decrees passed under Order 34, rule 6 of the Code. *The High Court was right in holding that interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed under section 32 of the Act.* We hold that the decision of the Karnataka High Court, referred to above, which has applied section 34 of the Code to a proceeding instituted under section 31(1) of the Act is not correctly decided."

(8) In view of this clear pronouncement made by the Supreme Court, it is not possible to accept the appellant's submission that the learned Single Judge had erred in holding that for purposes of proceedings under sections 31 and 32 of the State Financial Corporation Act, the District Judge was concerned with loanee's uptodate liability and not his liability as on the date of application under section 31 of the Act. The learned Judge, in our opinion correctly held that the amount for which property had to be sold had to be computed by taking into consideration loanee's uptodate liability in accordance with the terms of agreement entered into by him.

(9) Learned counsel for the appellant did not make any submission questioning the finding of the learned Single Judge that the agreement entered into between the parties on August 21, 1972, in which reference had also been made of the original agreement, clearly stipulated that loanee was liable to pay compound interest.

(10) As we do not find any merit in the only argument advanced on behalf of the appellant, the present appeal fails and is dismissed with costs.

R.N.R.

Before: H. N. Seth, C.J. and M. S. Liberhan, J.

RAM BHAGAT SINGH,—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 1313 *of* 1986

June 5, 1987.

Haryana Civil Services (Judicial Branch) Haryana 1st Amendment Rules, 1974—*Rules* 2, 7 *and* 8—*Selection on the basis of*

written and viva-voce test—Allocation of marks for viva-voce test—Extent of such allocation—Rule for judging fitness of a candidate—Such rule providing same percentage of marks for Scheduled Caste and general category candidates—Validity of such rule.

Held, that the marks allocated for viva-voce test should not exceed 12.2 per cent of the total marks taken into account for the purpose of selection. The total marks to be taken into account for the purpose of selection are 900 marks in the written test plus 120 marks for interview i.e. 1020 marks. 12.2 per cent of the total marks comes to 124.4. As 120 marks allocated for interview are well within the limits of 12.2 per cent of the total marks taken into account for the purpose of selection there has been no contravention of the guidelines laid down by the Supreme Court.

(Para 4)

Held, that the qualifying standard has been prescribed in Rule 8 of the Haryana Civil Services (Judicial Branch) Haryana 1st Amendment Rules, 1974, with a view to determine the fitness or suitability of a candidate for the job. The rules contemplate that the candidates who secure less than 55 per cent of the total marks both for the written and viva-voce test in the aggregate are not to be considered fit for the service. No one can claim that a scheduled caste candidate, even if he is not fit for the job, should be selected by lowering the standard for the purpose. There is no obligation upon the respondents to recruit the scheduled caste candidate by relaxing the standard for the purpose laid down in the rules.

(Paras 12 and 14)

Civil Writ Petition under Article 226/227 of the Constitution of India praying that the records of the case may be called for and after perusal of the same :—

(*i*) *to issue a writ in the nature of mandamus directing the respondents to relax the condition of 45 per cent and 55 per cent for Scheduled Castes candidates ;*

(*ii*) *to issue a writ in the nature of certiorari for declaring rule 2 of the H.C.S. (Judicial Branch) Haryana 1st Amendment Rules, 1974 as* ultra vires ;

(*iii*) *to issue any other writ, order or direction as this Hon'ble Court may deem fit in the peculiar circumstances of this case.*

(*iv*) *filing of certified copies of annexures be dispensed with.*

(*v*) *services of prior notices on the respondents be dispensed with.*

(*vi*) *costs of this petition be awarded to the petitioner.*

It is further prayed that during the pendency of the writ petition the respondent No. 2 be restrained in holding written tests for H.C.S. (Judicial Branch), in the interest of justice.

Ramesh Hooda, Advocate, *for the Petitioner.*

Kuldip Singh, Senior Advocate with Amarjit Singh, Advocate, for the *Respondent No.* 2.

JUDGMENT

H. N. Seth, C.J.

(1) The petitioner in these three petitions, namely, Ram Bhagat (Scheduled Caste), C.W.P. No. 1313 of 1986, Harish Chander, Advocate, C.W.P. No. 2742 of 1986 and Amin Lal Khichi, C.W.P. No. 1364 of 1986, were candidates for recruitment to the posts of Sub Judges in the Haryana Civil Service (Judicial Branch). They appeared at the written examination held for this purpose, by the Haryana Public Service Commission, in the months of October 1984 and January 1985. Subsequently, they were also called upon to appear at the *viva voce* tests. However, none of them was selected for appointment, inasmuch as, they did not, as required by Rule 8 of the Rules relating to the appointment of Subordinate Judges in Haryana (hereinafter referred to as the Rules), secure 55 per cent marks in the aggregate in the written papers and the *viva voce* tests. Aggrieved, they have approached this Court for relief under Article 226 of the Constitution.

(2) The petitioners claim that the recruitment proceedings, including their non-selection, stand vitiated for following four reasons:—

1. Fixing of total marks for interview/*viva voce* test in excess of 12.2 per cent of the marks allocated for the written papers is illegal.

2. Rule 8 which provides that no candidate should be considered to have qualified in the examination unless he

obtains at least 55 per cent marks in the aggregate in all papers including *viva voce* test, being irrational, is liable to be struck down.

3. The procedure adopted by the Public Service Commission for awarding marks at the *viva voce* test, being contrary to the guideline laid down by the Supreme Court in *Ashok Kumar Yadav* v. *State of Haryana and others* (1), stands vitiated.

4. The provision fixing identical qualifying marks as 55 per per cent both for general and Scheduled Caste candidates is illegal, inasmuch as it renders the reservation made for the Scheduled Castes nugatory.

(3) The petitioners, for their first ground of attack, claim support from the decision of the Supreme Court in *Ashok Kumar Yadav's case* (supra). They contend that the Supreme Court has, in this case, ruled that in competitive examinations, the marks fixed for interview must not exceed 12.2 per cent of the total marks for written examination. In the instant case, the Public Service Commission had allocated 900 marks for written papers and 120 marks for the *viva voce* test. As 12.2 per cent of 900 marks comes to 109.8, it was not open to the Commission to allocate more than 110 marks for the *viva voce* test. Inasmuch as the Commission allocated 120 marks for interview, the selection stands vitiated.

(4) We find no merit in the submission made by the petitioners. A careful reading of the judgment of the Supreme Court in *Ashok Kumar Yadav's case* (supra), does not bear out the submission that the marks allocated for interview should not exceed 12.2 per cent of the total marks allocated for the written papers. The observations made by the Supreme Court in this regard are as follows:—

> "...Where the competitive examination consists of a written examination followed by a *viva voce* test, the marks allocated for the *viva voce* test *should not exceed 12.2 per cent of the total marks taken into account for the purpose of selection...*"

In the instant case, the total marks to be taken into account for the purpose of selection are 900 marks in written papers plus 120 marks

(1) 1985(4) S.C.C. 417.

for interview is 1020. 12.2 per cent of the total marks comes to 124.4. As 120 marks allocated for interview are well within the limits of 12.2 per cent of the total marks taken into account for the purpose of selection, there has been, in this regard, no contravention of the guidelines laid down by the Supreme Court in *Ashok Kumar Yadav's case* (supra).

(5) In order to appreciate the second objection raised by the two petitioners, it would be pertinent to notice the provisions of Rules 7 and 8, contained in Part C of the Rules. The two provisions run thus:—

> 7. No candidate shall be called for *viva voce* test unless he obtains at least 45 per cent marks in the aggregate in all the written papers and 33 per cent marks in the language paper, Hindi (in Devnagri script).
>
> 8. No candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers including *viva voce* test.

According to these rules, a candidate can be considered to have qualified for appointment only if he secures at least 55 per cent marks in the aggregate of all papers including *viva voce* test, i.e., 55 per cent of total marks 1020, which comes to 561. Rule 7, however, lays down that no candidate shall be called for the *viva voce* test, unless he obtains at least 45 per cent marks in the aggregate in all written papers. In other words, a candidate securing 45 per cent of 900 marks, i.e., 405 marks in the written papers becomes eligible for being called for interview. It is contended that as such candidate and candidates obtaining upto 441 marks, i.e., 49 per cent marks in the written papers, even if they are awarded 100 per cent marks in the interview (120 marks), would still not be in a position to secure 55 per cent marks in the aggregate of all papers including *viva voce* test, the provisions contained in the two rules, namely, that the persons with at least 45 per cent marks in the aggregate in all written papers would be eligible for being called for *viva voce* test and those securing at least 55 per cent in the aggregate in all papers including *viva voce* test, along will be deemed to have qualified in the examination, are rendered meaningless.

(6) In this connection, it is significant to note that, to begin with, allocation of marks had been made in the Schedule attached to Part C of the Rules. According to the Schedule whereas 900 marks had been allocated for five written papers, the marks allocated for the interview/*viva voce* were 200. On this basis, it was possible for the persons securing 45 per cent marks of the written papers, i.e., 405 marks to secure a total of 605 marks, i.e., 55 per cent of 1100 marks and there appeared to be no irrelevancy in the Rule. However, in *Ashok Kumar Yadav's case* (supra), the Supreme Court ruled that in order to avoid any arbitrariness, in cases where competitive examination is held followed by interview, the marks allocated for interview should not exceed 12.2 per cent in aggregate of the total marks. The Commission, therefore, reduced the allocation for interview from 200 to 120 marks, resulting in a situation where it became impossible for candidates, obtaining marks between 45 per cent and 49 per cent in the aggregate in the written papers, i.e., 405 to 441 marks to, even if they secured 100 per cent marks in the interview (120 marks) qualify for appointment as laid down in Rule 8 and calling of such candidates (securing in between 405 and 441 marks in the written papers) for interview has, therefore, become a mere exercise in futility.

(7) The purpose behind Rule 8, when it provides that no candidate shall be considered to have qualified unless he obtains at least 55 per cent marks in the aggregate of all papers including *viva voce* test, clearly is to lay down a standard for judging the fitness or suitability of a candidate for appointment as Sub Judge. As it was, at the time when Rule 7 was framed, possible for a candidate securing merely 45 per cent marks in the aggregate in written papers to obtain 55 per cent marks in aggregate of all the papers including written and *viva voce* test (marks allocated for *viva voce* test being 200), the Rule provided that persons securing less than 45 per cent marks in the written papers i.e., persons who could not, even if they secured 100 per cent marks (200 marks) in the *viva voce* qualify for selection, are not to be called for interview. Its purpose merely was to avoid futile interviews. However, when as a result of guideline laid down by the Supreme Court in *Ashok Kumar Yadav's case* (supra), the Commission reduced the marks for interview/*viva voce* test from 200 to 120, its purpose was not to dilute the standard set up by Rule 8 for judging the suitability or fitness of a candidate for the job in the Service. It is true that as a result of reduction in the marks allocated for *viva voce* test from 200 to

120, calling of the candidates securing between 45 per cent and 49 per cent marks in the written papers, for interview or *viva voce* test, has become redundant, but then it, in our opinion, has absolutely no impact on the standard set up by Rule 8 for judging the fitness or suitability of a candidate for the job. Merely because some candidates who could not possibly qualify, have been interviewed, it does not mean either that any legal right of theirs has been affected or that any prejudice is caused to them. In the result, we find that the incongruity pointed out by the petitioners is not such, which, in any way, affects the validity either of the provisions contained in Rule 8 or that of their non-selection.

(8) Coming now to the third objection raised on behalf of the petitioners, we find that their case, as set up in paragraph 19 of the petition filed by Harish Chander, Advocate (C.W.P. No. 2742 of 1986) is that the Haryana Public Service Commission had evolved a method of giving grades instead of marks at the time of interview. The candidates graded as 'A' were supposed to have secured marks ranging from 81 to 120 and those graded as 'B' and 'C' 41 to 80 marks and 1 to 40 marks, respectively. This, according to the petitioners, could not be done, as for determining merit, the exact marks which the candidate is supposed to have obtained at the time of interview have to be added to the marks obtained by him in written examination. Although in the written statement filed by them, the respondents did not disclose the precise procedure adopted by the Commission for awarding marks at the interview, learned counsel appearing for them, obtained instructions and explained to the Court that for purpose of assessing the merit of a candidate at the time of interview/*viva voce* test, the Haryana Public Service Commission constituted a Board in which a sitting Judge of the High Court had been associated as an expert. After a candidate was interviewed, the expert graded him as 'A' or 'B' or 'C', i.e., he indicated to the Commission that the candidate graded by him as 'A' deserved 81 to 120 marks, those graded by him as 'B' and 'C' deserved 41 to 80 marks and 1 to 40 marks respectively. Thereafter, the members of the Commission, on the basis of their own assessment, proceeded to award exact number of marks to the candidate within the range indicated by the expert. Learned counsel for the petitioner accepted that the learned counsel for the respondents have correctly described the procedure adopted by the Commission in awarding marks at the time of *viva voce* test. He, however, urged that the said procedure was objectionable inasmuch

as, it derrogated from the following observation made by the Supreme Court in *Ashok Kumar Yadav's case* (supra):—

> ".....It is essential that when selections to the Judicial Service are being made, a sitting Judge of the High Court be nominated by the Chief Justice of the State should be invited to participate in the interview as an expert and since such sitting Judge knows the quality and character of the candidates appearing for the interview the advice given by him should ordinarily be accepted, unless there are strong and cogent reasons for not accepting such advice and such strong and cogent reasons must be recorded in writing by the Chairman and members of the Public Service Commission."

We are unable to accept the submission made on behalf of the petitioners. What the aforementioned observations convey is that while conducting interview for selection of judicial officers, a sitting High Court Judge must, for the purpose of advising the Commission, be associated by it as an expert and the Chairman and members of the Commission should be guided by and should act in accordance with the advice of the expert. In the instant case, it is not disputed that a sitting Judge of the High Court was associated with the Commission as an expert. He categorised the candidates appearing before the Board as 'A', 'B' or 'C' and the Chairman and members of the Commission awarded by them the marks in accordance with the grading made by the expert, namely, the candidates who had been graded as 'A' were awarded definite marks falling in between 81 and 120. Likewise, the candidates graded as 'B' or 'C' were awarded definite marks falling in between 41 and 80 and 1 to 40, respectively. The Commission had, therefore, as observed by the Supreme Court, accepted the advice given by the expert and had acted accordingly. The submission that in such a case the expert should have been called upon to recommend to the member of the Commission the exact number of marks that each individual candidate, according to him, deserved and the Commission should have awarded exactly the same marks to the concerned candidate and that the power given to the Commission to award marks within the range determined by the expert is objectionable, does not appeal to us. If the Commission is bound down to the exact marks recommended by the expert, it will mean that it is the expert who alone is to assess the merit of the candidate at the time of the interview and that the Chairman and other members of the Commission are not to play any role in this regard. Surely, such a position

cannot be countenanced. The merit of a candidate had to be judged by the Commission, in consonance with the advice given by the expert and this is precisely what has been done in this case when the Chairman and members of the Commission awarded marks to various candidates within the range determined for each of them by the expert. Accordingly, we do not find anything objectionable in the procedure adopted by the Commission in this regard. There is thus no merit in the third objection raised on behalf of the petitioners as well.

(9) Coming now to the last objection, the case of the petitioners is that Rule 8, which provides that no candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers, including *viva voce* test, is applicable both to general as well as Scheduled Caste candidates. No relaxation has been given to the Scheduled Caste candidates in this regard. In absence of such relaxation, the reservation made in favour of the Scheduled Caste candidates has become meaningless. It is urged on their behalf that in the matter of selection, the Scheduled Caste candidates must not be treated as equal to or at par with the upper section of the society and it is obligatory upon the respondents to provide certain safeguards for them. In order to give effect to the policy of reservation for the Scheduled Castes, it is necessary to fix a lower qualifying standard for them. It was precisely for this reason that the posts reserved for the Scheduled Caste could not be filled by them. The petitioners also pointed out that in various States, lower qualifying standards, as compared to general candidates, have been fixed for judging the merit of Scheduled Caste candidates and there is no reason why the State of Haryana should be an exception to it.

(10) In support of his submission, learned counsel for the petitioners strongly relied on the case of *The Comptroller and Auditor General of India and another* v. *K. S. Jagannathan and another* (2). The petitioners in that case who belonged to Scheduled Caste, were working as Selection Grade Auditors in the Department of Indian Audit and Accounts at Madras. The next promotional post for them was that of Section Officer in the same Department and in order to obtain such promotion, Selection Grade

(2) 1986(1) S.L.R. 712.

Auditors were required to pass the Subordinate Accounts Service Examination (SAS Examination) consisting of two parts, namely, Part I and Part II. The petitioners passed I examination and in Part II examination, they secured the minimum number of marks in each individual subject which was 40 per cent and in some papers more than minimum number of marks, but failed to secure in the aggregate minimum of 45 per cent marks. As the promotion was denied to them, they approached the Madras High Court praying for a writ of mandamus directing the Comptroller and Auditor General of India and the Accountant General, Madras, to make, in accordance with the instructions in office memorandum dated January 21, 1977, issued by the Department of Personnel and Administrative Reforms addressed to all Ministries, suitable relaxation for the petitioners in the qualifying standard of marks for Part II of the SAS Examination and to declare them as having passed the same. The said writ petition was dismissed by learned Single Judge of the Madras High Court. In appeal, the petition was allowed by a Division Bench, which directed the Comptroller and Auditor General of India as also the Accountant General, Madras, to give suitable relaxation to the two petitioners and to, in that light, consider whether they had qualified themselves in Part II of the SAS Examination. The department then took the matter up in appeal to the Supreme Court. The office memorandum relied upon for the purpose concerned itself with relaxation of standards in the case of Scheduled Caste/Scheduled Tribes candidates in qualifying examinations for promotion to the higher grade on the basis of seniority subject to fitness. It stipulated that in cases of promotion made through departmental competitive examination, and in departmental confirmation examinations, if sufficient number of Scheduled Caste/Scheduled Tribes candidates are not available on the basis of general standard to fill the vacancies reserved for them, candidates belonging to those communities who could not acquire the general qualifying standard should also be considered for promotion/confirmation provided they were not found unfit for such promotion/confirmation and that aforesaid direction was also to apply to cases where there was reservation for Scheduled Caste and Scheduled Tribe candidates and the promotions had to be made on the basis of seniority subject to fitness with a provision for holding a qualifying examination for determining the fitness of candidates for such promotion. The memorandum made it clear that the extent of relaxation was to be decided on each occasion whenever such an examination was held taking into

account all relevant factors, including the number of vacancies served, the performance of Scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examination, the minimum standard of fitness for appointment to the post, and the overall strength of the cadre and that of the Scheduled Caste and Scheduled Tribes in that cadre. A number of arguments including that regarding the nature of the writ or direction that could, in the circumstances, be issued by the High Court in exercise of its jurisdiction under Article 226 of the Constitution and the nature of the discretion conferred in respect of granting of relaxation in the qualifying standard by the office memorandum dated January 21, 1977, relied upon by the petitioners, were raised before the Supreme Court, which eventually came to the conclusion that the discretion conferred by the office memorandum for giving relaxation to the Scheduled Caste/Scheduled Tribes candidates was coupled with a duty and that it had to be exercised in accordance with the instructions on the subject from time to time. It observed that what was required to be done under the office memorandum was to fix a general qualifying standard for all candidates appearing in departmental competitive examinations for promotion and confirmation. It also required fixation of a relaxed or lower qualifying standard in respect of each examination for candidates belonging to the Scheduled Castes and the Scheduled Tribes, so that if a sufficient number of candidates belonging to the Scheduled Castes and Scheduled Tribes do not qualify according to the general standard, they could be considered for promotion in the light of the relaxed or lower qualifying standard. In this regard, the Court also referred to an office memorandum of the year 1970 in which it had been provided that in case of direct recruitment, whether by examination or otherwise, if sufficient number of Scheduled Caste/Scheduled Tribes candidates were not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities should be selected to fill up the remaining vacancies reserved for them provided they were not found unfit for appointment to such post or posts. The observations indicate that the Supreme Court, in the light of the provisions contained in the office memorandum, as also in the context in which those provisions had been made, felt that there is a basic difference between fixing of a general qualifying standard and that specified for determining whether a person was fit for the job. It felt that in the case before it, the general qualifying standards and the relaxed qualifying standards had not been fixed for the purposes of finding

out whether a candidate was fit for the job. This becomes clear from the way it dealt with the submission made on behalf of the respondents in the writ petition to the effect that the authorities cannot give relaxation in such manner tends to impair the efficiency of the Service and that had the relaxation been given to a greater extent, it would have resulted in impairing the maintenance of efficiency of the SAS especially in view of the fact that the memorandum specifically provided that relaxation was to be made provided the candidates belonging the Scheduled Castes and the Scheduled Tribes were not found unfit for the promotion. In this connection, the Supreme Court observed thus:—

> "This submission would require to be accepted had it any relevance to the facts of the present case. However much one may desire to better the prospects and promote the interests of the members of the Scheduled Castes and the Scheduled Tribes, no sane-thinking person would want to do it irrespective of the considerations of efficiency, or at the cost of the proper functioning of the administration and the governmental machinery. Public good and public interest both require that the administration of the Government and the functioning of its services should be carried out properly and efficiently. Article 335 of the Constitution, which provides for the claims of the members of the Scheduled Castes and the Scheduled Tribes to be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State, itself requires that this should be done 'consistently with the maintenance of efficiency of administration'."

(11) However, in the context in which the memorandum in questions was issued, by referring to various paragraphs of the relevant Manual, the Supreme Court came to the conclusion that the general qualifying standard fixed for the SAS Part II examination did not appear to have been so fixed for the purposes of determining the fitness of the candidate. This would be borne out from the following observations appearing in the judgment of the Court:—

> "The question of impairment of efficiency of the SAS service does not, however, arise here. The relevant paragraphs of the said Manual have already been referred to but it will not be out of place in the context of the above submission, to refer to them again. The relevant paragraphs

are 197, 198, 199 and 207. Both the Respondents were permitted to appear in Part I of the SAS Examination and after passing such examination were permitted to appear for Part II of the SAS Examination. Under paragraph 197, they required permission of the Accountant General or Head of Office to do so. Under paragraph 198, the selection of the candidates was primarily the responsibility of the Head of the Office. Under paragraph 199, the essential condition of such selection was that the candidates selected would, if qualified by examination, be likely to be efficient in all the duties of the SAS. Under paragraph 207, a certificate had to be given to each candidate that he was regular in attendance, energetic, of good moral character and business-like habits for appointment to the SAS and was not likely to be disqualified for appointment to the SAS as not possessing the aptitude for the work of a holder of a post in the SAS and that he had a reasonable prospect of passing the examination. This certificate is required by paragraph 207 to be given 'with due responsibility and not as a matter of form'. Thus, unless some event had occurred between the date of the giving of the certificate and the final declaration of results which would disqualify a candidate from discharging the duties of a post in the SAS, he is considered to be eligible for promotion to the SAS, subject only to the condition that he passes the examination. The said Office Memorandum dated January 21, 1977, is not intended only for the Department of the Comptroller and Auditor General of India. It also applies to all Ministries and Departments, and it has to be applied in the context of the rules concerning each Department. The condition contained in the said Office memorandum dated January 21, 1977, that the candidates belonging to the Scheduled Castes and the Scheduled Tribes should not be found unfit for promotion is a general condition applying to all Ministries and Department. In the case of candidates selected to appear for the SAS examination, this condition has already been satisfied by reason of their selection as candidates. If it was considered that the Respondents would not be able to discharge the duties of the holder of a post in the SAS, they would not have been given the

relevant certificate required under paragraph 207 of the said Manual. They were given such certificates and it is not open to the appellants to take a stand contrary to what the certificates given to the Respondents state."

Aforementioned observations made by the Supreme Court clearly indicate that in the context in which memorandum dated January 21, 1977, was issued, only such candidates were being sent up for participating in the SAS examination, who were in a position to discharge the duties of the holder of a post in the SAS and, as such, the general qualifying standard specified in the examination was for a purpose other than for determining their suitability for the job. In the circumstances, if the qualifying standard to select suitable Scheduled Caste candidates was fixed at a limit lower than that for the selection of general candidates, it could not be said that the relaxation was going to have the effect of impairing the maintenance of the efficiency of the Service.

(12) In the case before us, we find that, unlike the provision in the manual for the SAS examination, which was considered by the Supreme Court, no procedure for determining the suitability of candidates for selection to the Haryana Civil Service (Judicial Branch), before they are called upon to appear in the competitive examination, has been provided for. As already indicated in the earlier part of the judgment, it appears to us that the qualifying standard has been prescribed in Rule 8 with a view to determine the fitness or suitability of a candidate for the job. The Rules contemplate that the candidates, who secure less than 55 per cent of the total marks both for written and *viva voce* in the aggregate, are not to be considered fit for the service. No one can claim that a Scheduled Caste candidate, even if he is not fit for the job, should be selected by lowering the standard fixed for the purpose.

(13) No case has been brought to our notice where it has been held that the criteria fixed for determining the fitness or suitability of a candidate for a job can be lowered for accommodating Scheduled Caste candidates. Where a person fails to attain the level fixed for determining the suitability of a candidate, it obviously means that he is, irrespective of whether he is a general or a Scheduled Caste candidate, unsuitable for the job. Hence, as pointed out by the Supreme Court, one would not be justified in selecting an unsuitable candidate by lowering standard laid down for this purpose.

(14) As, in our opinion, the criteria laid down in Rule 8, is for determining the suitability of a candidate for Haryana Civil Service (Judicial Branch), there is no obligation upon the respondents to recruit the Scheduled Caste candidates by relaxing the standard for the purpose laid down in the Rule. There is, thus, no force in the fourth submission made on behalf of the petitioners.

(15) As we do not find any substance in any of the four submissions made on behalf of the petitioners, the petitions fail and are dismissed.

Costs on parties.

S.C.K.

Before D. V. Sehgal, J.

G. S. CHAWLA,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2302 of 1986.

July 14, 1987.

Constitution of India, 1950—Art. 14—Haryana State Cooperative Supply and Marketing Federation (Common Cadre) Rules, 1969—Rule 2.10—Permanent employee of HAFED—Statutory rule providing for removal of such employee without inquiry—Such Power—Whether arbitrary—Rule granting such Power—Validity of such rule.

Held, that the power to remove an employee without holding an inquiry is arbitrary and unguided power is vested thereby in the appointing authority to choose to hold an inquiry in a particular case or to terminate the services of an employee by giving him one month's notice or pay in lieu thereof. There is no escape from the conclusion that rule 2.10 vesting power in the appointing authority to terminate the services of an employee who has been confirmed or has been made regular after successful completion of the probation particularly when such termination is actuated by the allegation of misconduct against him is violative of the rule of equality enshrined in the Constitution of India.

(Para 8)