No.19459 of 2011.

Kapil Kakkar, Advocate for the petitioners in Civil Writ Petition No.19532 of 2011.

OP Gaba, Advocate for the petitioners in Civil Writ Petition No.3970 of 2012.

Mr.Alok Jain, Additional Advocate General, Punjab.

### **TEJINDER SINGH DHINDSA, J.**

This order shall decide Civil Writ Petition Nos.19459, 19532 of 2011 and 3970 of 2012 as common facts and question of law are involved in these three petitions.

(2) The facts are, however, being extracted from Civil Writ Petition No.19459 of 2011.

(3) The petitioners in all the three petitions had applied for selection and appointment to the posts of Clerks in response to an advertisement dated 27.7.2011 issued by the Subordinate Services Selection Board, Punjab (hereinafter to be referred to as 'the Board') and are impugning a public notice dated 13.10.2011, Annexure P7, whereby they had been called upon to appear in a Punjabi type test in furtherance of the process of selection for the post in question.

(4) Brief facts that would require notice are that the Board, respondent No.2 issued an advertisement dated 27.7.2011 inviting applications 'online' for recruitment to 530 posts of Clerks in the Punjab Civil Secretariat, different Departments of the State Government and in the offices of Divisional Commissioners/ Deputy Commissioners in the State. The last date for 'online' submission of applications was stipulated as 24.8.2011. In the advertisement itself, it was recited that the terms and conditions with regard to the posts, procedure of applying, other instructions as also procedure of remitting the fee and other important information would be available on the website, from 30.7.2011 onwards. Such terms and conditions downloaded from the Website [HTTP://recruitment.cdacmohali.in](http://recruitment.cdacmohali.in) stand appended along with the writ petition as Annexure P2. In terms of subsequent public notices dated 12.9.2011, 16.9.2011 and 20.9.2011, 530 posts initially

advertised were increased to 855. It has been pleaded that the petitioners who were otherwise eligible in terms of possessing the requisite essential qualifications had submitted their applications 'online' within the stipulated time-frame and had, accordingly, been permitted to participate in a written test held on 1.10.2011. The result of the same was displayed on the website on 8.10.2011 and as per the merit so determined in relation to the written test, the petitioners are stated to have secured a high merit position. It is after the declaration of the result of the written test on 8.10.2011 that the impugned public notice dated 13.10.2011 had been published calling upon the candidates as also the petitioners herein to appear in a Punjabi type test to be held as per the schedule mentioned in the public notice.

(5) Such Punjabi type test was to commence from 19.10.2011 but in the light of an interim order passed by this Court on 18.10.2011, the Punjabi type test has since been kept in abeyance.

(6) The public notice dated 13.10.2011 as regards holding of a Punjabi type test for selection and recruitment to the posts of

Clerks has been assailed at the hands of the petitioners, primarily, on the following grounds:

*(i) A specific reference has been made on behalf of the petitioners to Instruction No.3 contained in the detailed terms and conditions down-loaded from the website at Annexure P2, and which reads in the following terms:*

*"The recruitment will be made based on the merit of the written test. There will no marks for the interview and academic qualifications. The written test will be held at various districts of Punjab."*

Placing heavy reliance upon the aforementioned condition, it has been argued that the criteria for selection and appointment to the posts of Clerks having been laid down and disclosed in the advertisement i.e. on the basis of the merit of a written test and coupled with a fact that no marks stood assigned for the interview and academic qualifications, the holding of a Punjabi type test in the light of the impugned public notice dated 13.10.2011 clearly amounts to changing the criteria mid-way through the process of selection. It has been argued that no new condition could be imposed upon the petitioners and neither the criteria mentioned in the

advertisement could have been altered as has been done in the light of the impugned public notice calling upon the petitioners to appear in a Punjabi type test.

(ii) The second limb of the argument raised on behalf of the petitioners is that by virtue of adding the requirement of passing a Punjabi type test after the declaration of the result of the written examination, which was conducted on 1.10.2011, the same would amount to changing the Rules of the game after the game had already been played and the same is impermissible in law.

(iii) A reference has been made to the statutory provisions contained in the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter to be referred to as '1994 Rules') and, in particular, to Rule 15 of the 1994 Rules which lay down the educational qualifications and other qualifications for the post of Clerk. It is contended that as per sub-Rule (2) of Rule 15, of the 1994 Rules, a person so appointed as Clerk under the Punjab Government shall have to qualify a test in Punjabi type-writing to be conducted by the Board or by the Appointing Authority, within a period of one year from the date of appointment. The precise contention raised on behalf of the petitioners is that as on the date of issuance of the advertisement i.e. 27.7.2011 issued by the respondent-Board in response to which the petitioners had applied for the posts of Clerks, it was such Rule position that held the field and, accordingly, it would not be open for the State Government to insist upon the petitioners to qualify the Punjabi type test even prior to appointment on the post in question.

(iv) It has been contended on behalf of the petitioners that the basis of issuance of the impugned public notice dated 13.10.2011 is a notification dated 17.8.2011 in the light of which the 1994 Rules were amended and called the Punjab Civil Services (General and Common Conditions of Service) (Second Amendment) Rules, 2011. In the light of such notification dated 17.8.2011, sub-Rule (2) of Rule 15 of the 1994 Rules was substituted in the following terms:

*“(2) The person so appointed as Clerk in terms of the provisions of sub-rule (1), should have, before his*

*appointment, qualified a test in Punjabi typewriting either on computer or on manual or electronic typewriter, to be conducted by the Board or the appointing authority or the Department of Information Technology, as the case may be, at a speed of thirty words per minute”*

It has been argued on behalf of the petitioners that the operation of the amended Rule 15 requiring a candidate to have qualified a Punjabi type-writing test before his appointment would not be retrospective in operation. Such amendment was effected in terms of notification dated 17.8.2011, whereas the advertisement issued by the respondent-Board inviting applications for the posts of Clerks had been set in motion on 27.7.2011 itself.

Accordingly, it has been contended that the rights that already stood acquired by the petitioners under the Rules prior to amendment cannot be taken away by an amendment of the Rules. It has been urged that the petitioners had acquired a vested right for being considered for selection and appointment to the posts of Clerks and such rights had crystalized on the date of publication of the advertisement. It has further been submitted that since the process of appointment commenced with the issuance of an advertisement which is an integral part of the scheme of appointment, the same would come to an end on the declaration of the result of the written examination i.e. on 8.10.2011 and the consequent appointment and hence, the petitioners are required to be considered strictly in the light of the criteria provided in the initial advertisement . In the same breath, learned counsel for the petitioners would argue that vacancies occurring prior to the amended Rules have to be governed by the old Rules.

(v) The argument has further been buttressed in terms of asserting that almost all the petitioners have secured merit position in the first 530 i.e. number of posts advertised initially. As such, it is argued that even though the posts of Clerks were increased vide subsequent public notices but the petitioners' rights for being appointed to the posts of Clerks would be required to be considered as per the conditions/stipulations contained in the first advertisement dated 27.7.2011 in response to which they had applied and which was prior in point of time to the amendment of the 1994 Rules as per notification dated 17.8.2011.

(vi) In Civil Writ Petition No.3970 of 2012, an additional plea of discrimination has also been raised. Mr.OP Gaba, learned counsel for the petitioners therein would refer to an appointment letter dated 11.11.2011, Annexure P9, to contend that insofar as the Food and Supplies Department, Punjab is concerned, appointment letters had been issued on the posts of Clerks without imposing the conditions of having qualified the Punjabi type test prior to appointment. Learned counsel would contend that in such appointment letter dated 11.11.2011, the aforementioned Mukesh Kumar had been called upon to pass a Punjabi type test within a period of one year from the date of joining. The argument raised is that it is not open for the State Government to adopt different yard-sticks as regards the condition of qualifying the Punjabi type test while making recruitment to the posts of Clerks.

(7) Learned counsel for the petitioners in support of the contentions noticed hereinabove have relied upon the following judgments:

1. *Y.V.Rangaiah and others versus J.Sreenivasa Rao and others (1)*.
2. *P.Mahendran and others versus State of Karnataka and others (2)*.
3. *K.Manjusree versus State of A.P. and another (3)*.
4. *B.Ramakichenin versus Union of India and others (4)*.
5. *N.T.Devin Katti etc. versus Karnataka Public Service Commission, (5)*.

(8) It would be apposite to notice at this stage that even though a prayer has been raised in Civil Writ Petition No.19532 of 2011 for quashing of the notification dated 17.8.2011 i.e. the amendment to sub clause (2) of Rule 15 of the 1994 Rules, yet at the stage of arguments,

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- (1) (1983) 3 SCC 284
  - (2) (1983) 1 SCC 411
  - (3) 2008 (2) SCT 6
  - (4) 2008 (1) SCT 17
  - (5) 1992 (2) SCT 578

Mr. Kapil Kakkar, learned counsel confined the scope of the petition only to the extent that such notification dated 17.8.2011 and the amended provision of Rule 15 of the 1994 Rules to be prospective in nature and as such not applicable to the process of recruitment initiated for the posts of Clerks insofar as the advertisement dated 27.7.2011 is concerned.

(9) Per contra, Mr. Alok Jain, Additional Advocate General, Punjab has vehemently contended that the petitioners are guilty of deliberate concealment of material facts from this Court. Towards such assertion, learned State counsel would refer to a public notice dated 13.9.2011 which is appended as Annexure R3/T along with the written statement filed on behalf of the Board and reads in the following terms:

“SUBORDINATE SERVICES SELECTION BOARD, PUNJAB  
FOREST COMPLEX SECTOR 68, SAS NAGAR, MOHALI.

PUBLIC NOTICE

*In advertisement No.4 of 2011 at Sr.No.4, advertised for the recruitment of clerks in Punjab Civil Secretariat, different departments of Government issued by Subordinate Services Selection Board, Punjab, it was mentioned that besides above the candidate should have to pass Type Test as per instructions issued by Punjab Government from time to time. In this regard, the copy of the Notification issued by Punjab Govt. dated 17.8.2011 has been uploaded on the website <http://recruitment.cdacmohali.in> of C Dac. Besides this the detail of increased vacancies has also been available on this website.*

SECRETARY  
SUBORDINATE SERVICES SELECTION BOARD, PUNJAB”

(10) It is contended on behalf of the State that in the light of such public notice, which was issued prior to holding of the written examination, all the candidates including the petitioners had been informed as regards the notification dated 17.8.2011 and the amendment to the 1994 Rules, and thereby the petitioners had been put to notice as regards the pre-requisite of qualifying a Punjabi type test. Learned State counsel would submit that even though the petitioners have referred to and placed on record all other public notices issued by the respondent-Board, but they had deliberately



withheld the factum of issuance of public notice dated 13.9.2011 from this Court with the clear intention to mis-lead. It is argued that on this basis alone, the petitioners have disintitiled themselves from claiming any relief under the extra-ordinary writ jurisdiction of this Court.

(11) That apart, on merits, it has been argued by learned counsel for the State that it would be the inherent right with the employer to lay down the essential qualifications for a particular post. It is urged that the State cannot be denied the right to select the best and most efficient candidates for recruitment to a service under the State Government. Learned State counsel has further argued that even though initially, only 530 posts of Clerks had been advertised on 27.7.2011, but the same were subsequently increased to 855 in terms of issuance of public notices dated 12.9.2011, 16.9.2011 and 20.9.2011. It is sought to be contended that if the contention of the petitioners was to be accepted, it would result in an anomalous situation whcreby in a common selection process, the 530 posts, that were initially advertised prior to the amended Rules, would be filled up under the unamended Rules and the subsequent 325 posts would be required to be filled up as per the notification dated 17.8.2011 i.e. the amended Rules. Learned State counsel would submit that the State action is totally bonafide and in the interest of efficiency and better administration of service. The only distinction as regards the amended Rules and unamended Rules is that an applicant under the unamended Rules was required to pass the requisite Punjabi type test within one year of securing appointment to the posts of Clerks, whereas under the amended Rules vide notification dated 17.8.2011, the same very Punjabi type test would be required to be qualified even prior to securing appointment. The contention raised on behalf of the State is that a course of action which promotes efficiency in service and facilitates the appointment of a better qualified person to the post of Clerk cannot be frowned upon.

(12). Having heard learned counsel for the parties at length, the preeceise question that would require consideration in the present case is as to whether it was open for the Board to require the petitioners to appear in a Punjabi type test for selection and appointment to the posts of Clerks under the guise of the impugned public notice dated 13.10.2011 purportedly issued in the light of the notification dated 17.8.2011 i.e. the amended 1994 Rules in relation to a process of recruitment initiated by issuance of advertisement dated 27.7.2011 ?

Date..... 7/2/9 C-27

(13) Rule 15 of the 1994 Rules governs the minimum education and other qualifications for appointment to the post of Clerks under the State Government. Rule 15, as it was originally framed, was in the following terms:

***“Rule 15 Minimum education and other Qualifications for the appointment to the post of Clerk.***

*No person shall be appointed by direct appointment to a post of Clerk under the Punjab Government unless he:-*

*(a) is Matriculate in Second Division or has passed Senior Secondary Part-II examination from a recognized University or Institution; and*

*(b) Qualifies a test in Punjabi Type writing to be conducted by the Board or by the appointing authority at the speed of thirty words per minutes.”*

(14) Thereafter, vide notification dated 10.2.2009, Rule 15 was substituted as follows:

***“Rule 15 Minimum-Education and other Qualifications***

*(1) (i) No person shall be given direct appointment to the post of Clerk under the Punjab Government unless he possesses the Bachelor's Degree from a recognized University or Institution; and*

*(ii) Possesses at least one hundred and twenty hours course with hands on experience in the use of Personal Computer or Information Technology in Office Productivity applications or Desktop Publishing applications from a Government recognized institution or a reputed institution, which is ISO 9001, certified.*

OR

*Possesses a Computer Information Technology course equivalent to 'O' level certificate of Department of Elections Accreditation of Computer Courses (DOEACC) of Government of India.*

*2. The person so appointed as Clerk in terms of subrule (1), shall have to qualify a test in Punjabi typewriting to be conducted*

by the Board or by the Appointing Authority at the speed of thirty words per minute within a period of one year from the date of his appointment.

3. In case the person fails to qualify the said test within the period specified in sub-rule (2) he shall be allowed annual increment only with effect from the date he qualifies such test but he shall not be paid any arrears for the period for which he could not qualify the said test.

*Provided that where appointment to Group 'C' non technical post is offered to a War Hero, who has been discharged from Defence Services or dependent member of his family under the instructions issued in this behalf by the Government, the educational qualification to be possessed by such person shall be Graduate from a recognized University or Institution. However, such person shall not be required to qualify the test in Punjabi type-writing as specified in sub-rule (2)."*

(15) Vide notification dated 8.6.2011, Rule 15 (2) was amended to the following effect:

*"Rule 15(2). The person so appointed as Clerk in terms of the provisions of sub-rule (1) shall have to qualify a test in Punjabi typewriting either on computer or on manual or electronic typewriter, to be conducted by the Board or the appointing authority or the Department of Information Technology as the case may be, at the speed of thirty words per minute, within a period of one year from the date of his appointment."*

(16) Finally, vide notification dated 17.8.2011, Rule 15(2) and Rule 15(3) were further amended in the following terms :

*"2. In the Punjab Civil Services (General and Common Conditions of Service Rules, 1994, in rule 15 (1) for sub rule (2) the following shall be substituted namely:-*

*3. "(2) The person so appointed as Clerk in terms of the provisions of sub-rule (1), should have, before his appointment, qualified a test in Punjabi typewriting either*

*on computer or on manual or electronic typewriter, to be conducted by the Board or the appointing authority or the Department of Information Technology, as the case may be, at a speed of thirty words per minute" And*

*(2) Sub-rule (3) shall be deemed to have been omitted for the persons appointed on or after the date of publication of this Notification."*

17. A perusal of the aforesaid Rule 15 would make it apparent that such Rule, as originally framed, apart from laying down the essential qualifications, stipulated the qualifying of a Punjabi type test as a pre-requisite for being appointed to the post of Clerk. The requirement of qualifying the Punjabi type test was modified in terms of notification dated 10.2.2009 requiring such person so appointed as Clerk to qualify the requisite Punjabi type test within a period of one year from the date of appointment. In terms of notification dated 8.6.2011, Rule 15(2) was modified to read that the candidate appointed to the post of Clerk would now require to qualify a test in Punjabi type-writing either on computer or on manual or on electronic typewriter at the speed of 30 w.p.m. within a period of one year from the date of appointment. In terms of issuance of notification dated 17.8.2011, Rule 15 (2) and Rule 15(3) again stood amended and the requirement of qualifying a test in Punjabi type-writing either on computer or on manual or electronic type-writer was again made a pre-requisite prior to be considered for appointment on the post of Clerk.

18. The right vested with the Government to alter the eligibility conditions and essential qualifications for a particular post upon amendment of the statutory Rules governing such post and the competence of the State Government to make selection on the basis of the amended criteria even though such amended Rules being prospective in operation was recognized by the Hon'ble Supreme Court in the case of *State of MP and others versus Raghu Veer Singh Yadav*, (6). It was also held that the candidates who pass an examination under the unamended Rules or advertisement are not vested with any right against the State. It is equally well settled that advertisement of posts does not vest any indefeasible right in the applicants who apply in response to such advertisement. Even selection for a post does

not confer an indefeasible right to be appointed. In a Full Bench decision of this Court in *Rahul Prabhakar versus Punjab Technical University, Jalandhar and others*, (7) it has been categorically held that the relevant date for determining the eligibility of an applicant is the last date for submission of such application.

(19) In the case of *P. Ganeshwar Rao and others versus State of Andhra Pradesh and others* (8) their Lordships of the Supreme Court had to consider a question whether the process of filling up of 51 vacancies which had been notified by the Public Service Commission for direct recruitment under the existing recruitment Rules which permitted clubbing of temporary vacancies also for the purpose of recruitment, could be continued further if pending such recruitment process, the Rules of recruitment got amended and only 37-1/2% of substantive vacancies could be filled up by direct recruitment. It was held that the amendment to the recruitment Rules referred to future vacancies only in the light of the explanation which was introduced by way of amendment to the Sub Rules on 28.4.1980 containing the crucial words "37-1/2 % of substantive vacancies arising in the category of Assistant Engineers shall be filled up by direct recruitment....." The words "vacancies arising in the category" were emphasized to mean future vacancies and which could not cover the earlier erstwhile vacancies and, accordingly, it was held that for filling up the earlier vacancies which had arisen prior to the amendment, the old Rules would apply. In paragraph 7 of the judgment, however, the following relevant observations were also made:

*"7..... if the above clause had read "37-1/2% of the substantive vacancies in the category of Assistant Engineers shall be filled by direct recruitment" perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of amendment but which had not been filled up before that date....."*

(20) Clearly, the Hon'ble Apex Court in *P. Ganeshwar Rao's* case (supra) had observed that if the recruitment Rules underwent amendment

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(7) 1997 (3) SCT 526

(8) (1998) Supp. SCC 740

prior to actual filling up of the advertised posts, the amended Rules would apply and it is only on account of the word "arisen" as found to have been applied in the amended provision that the aforesaid decision had been rendered.

(21) Adverting back to the facts of the present case, the initial advertisement had been issued by the Board on 27.7.2011 inviting applications for recruitment to 530 posts of Clerks. The educational qualifications were laid down in the advertisement and condition No.(4) clearly read in the following terms:

*"(4) Apart from the above-stated, the applicant is required to pass the type test conducted by the Government of Punjab from time to time."*

(22) The last date for submission of applications was stipulated as 24.8.2011. In the detailed terms and conditions uploaded by the respondent-Board on the website, it was unequivocally laid down that the recruitment would be based on the merit of the written test and there would be no marks assigned for the future and academic qualifications. The State Government issued notification dated 17.8.2011 carrying out the amendment in Rule 15 of the 1994 Rules requiring the passing of the requisite Punjabi type test prior to appointment on the post of Clerk. Such amendment in the Rules even though prospective in nature was prior in point of time to the last date of submission of application forms i.e. 24.8.2011 which, in turn, would be the relevant date to determine the eligibility of candidate for the post of Clerk. The written test was held on 1.10.2011. All the candidates including the petitioners were cautioned as regards the amendment in the Rules vide notification dated 17.8.2011 as regards the pre-requisite of qualifying the Punjabi type test in the light of public notice dated 13.9.2011, Annexure R3/T, i.e. even prior to the holding of the written examination.

(23) Clearly, the petitioners appeared in the written examination having been duly informed about the amendment in the 1994 Rules carried out vide notification dated 17.8.2011 and having been put to notice as regards the pre-requisite of passing a Punjabi type test prior to appointment to the post of Clerk. Following the observations of the Hon'ble Apex Court in the case of *P. Ganeshwar Rao* (supra), no infirmity can be found in the action of the respondent-Board in calling upon all the candidates including

the petitioners upon having qualified the written test to even appear in a Punjabi type test as per the amended 1994 Rules which came into operation during the pendency of the recruitment process.

(24) A reference at this stage would be appropriate to the various judgments upon which strong reliance has been placed by the learned counsel appearing for the petitioners. In the case of *Y.V. Rangaiah and others* (supra), the Hon'ble Supreme Court was considering the question about the applicability of the relevant Andhra Pradesh Registration and Subordinate Service Rules which laid down the procedure for appointment by promotion to the posts in that service. Upon consideration of the said Rules, it had been held that when the said Rules cast a duty upon the appointing authority to prepare panels for selecting promotees year-wise in old vacancies to be filled up by promotion and if panels were not prepared at the appropriate time, the authorities could be directed to prepare such panels and while preparing such panels for the earlier years, the then existing statutory rules of recruitment had to be applied. Such decision would not apply on the facts of the present case for two reasons; firstly, in the present case, this Court is dealing with an issue relating to direct recruitment to the advertised posts and secondly, the scheme of the Andhra Pradesh Rules considered by the Hon'ble Apex court had cast a statutory duty and obligation upon the appointing authority to prepare panels of eligible candidates year-wise in connection with the vacancies then existing. It was upon the failure to discharge such statutory duty, it had been held that the relevant rules existing for the years would hold the field insofar as preparation of panels pertaining to those years is concerned.

(25) In the case of *P. Mahendran and others* (supra), a question arose before the Hon'ble Supreme Court as to whether under the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1962 which had earlier prescribed a diploma in Automobile Engineering or Mechanical Engineering as a minimum qualification for appointment of a Motor Vehicle Inspector, once amended in 1987, could affect the earlier process of selection carried out in the light of the prior unamended Rules by the Karnataka Public Service Commission and resultantly, could make the earlier diploma-holder applicants ineligible. A finding of fact had been recorded that the earlier selection process, when the amended Rules were holding the field, had already been completed. The selected candidates

eligible as per unamended Rules had already been recommended for appointment and it is only on account of interim orders passed by the High Court of Karnataka that they had not actually been appointed on the post. The issue as such was that after vacation of such interim orders by the High Court, could such selected candidates be given appointments in the light of the earlier Rules or they could be held ineligible in the light of the amended Rules. It is in the light of such peculiar facts, the Hon'ble Apex Court had held that the amending Rules contained no provision of enforcement with retrospective effect and as such, appointments to the selected candidates which would have been available but for the interim relief granted by the High Court, could not be denied to them. The case of *P. Mahendran* (supra) is clearly distinguishable on facts.

(26) Even the case of *K. Manjusree* (supra) would have no applicability to the present case. The selection to posts of District & Sessions Judges (Grade II) in the Andhra Pradesh State, Higher Judicial Service was the subject matter of consideration before the Hon'ble Supreme Court. In that case, the selection and appointments to the post of District & Sessions Judges (Grade II) were governed by the Andhra Pradesh State Higher Judicial Service Rules, 1958. The Rules only prescribed the qualifications for appointment, but did not lay down the selection procedure. When the posts were advertised, the only criteria for selection that was mentioned, was in terms of holding a written examination followed by an interview. The procedure adopted as regards introduction of requirement of minimum marks in the interview, and that too, after the entire selection process consisting of written examination and interview had been completed, was held to be bad in terms of observing that the same would amount to changing the Rules of the game after the game had already been played and the same was held to be impermissible. In the facts of the present case, in the initial advertisement dated 27.7.2011, the selection criteria had been disclosed i.e. on the basis of a written examination and without assigning any marks for interview and educational qualifications. Even prior to the last date for submission of application forms, the amended Rules came into force. All the candidates including the petitioners were put to notice as regards the amended Rules and requirements of passing the Punjabi type test, vide public notice dated 13.9.2011, prior to holding the written examination i.e. 1.10.2011. The dictum in *K. Manjusree's case* (supra) would not as such apply.



(27) Reliance placed upon yet another Supreme Court judgment in *B. Ramakichenin* (supra) is also wholly mis-placed. The Hon'ble Supreme Court had held in the aforementioned matter that the conditions of the advertisement are binding in nature and it is not open for the authorities concerned to resort to any other method, apart from the specific conditions/stipulations, as contained in the advertisement. There has been no departure as regards the afore-noticed proposition in the present case. In the advertisement dated 27.7.2011, the candidates had been informed at the very threshold that apart from possessing the essential qualifications for the post of Clerk, it would be required to pass the type test conducted by the Government of Punjab from time to time. The public notice dated 13.9.2011 which can be construed as a corrigendum to the initial advertisement put all the candidates including the petitioners to notice as regards the amended 1994 Rules and as regards qualifying the Punjabi type test. Such public notice had been issued prior to holding the written examination on 1.10.2011 and as such, it cannot lie in the mouth of the petitioners to contend that there had been any deviation from the conditions contained in the advertisement in response to which they had applied.

(28) Even in the case of *N.T. Devin Katti etc.* (supra), it had been held that a candidate is vested with the right to be considered in accordance with the terms and conditions set out in the advertisement as such right crystallises on the date of publication of the advertisement. However, it was also held that such a candidate would have no absolute right in the matter. In case the recruitment Rules were amended retrospectively during the pendency of selection, in that event the selection must be held in accordance with the amended Rules. A further rider was added in terms of observing that the rights of the candidate would also be governed for being considered for selection as per advertisement and as per the existing Rules unless the advertisement itself indicates a contrary intention. The petitioners herein, in the initial advertisement itself dated 27.7.2011 had been made aware of having to qualify a Punjabi type test to be held by the State Government as per instructions issued from time to time. The amended 1994 Rules mandating the passing of a Punjabi type test prior to appointment came into force prior to the last date for submission of application forms as stipulated in the advertisement and as such, the amended 1994 Rules issued vide notification dated 17.8.2011 would hold the field.

(29) Even the plea of discrimination as raised by Mr. OP Gaba, learned counsel for the petitioners in Civil Writ Petition No.3970 of 2012 in terms of referring to an appointment letter at Annexure P9 is without any basis. The State Government has answered such plea in the written statement by stating the facts that 133 posts of Clerks in the Department of Food, Civil Supplies and Consumer Affairs had been advertised on 2.2.2011 and the last date for submission of applications was 21.2.2011. The written test was conducted on 8.5.2011 and the result was declared on 7.6.2011. It was in pursuance to such recruitment and selection process that the appointment letter at Annexure P9 dated 11.11.2011 had been issued to the candidate, namely, Munish Kumar with the requirement of qualifying the Punjabi type test within a period of one year. Clearly, in the case of aforementioned Munish Kumar, the recruitment process had commenced on 2.2.2011 and stood culminated in the light of declaration of the result of the written test on 7.6.2011 i.e. much prior to the issuance of the notification dated 17.8.2011 whereby the amending Rule 15 of 1994 Rules was carried out.

(30) In such circumstances, this Court has been unable to trace any element of discrimination and arbitrariness in the issuance of the public notice dated 13.10.2011 calling upon the candidates including the petitioners to appear in the Punjabi type test in furtherance of the recruitment process for appointment to the posts of Clerks. The question as formulated at the very outset by this Court is, accordingly, answered against the petitioners.

(31) There is yet another aspect of the matter. The written test for the post of Clerk in the present recruitment process was slated for 1.10.2011. A public notice dated 13.9.2011, Annexure R3/T, had been issued informing all the candidates including the petitioners as regards the requirement of passing the type test in the light of notification dated 17.8.2011. The petitioners, inspite of having been put to such notice, participated in the selection process and appeared in the written examination on 1.10.2011 without any protest. Inspite of knowingly well that they would have to qualify a Punjabi type test as per notification dated 17.8.2011, the petitioners subjected themselves to a process of selection in terms of appearing in the written test on 1.10.2011. They cannot now be permitted at this stage after they having appeared in the written test and the result having been declared to turn around and to contend that they be appointed to the posts of Clerks

and to be given a chance to qualify such Punjabi type test within a period of one year thereafter. In taking such view, I would draw support from the observations of the Hon'ble Supreme Court in a recent judgment in *State of Jharkhand and others versus Ashok Kumar Dangi and others* (9), and it has been observed as under:

*"16. It is in the present appeals the writ petitioners, for the first time, have attempted to contend that amendment to Rule 2(b)(iii) made on 6th March, 2003, which inter alia provided that candidates having C.P.Ed or Dip.P.Ed shall be eligible for Physical Trained Teachers only cannot be applied retrospectively and their cases shall be governed by the un-amended Rules. It has been pointed out that the amendment has not been made with retrospective effect. We are not inclined to go into this question in the present appeal for the reason that in the light of the amendment in the Rules, Commission issued corrigendum and confined the candidature of persons holding qualification of C.P.Ed. or Dip. P.Ed., like the writ petitioners, to the posts of Physical Trained Teachers only. It conducted the examination on that basis and the writ petitioners without making any challenge to the same, participated in the selection process and appeared in the examination without any murmur. It is only after the result was published and their candidature not considered against the entire vacancy of the Primary School Teachers that they have chosen to file the writ petition with the relief aforesaid. Any direction to consider the candidature of the writ petitioners against the entire vacancy of Primary School Teachers would unsettle settled matter and shall result into chain reaction, affecting the appointment of a large number of persons."*

(32) For the reasons recorded above, I find no merit in these petitions and the same are, accordingly, dismissed. Consequently, it shall be open for the respondent-Board to conduct the Punjabi type test, that had been held in abeyance during the pendency of the instant writ petitions by notifying the same and to finalise the process of selection and appointment to the posts of Clerks as advertised in the light of advertisement dated 27.7.2011 and subsequent public notices dated 12.9.2011, 16.9.2011 and 20.9.2011.

(33) Petitions dismissed.

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*V.Suri*