

A.F.R.

Judgment reserved on 17.3.2021

Judgment delivered on 21.6.2021

Case :- WRIT - A No. - 26813 of 2018

Petitioner :- Ajay Prakash Mishra and 216 others

Respondent :- State of U.P. and 3 Others

Counsel for Petitioner :- Seemant Singh, Ashok Kumar Singh, Dhiraj Singh, Ganesh Kumar, Rakesh Kumar, Vibhu Rai

Counsel for Respondent :- C.S.C.

Connected with Writ A Nos. 27810 of 2018, 1488 of 2019, 1850 of 2019, 2503 of 2019, 3027 of 2019, 3281 of 2019, 3754 of 2019, 3894 of 2019, 4896 of 2019, 5604 of 2019, 5831 of 2019, 6182 of 2019, 6185 of 2019, 6542 of 2019, 6948 of 2019, 8771 of 2019, 10280 of 2019, 12085 of 2019, 15037 of 2019, 15763 of 2019, 15790 of 2019, 15959 of 2019, 16054 of 2019, 16250 of 2019, 16408 of 2019, 17080 of 2019, 17317 of 2019, 17385 of 2019, 17512 of 2019, 17739 of 2019, 18196 of 2019, 18595 of 2019, 18944 of 2019, 19220 of 2019, 19392 of 2019, 20006 of 2019, 20238 of 2019, 20357 of 2019, 20362 of 2019, 20680 of 2019, 111 of 2020, 132 of 2020, 155 of 2020, 260 of 2020, 529 of 2020, 571 of 2020, 578 of 2020, 597 of 2020, 620 of 2020, 874 of 2020, 1070 of 2020, 1245 of 2020, 1283 of 2020, 1409 of 2020, 1415 of 2020, 1465 of 2020, 1974 of 2020, 2027 of 2020, 2033 of 2020, 2087 of 2020, 2147 of 2020, 2182 of 2020, 2266 of 2020, 2314 of 2020, 2353 of 2020, 2362 of 2020, 2377 of 2020, 2419 of 2020, 2886 of 2020, 3452 of 2020, 3526 of 2020, 3748 of 2020, 3955 of 2020, 4110 of 2020, 4520 of 2020, 4715 of 2020, 5249 of 2020, 6196 of 2020, 6240 of 2020, 6242 of 2020, 6611 of 2020, 6841 of 2020, 7913 of 2020, 9262 of 2020, 9370 of 2020, 9801 of 2020, 10015 of 2020, 10630 of 2020, 10701 of 2020, 10914 of 2020, 11860 of 2020, 11861 of 2020, 12308 of 2020 and 1389 of 2021

Hon'ble Mahesh Chandra Tripathi, J.

1. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri Siddharth Khare, Advocate; Shri H.N. Singh, learned Senior Advocate assisted by Shri Seemant Singh, Advocate; Shri Vijay Gautam, learned Senior Advocate assisted by Shri Pradeep Kesharwani, Advocate, Ms. Atipriya Gautam, Advocate, Shri Anoop Trivedi, learned Senior Advocate assisted by Shri Vibhu Rai, Advocate, Shri Vinod Kumar Mishra, Advocate and Shri Devesh Mishra, Advocate; Shri Tarun Agrawal, Advocate and Shri Mujeeb Ahmad Siddiqui, Advocate for the petitioners and Shri Manish Goyal, learned Additional Advocate General assisted by Shri Bipin Bihari Pandey, learned Chief Standing Counsel, Shri A.K. Goyal, learned Additional Chief Standing Counsel, Shri Sanjay Kumar Singh, learned Additional Chief Standing Counsel, Shri Apurva Hajela, learned Standing Counsel, Shri Devesh Vikram, learned Standing

Counsel, Shri Sheetala Prasad, learned Standing Counsel and Shri Vikram Bahadur Yadav, learned Standing Counsel for the State respondents.

2. All the writ petitions relate to similar facts and raise common questions of law, therefore, with the consent of the counsel for the parties, all the petitions have been heard together and are being decided by means of a common judgment.

3. In this group of cases the petitioners are seeking suitable direction upon the respondents to consider their claim for selection and appointment on the vacant posts of Constables (Civil Police) and Provincial Armed Constabulary (PAC) Direct Recruitment-2015 initiated in pursuance of the advertisement dated 29.12.2015 published by the Additional Secretary (Recruitment), U.P. Police Recruitment and Promotion Board, Lucknow.

4. For the sake of convenience, the facts of leading Writ A No.26813 of 2018 are being noted below:-

5. Ajay Prakash Mishra and 216 others are before this Court with following prayers:-

“i) Issue a writ, order or direction in the nature of mandamus directing the respondents to consider the claim of the petitioners in respect of their selection on the post of Police Constable and Constable PAC against the posts, which are lying vacant by lowering down the cut-off marks in respect of different categories in the selection of Police Constable and Constable PAC for male candidates in pursuance of advertisement dated 29.12.2015 issued by the Additional Secretary (Recruitment), Uttar Pradesh Police Recruitment and Promotion Board, Lucknow and in the selection of Police Constable for female candidates in pursuance of advertisement dated 29.12.2015 issued by the Additional Secretary (Recruitment) Uttar Pradesh Police Recruitment and Promotion Board, Lucknow within stipulated period of time as fixed by this Hon'ble Court.

ii) Issue any other suitable writ, order or direction as this Court may deem fit and proper in the facts and circumstances of the case.

iii) Award the costs of the petition to the petitioners.”

6. The factual matrix, which is relevant for considering the relief that falls for consideration to this Court in all the writ petitions, is common. A notification was issued on 29.12.2015 by the Uttar Pradesh Police Recruitment and Promotion Board, Lucknow,

notifying recruitment of Constables (Civil Police) and Provincial Armed Constabulary (for short 'PAC') under the Uttar Pradesh Police Constable and Head Constable Service Rules, 2015 (for short, Rules, 2015). The respondents had notified 23200 posts of Constable (Civil Police) and 5716 posts for PAC, totalling 28,916, prescribing 17.2.2016 as last date for registration of online applications and 22.2.2016 for submission of the applications.

7. The Rule 15 (b), 15 (c) and 15 (e) of the Rules, 2015 were challenged before this Court in **Ranvijay Singh and others vs. State of UP and others**¹ for considering the question regarding ideal mode of selection to the post of Police Constable, by written examinations, as provided for under Rule 15 of the Uttar Pradesh (Civil Police) Constable and Head Constable Service Rules, 2008 (for short 'Rules, 2008') or on the basis of marks awarded in 10th and 12th Board examination results, as provided for in the Rules, 2015. The primary challenge raised in the said writ petition under Article 226 of the Constitution of India, was to the Rules 15(b), 15(c) and 15(e) of the Rules, 2015, whereby, Preliminary Written Test and Main Written Examination, that was provided for in the Rules, 2008, has been done away with by providing selection on the basis of marks awarded in 10th and 12th Board examination results or qualification equivalent thereto, as provided under clause (8) of Rules, 2015. In the said writ petition vide order dated 27.5.2016 the Court had directed the State Government to continue with the recruitment process, but restrained them from declaring the result till the next date of hearing. In the aforesaid writ petition, the respondents had filed counter affidavit stating that for the posts of 28,916 male vacancies, 15,63,674 applications and for 5800 female vacancies, 56338 applications were received. Finally, a Division Bench of this Court had proceeded to dismiss the writ petition with following observations:-

“25. Having so observed, we are of the opinion that the object of any process of recruitment for the post of constable is to secure best and most suitable person for the job, obviously avoiding patronage and favoritism and, therefore, the selection should be based on merits and should be fair. Therefore, giving paramount importance to physical efficiency test, for the

1. Writ C No.3336 of 2016

post of constable, in our opinion, is most fair and ideal way of recruitment, coupled with their merit based on the marks obtained by them in 10th and 12th standard examinations conducted by a Board. It is common knowledge that in the process of recruitment for the posts, such as constables, lot of manipulation and unfair tactics are adopted, particularly if independent written examination and interviews are made as part of the process of selection. In fact, this is all done away with by the impugned Rules, which provide for selection solely on the basis of the marks obtained by candidates in 10th and 12th standard examinations and their physical efficiency test and physical fitness. Having regard to the fact that the procedure for recruitment introduced and prescribed by the impugned Rules, we are satisfied that it will avoid patronage and favoritism and the selection would be absolutely transparent and it would not be possible for any one to either manipulate or show any favour in the process of recruitment. Therefore, it cannot be stated that it is either arbitrary or irrational and violative of Article 14 of the Constitution of India. As a matter of fact, the procedure contemplated by the impugned Rules for recruitment, discloses sufficient safeguards. It does not deprive or discriminate any eligible person from fair and transparent selection based on merits. Insofar as physical fitness is concerned, by Rules, 2015, as observed earlier, the physical efficiency test is made more stringent, commensurate with the post for which the recruitment drive under these Rules is undertaken without diluting the academic performance.

26. It is now well settled, as observed by the Supreme Court in Chandigarh Administration (supra), that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts can neither prescribe the qualification nor trench upon the power of the authority concerned so long as the qualifications prescribed by the appointing authority/employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provisions of the Constitution, Statute and Rules. It is equally well settled that laying down of relevant criteria for recruitment is within the exclusive domain of the employer. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations and restrictions envisaged in the Constitution of India and it is not for the courts, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or impose itself by substituting its views for that of the State [See P.U. Joshi (supra)]. Similarly, it is well open and within the competence of the State to change the rules relating to a service and alter or amend or vary by addition/subtraction of qualifications, the eligibility criteria and other conditions of service, from time to time, as the administrative exigencies may need or necessitate. There is no right in any person to claim that the rules for recruitment should be forever the same as the one which is more suited to him. Merely because written test has been restored by the State once again by further amending the Rules in 2017 would not render the impugned Rules in Rules, 2015 arbitrary and irrational. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is arbitrary or is vitiated due to mala fides. We have applied all these tests while examining the challenge and we are satisfied that the impugned Rules are neither arbitrary nor irrational nor contrary to any constitutional or statutory provision or are vitiated due to mala fides.

27. In the circumstances, we find no merit in the challenge raised in these writ petitions. The petitions are accordingly dismissed and we hold that the mode of selection to the post of police constable on the basis of the marks awarded in 10th and 12th standard Board examination results deserves no

interference by this Court or the impugned Rules cannot be declared ultra vires the Constitution of India”.

GROUND OF ATTACK

8. It has been submitted on behalf of the petitioners that the Rules, 2015 provide that the posts, which came to be vacant at the time of verification of documents and physical standard test, shall not be carried forward for further selection. Such vacant posts have to be filled up by next meritorious candidates in the same selection. The respondent Police Board, in the garb of the Rules, 2015, is adamant not to fill up the remaining vacant posts of Constable (Civil Police) and Constable (PAC) for the reasons best known to it. The petitioners are under the zone of consideration as they are all selected and as such, their valuable rights are going to be frustrated on account of inaction of the Police Board. In any eventuality the vacant posts cannot be carried forward for the next selection year. The Rules, 2015 do not provide that in any eventuality in case at the time of verification of documents and physical standard test any candidate fails to achieve the minimum required standard or failed to clear the minimum physical standard test then in such situation said post is to be carried forward in the next selection. The post is to be filled up from the same selection process and therefore, the merit was required to be lowered to select the remaining candidates, who were otherwise eligible.

9. It is being claimed that the petitioners applied under different categories and their category-wise merit is given in paragraph-9 of the leading writ petition. All the petitioners participated in the physical efficiency test and secured minimum prescribed 191.6 cutoff marks and were declared as qualified. Consequently, the petitioners were called upon for appearing in the verification of documents and physical efficiency test. It is being claimed that all the petitioners appeared in the said process. The petitioners could not reach to the cutoff merit prescribed by the Police Board for the verification of documents and physical efficiency test. The Police Board had prescribed the cutoff merit for 403.6 marks (General Category);

394.73 marks (OBC) and 380.3 marks (SC/ST).

10. In this backdrop, it is being claimed that candidatures of large number of candidates, whose mark sheets of Class-X and XII examinations were found to be forged, were cancelled by the Police Board. Similarly, the candidates, who found place in the select list dated 15.5.2018 and 21.5.2018 and further whose marks sheet of Class-X and XII examination were found to be genuine, were called upon for appearing in the medical examination in which again large number of candidates were declared as medically unfit, causing 3000 vacancies of Constable (Civil Police) and Constable (PAC). The petitioners, who are next in the merit list, are to be considered by lowering down the merit category-wise, otherwise, the petitioners shall suffer irreparable loss and injury.

GROUND OF DEFENCE

11. Per contra, Shri Manish Goyal, learned Additional Advocate General appearing for the State submitted that the advertisement was made on 29.12.2015 for 23,200 male and 5800 female posts of Constable (Civil Police) and 5716 posts of Constable (PAC). In pursuance of the requisition, the Police Board initiated the process of selection which was followed by preparation of merit list on the basis of marks obtained by them in 10th and 12th standard board examination results, physical efficiency test, scrutiny of documents & physical standard test, selection and preparation of final merit list on their part. Finally, the result was declared on 15.5.2018 by the Police Board on its official website. The candidates, whose names were in the select list, were required to appear for the medical examination by the appointing authority. However, since a technical error was occurred, the amended result of 4350 Constable (PAC) was declared on 24.5.2018 and 1366 Constable (PAC) (General Category) and 13 Constable (Female) (SC category) was declared on 25.1.2019 by the Selection Board on its official website. Thereafter, the selected candidates were sent to their respective districts/battalions for the purpose of medical examination and character verification and further

process was carried out at districts level for Constable (Civil Police) and battalion level for Constable (PAC). The selected candidates joined police force and sent for training.

12. Shri Manish Goyal further submitted that in terms of the direction issued by Hon'ble Apex Court in **Manish Kumar vs. Union of India and ors**² the guideline was issued by the State Government vide letter dated 18.5.2017 providing, therein, the process of recruitment of remaining 1,01,619 vacancies of Constable in the State of Uttar Pradesh. During the ongoing process of selection of the year 2015 and in compliance of the direction of Hon'ble Apex Court dated 24.4.2017 the requisition for recruitment process of the year 2017 was sent to the Police Board on 12.1.2018. The collective left over vacancies in the Constable (Civil Police) Recruitment 2015 and Constable PAC Recruitment 2015 were carried forward in the requisition of Constable recruitment of the year 2018, which was sent to the Police Board on 30.10.2018. The same vacancies have been quantified as 2846 and a district-wise chart has also been prepared giving the vacancies occurred in each and every district. With regard to the remaining posts of Constable (PAC) similar procedure was initiated by the respondents in terms of the result dated 21.5.2018. The Additional Director General (PAC) vide his letter dated 17.10.2018 intimated that 18,580 posts of Constable (PAC) were available for recruitment and 1366 remaining posts of Constable (PAC) 2015 whose result were not declared by the Police Board till date, were included in the category of ongoing recruitment. In pursuance of the final result of police constable as provided by the Police Board on 21.5.2018, the entire process was completed and the left over vacant posts were carried forward by the Police Board in the recruitment and selection process of the subsequent recruitment year 2017.

13. Shri Manish Goyal has contended that sole relief has been pressed by the petitioners for lowering down the merit and in absence of any serious challenge to the Rule, 2015, the said relief cannot be

2. Writ Petition No.183 of 2013

accorded to them under Article 226 of Constitution of India. So far as the Rules, 2015 are concerned, the same has been upheld by the Division Bench of this Court in **Ranvijay Singh** (supra). Similar relief and Rule 15 of the Rules, 2015 have also been considered in **Chandra Prakash Yadav vs. State of UP and 3 others**³ and in **Ankit Yadav vs. State of UP and 3 others**⁴, wherein, the Court has held that the action of the respondents is not arbitrary and held that the recruitment process has already over. The resultant vacancies occurred on account of non-availability or non-joining of the candidates can only be filled up in the next selection process and the cutoff of merit cannot be lowered. Therefore, he submitted that judicial propriety also demands that these writ petitions are liable to be dismissed on this very sole ground.

14. He further submitted that the relief, as has been framed and drawn, cannot be accorded under Article 226 of Constitution of India. Eventually, such relief would lead to preparation of wait list, which is impermissible as per Rules, 2015 wherein, full fledged recruitment process is defined. In any case the Rules, 2015 do not provide any discretion to the selection authority to lower down the cutoff merit and preparation of a wait list. (Ref.: **Bihar State Electricity Board vs. Suresh Prasad and others**⁵ and **Abhinav Anand Singh and ors vs. State of UP and ors**⁶).

15. Shri Manish Goyal further submitted that mere participation in different stages of selection process does not vest any indefeasible right to a candidate much less a legitimate expectation to be included in the select list. (Refer: **State of M.P. And ors vs. Sanjay Kumar Pathak and ors**⁷; **Union Public Service Commission vs. S. Thiagarajan and others**⁸ and **Shankarsan Dash vs. Union of India**⁹). He has also submitted that the petitioners have already

3. Writ A No.401 of 2021 decided on 27.1.2021

4. Writ A No.1334 of 2021 decided on 05.2.2021

5. AIR 2004 SC 1724 (paras 6 and 7)

6. 2016 SCC Online All (DB) (paragraphs 7, 12 and 13)

7. 2008 (1) SCC 456 (paras 18, 19, 20, 24 and 25)

8. 2007 (8) JT 451 (paragraph-22)

9. AIR 1991 SC 1612 (paras 7, 8, 9, 10 and 11)

participated in the selection process and since very beginning they were known with the conditions applicable to such selection process. Subsequently, they cannot turn around and challenge the selection process after being declared unsuccessful. (Refer: **Dr. Sarojkumari vs. R. Helen Thilakom and ors**)¹⁰; **Ashok Kumar and another vs. State of UP and others**¹¹ and **K.H. Siraj vs. High Court of Kerala and others**¹². Lastly, he has submitted that the difference between physical efficiency test under Rule 15 (c) and medical examination under Rule 15 (g) of the Rules, 2015 is not of nomenclature but is substantive. (Refer: **State of U.P. and 5 others vs. Bhanu Pratap Rajput**)¹³.

16. I have carefully considered the submissions of learned counsel for the parties and perused the records.

17. In order to understand the challenge better, it would be appropriate to have a close look at Rule 15 in the Rules, 2008 and the Rules, 2015. The Rules, 2008 provided for Preliminary Written Test, followed by Physical Efficiency Test and then Main Written Examination under clauses (c), (d) and (e) of the Rule 15 of the Rules, 2008. The basic academic qualification for direct recruitment to the post of constable remained the same i.e. one must possess the qualification of 12th standard by a Board established by law in India or a qualification recognized by the Government equivalent thereto. The procedure for direct recruitment of constable, as provided for under Rule 15 of the Rules, 2008, consisting of the clauses (c), (d) and (e), read thus:

"[15. **Procedure for direct recruitment of Constable.--(a) Application. -**

(i) A candidate shall fill the application form from one District only. Regarding allocation of Examination Center, the candidate may give more than one option. However, Board may allocate center other than those indicated by the candidate.

(ii) The details of the information regarding educational qualification, age,

10. 2017 (9) SCC 478 (paras 4-12)

11. 2017 (4) SCC 357 (paras 9, 10, 12-22)

12. 2006 (6) SCC 395 (Paras 62, 68, 71-75)

13. Special Appeal No.725 of 2020 decided on 08.2.2021 (paras 11, 12, 13, 14, 15 and 16)

minimum qualifying standards for each category of examination, including physical, written, medical etc., minimum qualifying marks for Written Examination subject wise, copy of O.M.R. sheet for practice and other important guidelines as may be determined by the Board from time to time shall be provided by the Board on its web-site or any other method as it deems necessary.

(iii) The applications shall be invited by the Board giving the applicants adequate time for application. The candidate shall be personally and solely responsible for its accuracy and completeness, if Form of any candidate found incomplete, wrong or having inaccurate information, this Form shall be cancelled.

(iv) An applicant shall certify himself all his certificates and documents and be responsible for their genuineness and correctness.

(v) The application form may also include identification details like Unique Identity Number, thumb and finger impressions, photograph or bio metries in appropriate manner as prescribed by the Board from time to time.

(vi) The head of the department may fix an application fee for any recruitment.

(vii) The Board shall have the right to summarily reject the candidature of an applicant for any incompleteness or inaccuracy or variation or conflict with any previous or subsequent information submitted by the candidate.

(viii) The Government may change the number of vacancies for any recruitment at any time before the first examination and may also cancel any recruitment at any time or stage of recruitment without assigning any reason thereof.]

[(b) Call Letter. - Call letters for candidate shall be made available at least ten days before the examination.

(c) Preliminary Written Test. - Candidates whose applications are found to be correct may be required to appear in an objective type preliminary written test of qualifying nature. The test shall be of one paper of 300 marks and contain questions on general knowledge, current affairs, reasoning ability and numeric ability of appropriate level, the detailed syllabus for which shall be notified by the Board from time to time. The candidate who fails to obtain 35% marks shall not be eligible for recruitment. From the candidates who pass the preliminary written test, a number equal to ten times the number of vacancies shall be eligible for the physical Efficiency Test.

(d) Physical Efficiency Test. - The eligible candidates shall be required to appear in a Physical Efficiency Test which shall be of 100 marks. The procedure for conducting the Physical Efficiency Test shall be such as prescribed in Appendix-2.

(e) Main Written Examination. - The eligible candidates who qualify Physical Efficiency Test shall be required to appear in the main written examination which will be of objective type shall carry 300 marks. The written paper will consist of questions covering, general awareness, mental ability, reasoning and comprehension. The detailed syllabus for the examination shall be notified by the Board. The procedure for conducting written examination shall be such as mentioned in Appendix-3. Candidates who fail to obtain 35% marks in the main written examination shall not be eligible for recruitment.

(f) Scrutiny of Documents and Medical Examination. - The Board shall prepare a merit list for each category of candidates on the basis of total marks obtained by the candidates according to the orders of the State Government and the provisions of enactments for the time being in force.

The scrutiny of documents of the above candidates shall be carried out as per Appendix-4. In case any document is found to be manipulated, inaccurate or forged during the scrutiny or at any time after the scrutiny, the candidature of the applicant will be cancelled at the discretion of the Board and Head of the Department. Those candidates whose documents are found in order will undergo for Medical Examination as per Appendix-5.

Note. - The Medical Board shall examine the candidate and deficiencies thereof such as knock knee, bow-legs, flat feet, varicose veins, distant and near vision, colour blindness, hearing test comprising of Rinne's test, Webber's test and shall also tests for vertigo, speech defects etc. of the candidates as may be notified from time to time by the State Government.

(g) Selection and Merit List. - The Board shall prepare a final select list of candidates in order of their merit, keeping in view the reservation policy of the State.

If two or more candidates obtain equal marks, preference will be given to the candidates who have obtained higher marks in the main written examination. If two or more candidates secure the same marks in main written examination then the candidate who are older will be placed higher in the merit list. In case two or more candidates have the same date of birth, the candidates possessing preferential qualification as mentioned in Rule 9 will be placed higher in the merit list.

The final list shall be published in Website/Notice Board. This list shall be forwarded to the Head of Department, who will forward it to the Appointing Authority for further action.]

Note. - If two or more candidates obtain equal marks then the merit list would be finalized, according to the following procedure: -

(i) Such candidate will be given preference, having Preferential qualification if any. A candidate having more than one preferential qualification will get benefit of only one preferential qualification.

(ii) If despite the above, two or more candidates have the same rank then such candidate will be given preference who secures higher marks in the main written examination.

(iii) If despite the above two or more candidates have equal marks then such candidate will be given preference who is older in age.

(iv) If in spite of above consideration still the marks are equal, and date of birth is same and marks in the main written examination are also the same then such candidate will be given preference in order of the first letter of the English alphabet of the first name as mentioned in High School Certificates.

The merit-list shall be published in website/Notice Board.

(ii) The Board shall prepare a select list of candidates in order of the merit, keeping in view the reservation policy guidelines and the total number of vacancies notified to the Board which will be subject to character verification by the Appointing Authority. The select list shall be forwarded

to the Head of Department who will after approval forward it to the Appointing Authority for further action.]"

18. The Rules, 2015 were notified by the State Government in exercise of the powers under clause (c) of sub-section (2) of Section 46 read with sub-section (3) of the said Section and Section 2 of the Police Act, 1861 on 02.12.2015 and all other powers enabling him, in this behalf and in supersession of all existing rules or orders issued in this behalf. The Rules, 2015 were framed with an object to regulate the selection, promotion, training, appointment, determination of seniority and confirmation etc. of Constables and Head Constables of the police in Uttar Pradesh Police Force. By the Rules, 2015, procedure laid down under Rules, 2008, in particular, clauses (c), (d) and (e) thereof, for recruitment has been done away with. In other words, under the Rules, 2015, clauses (b), (c) and (e) thereof in particular, the Preliminary Written Test and the Main Written Examination has been done away with and now it is made on the basis of 10th and 12th standard Board examination results or qualification equivalent thereto, as provided under clause (8) of these Rules was introduced, followed by a Physical Efficiency Test. Relevant provisions for the purposes of the controversy involved in these writ petition are Rules 14, 15 and 16 of the Rules, 2015 and Appendix-1, Appendix-2 and Appendix-3, which are reproduced below:-

PART-V
Procedure for Recruitment

14. Determination of vacancies -

The appointing authority shall determine and intimate to the Head of the Department the number of vacancies to be filled during the course of the year of recruitment as also the number of vacancies reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories under rule 6. The Head of the Department shall intimate the number of vacancies for both male and female candidates separately, to the Board and also to the Government. Subsequently the Board shall notify the vacancies for both male and female candidates separately in the following manner:-

- (i) by issuing advertisement in daily Hindi and English newspapers having wide circulation;
- (ii) by pasting the notice on the notice board of the office or by advertising through Radio/Television and other Employment newspapers;

- (iii) by notifying vacancies to the Employment Exchange; and
- (iv) by other means of mass communication-

Rule 15. Procedure for Direct Recruitment to the post of Constable -

(a) Application Form -

(I) A candidate shall fill only one application Form. The Board will accept only online applications. The application of candidates, who fill more than one Forms, may be rejected by the Board.

(ii) The details of the information regarding educational qualification, age, minimum qualifying standards for each category of examination, including physical, medical examination etc., other important guidelines as determined by the Board from time to time shall be made available by the Board on its own website and or by other means as it deems necessary.

(iii) The application shall be invited by the Board giving the applicants adequate time for making application, the candidate shall be personally and solely responsible for its accuracy and completeness, if the Form of any candidate is found incomplete, wrong or having inaccurate information, it may be cancelled and the decision of the Board in this regard shall be final.

(iv) An applicant shall certify himself his certificates and documents and be responsible for their genuineness and correctness.

(v) In the application Form the detail of identity, specific identity card number, thumb and finger impression, photographs or bio-matrix details will be so included as determined by the Board from time to time.

(vi) The Head of the Department may fix an application fee for any recruitment in consultation with the Recruitment Board.

(vii) The Board shall have the right to summarily reject the candidature of an applicant for any incompleteness or inaccuracy or variation or conflict with any previous or subsequent information submitted by the candidate.

(viii) The Government may change the number of vacancies for any recruitment at any time or stage of recruitment without assigning any reason thereof.

(b) Merit List on the basis of 10th and 12th examination results

All such candidates whose application forms are found correct, shall be awarded marks on the basis of 10th and 12th examination results, or qualification equivalent thereto, as provided under clause (8) of these rules. For awarding these marks, maximum of 100 marks will be awarded on the basis of 10th standard Board examination and maximum of 200 marks will be awarded on the basis of 12th standard Board examination. The marks such awarded to them will be counted upto second digit after decimal point and will be awarded to them will be counted upto second digit after decimal point and will be awarded as per following procedure -

(1) Marks awarded on the basis of 10th examination result = percentage of marks obtained by the candidate in 10th standard Board or examination equivalent thereto.

(2) Marks awarded on the basis of 12th examination result = 2 x percentage of marks obtained by candidate in 12th standard Board or examination

equivalent thereto.

If any examination Board, awards grades in place of marks to the candidates, in above mentioned 10th and 12th examination, then Board shall proceed only after taking information from concerned examination Board, regarding marks to be awarded equivalent to corresponding grades. Candidates shall be awarded total marks on the basis of such total marks awarded to them on the basis of 10th class examination results and marks awarded to them on the basis of 12th class examination results, as above. All candidates will be awarded total marks as per sum total of marks awarded as above, out of a maximum of 300 marks and a list in the order or merit will be prepared on the basis of these total awarded marks. Out of the merit list such prepared, candidates equal to 15 times the number of total vacancies, on the basis of merit shall be called for Physical Efficiency Test. If more than one candidates are found on the marks obtained by the last candidate in the merit list then all such candidates shall be considered eligible for physical Efficiency Test.

(c) Physical Efficiency Test

All candidates declared eligible in the merit list under clause (b) shall be required to participate in Physical Efficiency Test which shall be of 200 marks. The procedure for conducting the Physical Efficiency Test shall be as prescribed in Appendix-1.

(d) Scrutiny of Documents & Physical Standard Test -

The scrutiny of documents & Physical Standard Test of candidates selected under clause (c) mentioned above shall be done according to Appendix-2. In case any document is found to be manipulated, inaccurate or forged during the scrutiny or at any time after the scrutiny, the candidature of the applicant will be cancelled at the discretion of the Board or the Appointing authority as the case may be.

(e) Selection and Final Merit List -

From amongst the candidates found successful after Physical Standards Test and scrutiny of documents under clause (d), the Board shall prepare, as per the vacancies, a select list of each category of candidates, on the basis of sum total of, marks awarded to each candidate on the basis of 10th and 12th examination results as per clause (b) and marks obtained by him in physical efficiency test as per clause (c), keeping in view the conservator policy and send it with recommendation to the head of the department subject to character verification, medical examination and 10th and 12 examination mark sheet verification. **No waiting list shall be prepared by the Board. List of all candidates with marks obtained by each candidate shall be uploaded on its website by the Board. The Head of the Department shall after his approval forward the list sent by the Board to the concerned Authority for further action.**

Note - If two or more than two candidates obtain equal marks the merit list shall be decided according to the following procedure -

(1) If marks of two, or more candidates are equal then candidate obtaining higher marks, as per total marks awarded in clause (b), will be given preference.

(2) If two or more candidates are equal even after this the candidates who have the preferential qualification (in the same order as stated in Rule 9) will be given preference. Candidate having more than one preferential

qualification shall get the benefit of only one preferential qualification.

(3) Even then if two or more candidates have equal marks then candidates older in age shall be given preference.

(4) If despite the aforementioned more than one candidates are equal, then preference to such candidate shall be determined according to the order in English Alphabets of their names mentioned in High School Certificate.

(f) Verification of 10th and 12th examination marks sheets

While preparing the final select list, the Board will send for verification to the concerned Education Board, the 10th and 12th class mark sheets of all candidates included in the select list. As and when their verification reports from concerned Education Boards are received, the Board will send them separately to Police Headquarter later on, who will subsequently send it to the Appointing Authority for necessary action. **If as per report sent by the concerned Educations Board, the 10th and 12 examination marks sheets of any candidate, is not verified, then such candidate shall be declared unfit by the Appointing Authority and such vacancies shall be carried forward for new selection.**

(g) Medical Examination

The candidates whose name are in the select list sent as per clause (e), will be required to appear for Medical Examination by the Appointing authority. Medical Examination will be conducted in the Police Line of the concerned District or at the place mentioned by the Appointing authority. Medical Examination will be conducted as per Appendix-3. **The candidate found unsuccessful in Medical Examination shall be declared unfit by the Appointing authority and such vacancies shall be carried forward for new selection."**

16. Character Certificate Verification

Character Verification shall be completed under the supervision of appointing authority before issuing of appointment letter and before sending the candidates for training. Ordinarily character verification shall be completed within a month. **On adverse fact coming to light during character verification of any candidate, he shall be declared unfit by the appointing authority and such vacancies shall be carried forward for next selection.**

APPENDIX-I

[See Rule 15 (c)]

Physical Efficiency Test for direct recruitment

1. The Physical Efficiency Test will be conducted by a team formed by the Board which shall have the following members -

(i) Sub Divisional Magistrate nominated by the District Magistrate of the District concerned;

(ii) Medical Officer nominated by the Chief Medical Officer of the District concerned;

(iii) Deputy Superintendent of Police nominated by Senior Superintendent of Police/Superintendent of Police.

Where according to the prevalent Government Orders representation of Scheduled Castes/Scheduled Tribes, Other Backward classes. Minority or any other category whose representation is necessary in the above team, the Board shall keep additional officers nominated by the District Superintendent of Police to ensure their representation. Such nominated officers shall not be below the ranks of Inspector in police department.

The said team may take the help of any other expert for conducting the examination.

1. In the physical efficiency test for direct recruitment of constables, the male candidates will have to complete 4.8 Km. (Kilometre) run in 27 minutes and female candidates will have to complete 2.4 Km. (Kilometre) run in 16 minutes. Those candidates who fail to complete the run in stipulated time will not be eligible for next stage.

The allotment of the marks will be according to time taken by the candidates within the above stipulated time, for which there shall be a maximum of 200 marks and minimum of 120 marks.

2. For male candidates maximum of 200 marks will be awarded to those, who complete the 4.8 Km run in 17 minutes or time less than that. After that male candidates completing the run in more than 17 minutes and upto 17 minutes 15 seconds, will be awarded 198 marks, male candidates completing the run in more than 17 minutes 15 seconds and upto 17 minutes 30 seconds will be awarded 196 marks. Likewise in the increasing order of time as above, 2 marks shall be deducted every time from the marks to be awarded to male candidates for every 15 seconds increase in time interval. Likewise, serially as per above prescribed norms, all male candidates completing the run in more than 26 minutes 30 seconds and upto 26 minutes 45 seconds shall be awarded 122 marks and all male candidates completing the run in more than 26 minutes 45 seconds and upto 27 minutes will be awarded 120 marks, minimum prescribed for this run, and all those male candidates who complete the 4.8 Km. run in more than 27 minutes shall be declared unfit for selection.

For female candidates maximum of 200 marks will be awarded to those, who complete the 2.4 Km. run in 11 minutes or time less than that. After that female candidates completing the run in more than 11 minutes and upto 11 minutes 15 seconds, will be awarded 196 marks, female candidates completing the run in more than 11 minutes 15 seconds and upto 11 minutes 30 seconds will be awarded 192 marks. Likewise in the increasing order of time as above, 4 marks shall be deducted every time from the marks to be awarded to female candidates for every 15 seconds increase in time interval. Likewise, serially as per above prescribed norms, all female candidates completing the run in more than 15 minutes 30 second and upto 15 minutes 45 seconds shall be awarded 124 marks and all female candidates completing the run in more than 15 minutes 45 seconds and upto 16 minutes will be awarded 120 marks, minimum prescribed for his run, and all those male candidates who complete the 2.4 Km. run in more than 16 minutes shall be declared unfit for selection.

The detailed table for Physical Efficiency Test, indicating marks to be awarded for different timings as above, separately for male and female candidates, shall be displayed by Board on its website.

3. Manual timing shall not be permitted to be used by the team. Standardised Electronic Timing Equipment alongwith CCTV coverage and biometrics with adequate backup will be used to ensure accuracy, transparency and avoid impersonation.

4. The team shall follow the process laid down as under -

(a) the number of candidates to be tested per day shall be determined by the Board and decided depending on the total numbers to be tested and prevailing conditions.

(b) The information regarding minimum standards of physical efficiency of qualification and table indicating marks for different timing for physical efficiency test as given in para 2 of this appendix, shall be displayed on the notice board at the venue of the test.

(c) The result of this test will be displayed on the notice board at the end of the day, at the venue of the Test and if possible, will be uploaded on the Board's website as soon as possible.

(d) The members of the organizational team including testing agency if any who willfully commit an act which is wrong or omit to perform an act and which causes an unfair advantage or disadvantage to any candidate may be liable to Criminal proceedings or Department proceedings.

(e) The result of the Physical Efficiency Test will be made available to the candidates on the same day. The list of the successful candidates will be declared under the joint signature of the members of the team.

(f) The outdoor test shall be such that the results are capable of being measured and recorded mechanically without manual intervention. Only standardized equipment preferably having Bureau of Indian Standards certificate shall be used for Physical Efficiency Test.

(g) Candidates will be expected to appear on the date and time assigned to them. For reasons beyond their control and to be recorded in writing, the date and time of the test may be changed by the board for a group of candidates to be tested at a particular time.

(h) The list of successful and unsuccessful candidates shall be declared by the collective signatures of members of the team.

(i) If a candidate fails to appear in the examination on the scheduled date and time, then he can give application to the committee formed for conducting the test in concerned district, giving reasons in detail for absence and requesting to appear in the examination on some other date. The committee, after considering his application, may decide and allow him to appear for test on some other date. The candidate will be given only one chance in this regard and if he fails to appear in the examination on rescheduled date and time, he shall be considered unsuccessful. The candidates may give this application, before the last date fixed for this test, by the Board. No application will be accepted after the last date. The committee shall inform the Board about all such cases where the date and time of the test has been rescheduled.

(j) A candidate who fails for not achieving the prescribed standards in the examination, shall not be given another chance and no appeal shall lie for a retest for reasons of health and any other ground whatsoever.

Note-- Individual privacy will be respected in all video records and the record will be kept in safe custody and will be made available to a court of law when summoned by it, or to an officer with the permission of the Board.

(See rule 15 (d))

(Scrutiny of Documents & Physical Standard Test)

Scrutiny of the Documents

1. Candidates will be summoned with relevant documents with regard to eligibility, relaxation, preferential qualifications, etc., for scrutiny thereof to be carried out by a committee which will consist of following members:-

(a) a Deputy Collector nominated by the District Magistrate of the District will be the Chairman;

(b) a Deputy Superintendent of Police nominated by the Senior Superintendent of Police/Superintendent of Police of the district;

(c) District Inspector of Schools (D.I.O.S.) or Basic Siksha Adhikari (B.S.A) or any other gazetted officer of the education department by the District Magistrate.

Where according to the prevalent Government Orders representation of Scheduled Castes/Scheduled Tribes, Other Backward Classes, Minority or any other category whose representation is necessary in the said committee, the Board shall keep additional officers nominated by the District Superintendent of Police to ensure their representation. Such nominated officers shall not be below the ranks of Inspector in police department.

2. Original documents shall be checked as per the information provided in the application form.

3. During scrutiny of documents on being referred by any committee because of any doubt or any being brought directly in its notice, the Board can issue directions in this regard. The directions issued by the Board, shall be final.

Physical Standard Test

The above mentioned committee can take help of any Government employee for conducting Physical Standard Test.

1. Minimum Physical Standards for male candidates are as follows -

(a) **Height -**

(one) for General/Other Backward classes and Scheduled Castes male candidates minimum height should be 168 centimetre.

(two) for Scheduled Tribe male candidates minimum height should be 160 centimetre.

(b) **Chest -**

For the candidates belonging to General/Other Backward classes and Scheduled Castes minimum chest measurement should be 79 centimetres without expansion and at least 84 centimetres with expansion and for the Scheduled Tribes 77 centimetres without expansion and not less than 82 centimetres on expansion.

Note - Minimum 5 centimetres chest expansion is essential.

2. Minimum Physical Standards for female candidates are as follows -

(a) **Height** -

(one) for General/Other Backward classes and Scheduled Castes female candidates minimum height should be 152 centimetre.

(two) for Scheduled Tribes female candidates minimum height should be 147 centimetre.

(b) **Weight** -

Minimum 40 Kg. for female candidates.

3. The minimum physical standards for qualifying for each test shall be displayed very prominently on Notice Boards in the venue of examination before conducting the examination.

4. Only standardized equipments having Bureau of Indian Standards certification or duly certified by the Director of Weights and Measures are to be used for physical standards test examination."

5. if any candidate is not satisfied with his Physical Standard Test, he/she may file an objection on the same day after the test. For clearing all such objection; the Board shall nominate one Additional Superintendent of Police at every place and Physical Standard Test of all such candidates will be conducted again by the committee in the presence of above nominated Additional Superintendent of Police. All those candidates who are again found unsuccessful in the Physical Standard Test, will be declared unfit and no further appeal will be entertained in this regard.

General Instructions

(1) Candidates will be expected to appear on the date and time assigned to them. For reasons beyond their control and to be recorded in writing, the date and time of the test may be changed by the Board for a group of candidates to be tested at a particular time.

(2) If a candidate fails to appear in the examination on the scheduled date and time, then he/she can give application to the committee formed for conducting the test in concerned district, giving reasons in detail for absence and requesting to appear in the examination on some other date. The committee, after considering his/her application, can decide and may allow him/her to appear for test on some other date. The candidate will be given only one chance in this regard and if he/she fails to appear in the examination on rescheduled date and time, he/she shall be considered unsuccessful. The candidates may give application before the last date fixed for this test, by the Board. No application will be accepted after the last day. The committee shall inform the Board about all such cases where the date and time of the test has been rescheduled.

(3) A candidate who fail for not achieving the prescribed standards in the examination, shall not be given another chance and no appeal shall lie for a retest for reasons of health and any other ground whatever.

(4) The candidate will be informed about result of Scrutiny of Documents and Physical Standards Test.

Medical Examination for direct recruitment

The appointing authority will request the Chief Medical Officer of the concerned District to constitute Medical Board for conducting Medical Examination. The Medical Board will consist of three Doctors, who will conduct Medical Examination as per "Police Recruitment Medical Examination Forms" as prescribed and codified by Head of Department in consultation with Director General of Medical Examination. Medical Board may take services of any expert as per requirements.

(1) The doctors will examine the candidates in accordance with the Medical Manual, if any, and announce the result on the day of the Medical Examination.

(2) The result of the Medical Examination will be displayed on the notice board outside the premises at the end of the day.

(3) Any candidate not satisfied by his Medical Examination, may file an appeal on the day of examination itself. Any appeal in regard to Medical Examination will not be considered if the candidate fails to file appeal on the date of Medical Examination and declaration of its result itself. The appeal should be disposed of by the Medical Board, constituted for the same purpose within two weeks of the appeal being filed. The Medical Board constituted for appeal shall have expert regarding Medical deficiency of the applicant.

(4) The members of the Medical Board who are found to give wrong report wilfully will be liable for criminal proceedings.

(5) The Medical Examination is only qualifying in nature and it has no effect on the merit list.

Note:- The Medical Board will examine the candidates and their deficiencies such as knock knee, bow legs, flat feet, varicose veins, distant and near vision, colour blindness, hearing test comprising of Rinne's Test, Webber's Test and Tests for vertigo etc. as notified by the government from time to time. The Medical Board may get conducted other examinations after obtaining opinion of experts.”

DISCUSSIONS AND FINDINGS

19. The Rules, 2015 were introduced, whereunder, Preliminary Written Test and Final Written Examination have been done away with and merit list of candidates now would be prepared on the basis of the marks obtained by them in 10th and 12th standard Board examination results. 300 marks have been awarded for Class 10th (100 marks) and Class 12th (200 marks) and out of the merit list prepared, candidates equal to 15 times the number of total vacancies, on the basis of merit shall be called for Physical Efficiency Test. (200 marks) has been assigned to Physical Efficiency Test, the procedure for conducting the Physical Efficiency Test is prescribed in Appendix-1 to the Rules. From amongst the candidates found successful after

Physical Efficiency Test and scrutiny of documents, the Board shall prepare, as per vacancies, a select list of each category of candidates, on the basis of sum total of marks awarded to each candidate on the basis of 10th and 12th Board examination results and marks obtained by him/her in Physical Efficiency Test, keeping in view the reservation policy, the recommendation of selected candidates shall be made to the Head of the Department, subject to character verification, medical examination and examination of educational documents.

20. The Rule 15 (e) of Rules, 2015 deals with selection and final merit list, which contemplates that from amongst the candidates found successful after Physical Standards Test and scrutiny of documents under clause (d), the Board shall prepare, as per the vacancies, a select list of each category of candidates, on the basis of sum total of marks awarded to each candidate on the basis of 10th and 12th examination results as per clause (b) and marks obtained by him in physical efficiency test as per clause (c), keeping in view the conservator policy and send it with recommendation to the Head of the Department subject to character verification, medical examination and 10th and 12th examination mark sheet verification. **No waiting list shall be prepared by the Board.** List of all candidates with marks obtained by each candidate shall be uploaded on its website by the Board. The Head of the Department shall after his approval forward the list sent by the Board to the concerned Authority for further action. The Rule 15 (f) provides verification of 10th and 12th examination marks sheet. While preparing the final select list, the Board will send for verification to the concerned Education Board, the 10th and 12th class mark sheets of all candidates included in the select list. As and when their verification reports from concerned Education Boards are received, the Board will send them separately to Police Headquarter later on, who will subsequently send it to the Appointing Authority for necessary action. It further provides that ***“if as per report sent by the concerned Educations Board, the 10th and 12 examination marks sheets of any candidate, is not verified, then such candidate shall be declared unfit by the Appointing Authority***

and such vacancies shall be carried forward for new selection”.

(emphasis supplied)

21. Similarly, the Rule 15 (g) deals with medical examination, which provides that the candidates whose name are in the select list sent as per clause (e), will be required to appear for Medical Examination by the Appointing authority. Medical Examination will be conducted in the Police Line of the concerned District or at the place mentioned by the Appointing authority. Medical Examination will be conducted as per Appendix-3. **It further provides that the candidate found unsuccessful in Medical Examination shall be declared unfit by the Appointing Authority and such vacancies shall be carried forward for new selection.**

(emphasis supplied)

22. The Rule 16, which provides for Character Certificate Verification, contemplates that Character Verification shall be completed under the supervision of appointing authority before issuing of appointment letter and before sending the candidates for training. Ordinarily character verification shall be completed within a month. *“On adverse fact coming to light during character verification of any candidate, he shall be declared unfit by the appointing authority and such vacancies shall be carried forward for next selection”.*

(emphasis supplied)

23. In the present proceeding, in response of the earlier order dated 06.1.2020 the State has filed detailed supplementary counter affidavit dated 12.2.2020 on behalf of respondent nos.2 and 3 with categorical averments, refuting the alleged claim set up by the petitioners. It would be appropriate to have a glance of the averments contained in paragraphs 4, 5 and 6 of the said affidavit as under:-

“4. That, for the purposes of initiating the selection process of the same, the office of answering respondents received requisition dated 26.12.2015 from the office of Director General of Police, Uttar Pradesh, therein

requiring the selection of 23,000 for the post of Constable (Civil Police), 5716 post of Constable (PAC) and 5800 posts for Female Constable (Civil Police). In pursuance of the above requisition the Police Recruitment and Promotion Board (Hereinafter referred as Board/answering respondents initiated with the selection process in terms of the Rules, 2015 thereby inviting the advertisement dated 29.12.2015 seeking online applications for the same posts as provided by the above Rules. A merit was prepared of all the applicants on the basis of the marks secured in Class 10th and in Class 12th. The said merit consisted of total 300 marks and the classification of the same is as follows:-

- (a) Maximum 100 marks for the marks secured in Class 10th;
- (b) Maximum 200 marks for the marks secured in Class 12.

The same maximum marks as stated above were a parameter for the marks secured by each and every candidate as provided and calculated under Rules 2015 in order to ascertain his own independent merit and accordingly, post preparation of the same, 15 times maximum candidates of the total vacancies were called upon for the purposes of physical efficiency test (running). The notification of the same for female Constable was made on 30.03.2016 and for Male Constable and PAC was made on 04.04.2016 on the official website of the Selection Board. It is also pertinent to state over here that physical efficiency test (Running) carried 200 maximum marks and as per the Schedule 1 of Rule 2015, the male candidates were required to complete the stage of 4.8 km in 27 minutes and female candidates were required to run 2.4 km. in 16 minutes.

After completion of the aforesaid process, the merit as prepared out of total 500 marks and 1.5 times candidates of the total vacancies were called upon for the purposes of documents verification and physical standard test. It is pertinent to state over here that the said documents verification and physical standard test were are a prima-facie qualifying examination and scrutiny of the documents as well as of the physical condition of the candidates and the final selection would be subject to the final scrutiny and verification of the documents from the concerning Education Boards and the Physical Standard Test is also followed by a comprehensive medical examination at the Range/District Level in the supervision of Police Headquarter/Addl. Director General of Police (Establishment).

5. That, accordingly the selection process was initiated and concluded and at the stage of board and accordingly on 15.05.2018 result were declared. However, it appeared that due to some technical error occurred in the cut of marks of Constable PAC under open category and Female Constable (Civil Police) as ascertained by the board and therefore, on 18.05.2018 a notification was published on the official website of Board bringing on record the same discrepancy on 19.05.2018 the Director General of Police, Uttar Pradesh was also intimated of the same anomaly and was further requested to return the result as were forwarded by the Board. The same information was also forwarded to the Principal Secretary, Home, U.P. vide letter dated 21.05.2018.

In order to further clarify the above discrepancy it is most respectfully submitted that after declaration of the selection result on 15.05.2018, it appeared that certain candidates of general category for Constable P.A.C were having marks as secured by the selected candidates of the same category. Similarly in the case of Female Constable (Civil Police) it was found that certain female candidates of Scheduled Caste category were having higher marks in comparison to that selected candidates of Female Constable (Civil Police) to Schedule Caste category and accordingly, in order to rectify the same mistake, the above mentioned exercise was done

on the part of the Board. On appreciation of the above controversy and on proper scrutiny of the same by the Board it was found that the same discrepancy occurred due to the reason that their documents verification as well as their physical standard test was not undertaken and accordingly they were left out from getting included in the select list.

6. That due to the above discrepancy and the technical error, 1366 posts for Constable PAC under open category and 13 post for Female Constable (Civil Police) of Scheduled Caste category were getting effected and as such rectification in the result dated 15.5.2018 was highly warranted. In the same reference it is most respectfully submitted that post declaration of result on 15.05.2018, 1366+13 posts were not vacant or unfilled as stated by the petitioners. However, due to technical error the same required rectification and correction of the cut of marks on the end of the answering respondents and accordingly, the present exercise was initiated and concluded by the Board in the interest of meritorious candidates only.”

CONCLUSION

24. As per chart, which has been submitted before this Court on behalf of the State, it indicates that vacant posts of Constables (Civil Police & PAC) of the selection year 2015 in respect of those candidates, who were either failed in physical efficiency test and document verification, were carried forward for the next selection year 2017. The contention of the petitioners is to the effect that these posts should be offered to the petitioners, and the same posts are to be allotted in the same process of selection. Said aspect of the matter has been considered by the Division Bench of this Court in **Abhinav Anand Singh (supra)** and after considering the relevant provisions of the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 the Division Bench had proceeded to dismiss the writ petition with following observations:-

“12. In the present case, there is a clear statutory embargo which provides that such vacancies shall be carried forward for further selection which is specifically in the context of candidates being found unfit in the medical test or being invalidated as a result of the character verification. Rule 15 (h) clearly contemplates drawing up of a tentative select list on the basis of marks obtained in the main written examination and group discussion for each category of candidates which is then sent to the head of the department with a recommendation, subject to medical test and verification of testimonials/character. Rule 15 (h) specifically contemplates that no waiting list is to be prepared by the Board. It is in this background that Rule 15 (j) provided that prior to the issuance of letters of appointment, completion of the character verification is necessary and if any candidate has been found unfit in the medical test or as a result of the character verification, these vacancies shall be carried forward for further selection. The principle that the vacancies which are available should be filled up is subject to statutory rules laying down the method and process of selection. Each of the petitioners admittedly has received marks which are lower than the cut off

which was prescribed for the general category of candidates and had been unable to be selected on the basis of the cut off.

13. Hence, we find no merit in the submission which has been urged on behalf of the petitioners that Rule 15 (h) should be so construed as to require that the vacancies which remain unfilled as a result of unfitness of 104 candidates and the absence of 46 should be offered to the petitioners or to other persons in order of merit. This would be plainly contrary to the provisions contained in the Rules.

14. During the course of hearing, the issue of interpretation alone has been pressed for the consideration by the Court and the issue of vires was not pressed.

15. For these reasons, we are unable to accept the submissions which have been urged on behalf of the petitioners.

16. The writ petition shall, accordingly, stand dismissed.”

25. The categorical procedure, which contemplates in the Rules, 2015, nowhere, provides any discretion to the recruitment authority or the appointing authority to either manipulate or show any favour in the process of recruitment. At every stage in case the applicant does not fall in the zone of consideration, nowhere, discretion is available to the authority and in every eventuality the post is to be carried forward. It is equally well settled that laying down of relevant criteria for recruitment is within the exclusive domain of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is arbitrary or is vitiated due to mala fides.

26. It was also one of the ground urged on behalf of the State that once petitioners participated in the selection process, then they could not be permitted to challenge/question the recruitment process after they were unsuccessful in getting selection. Indirectly the petitioners are questioning the recruitment process as contemplated in Rule 15 (e) and (g) of the Rules, 2015, which provide in every eventuality such vacancies shall be carried forward. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

27. In **G. Sarana v. University of Lucknow**¹⁴ the Supreme Court

14 . (1976) 3 SCC 585]

observed that it was not necessary for the court to go into the question of reasonableness of bias or real likelihood of bias because the petitioner appeared before the Committee and at the relevant time did not raise any finger against constitution of the Committee. It was ruled that petitioner voluntarily appeared before the Committee and took chance of favourable view of the Committee, but when he was not able to get the appointment, he turned around his face. Similar was the principle pronounced in **Nanak Lal v. Prem Chand Singhvi**¹⁵ where the appellant found to have taken chance to secure a favourable report from the Tribunal but when confronted with the unfavourable report, he adopted the device of raising objection. In **Prakash Shukla v. Akhilesh Kumar Shukla**¹⁶ the Apex Court held that as the petitioner appeared at the examination without any protest and when he found that he would not succeed in the examination, he filed a petition challenging the examination, the High Court should not have granted any relief to such petitioner.

28. Again in **Manish Kumar Shahi v. State of Bihar**¹⁷ it was emphasized that the conduct of the petitioner in taking part in the selection process would clearly disentitle him from questioning the selection. It was stated that the petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name did not figure in the merit list prepared by the Commission. In **Amlan Jyoti Borooah v. State of Assam**¹⁸ it was reiterated that since the appellant had subjected himself to the allegedly faulty selection process without questioning it during the process, he could not question it later on. In **Ramesh Chandra Shah v. Anil Joshi**¹⁹, it was held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division

15. [AIR 1957 SC 425]

16 [1986 Supp SCC 285]

17 [(2010 12 SCC 576]

18[(2009) 3 SCC 227]

19. [(2013) 11 SCC 309]

Bench of the High Court committed grave error by entertaining the grievance made by the respondents. In **D. Saroj Kumari v. R. Helen Thilakom**²⁰, the Supreme Court stated the principle the very principle that once a person takes part in the process of selection and is not found fit for appointment, such person is barred from challenging the process of selection.

29. The petitioners have prayed for mandamus commanding the respondents to lower the respective category-wise merit and accord selection to them on the vacant posts of Constable (Civil Police/PAC). Such situation eventually leads to preparation of wait list, which is not contemplated in Rules, 2015.

30. The Apex Court in **Bihar State Electricity Board's** case (supra) has upheld non-preparation of wait list, where rules do not require for preparation of wait list and held that preparation of a wait list is not at all obligatory or mandatory unless recruitment rules provide for the same in addition to the select list. Relevant paragraphs 6 and 7 of the said judgment are reproduced herein below:-

“6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash Vs. Union of India (supra) it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of respondents Nos.1 to 7 that the appellant had violated the order of High Court dated 23rd March, 1994 by preparing a list of only 22 candidates instead of filling up 50% of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 255 against the advertisement dated 15th December, 1986 and 255 against advertisement dated 25.11.1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.

7. In the present case pursuant to the direction of the High Court dated 23.3.1994, the appellant took steps for filling up 25 vacancies in the post of Operators from advertisement No. 3/86 and the remaining 25 vacancies

20 . [2017 (11) SCALE 366]

from advertisement No. 6/92. The results were notified on 29.4.1994 on the notice board. The Board recommended names of successful candidates under advertisement No. 3/86 and advertisement No. 6/92. Out of 22 candidates selected by the Board for appointment under advertisement No. 3/86 18 candidates did not turn up. At this stage it is important to note that respondent Nos. 1 to 7 had applied for appointment under advertisement No. 3/86 dated 15.12.1986 and they had qualified but they were placed at serial no. 23 onwards in the descending order. As stated above a panel of 22 candidates was prepared for appointment under advertisement No. 3/86 and respondent Nos. 1 to 7 fell beyond cut off number. We are not shown any statutory recruitment rules which require the Appellant-Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of respondent Nos. 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. In our view, the judgment of this Court in the case of *Shankarsan Dash Vs. Union of India* (supra) squarely applies to the facts of this case. Further there was no infirmity in the judgment of this Court delivered on 4.12.1998 and in our view with respect there was no need to recall the said judgment.”

31. The Apex Court in **Shankarshan Dash Vs, Union of India** (Constitution Bench) (supra) held that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed, which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This judgment has been consistently followed in **Government of Orrisa Vs. Harprasad Das**²¹, **A. Arthur Vs. Jeen**²², **Bihar State Electricity Board** (supra), **Punjab State Electricity Board Vs. Malkiat Singh**²³, **Union of India Vs. Kali Das Batish**²⁴, **Aryavrat Gramin Bank Vs. Vijay Shanakr Shukla**²⁵.

21 . AIR 1998 S.C. 375

22 . AIR 2001 S.C. 1851

23 . AIR 2004 S.C. 5061

24 . (2006) 1 SCC 779

25 . (2007) 12 SCC 413

32. Hon'ble Supreme Court in **Union of India and others Vs. S. Vinodh Kumar and others**²⁶ held that competent authority has power to fix cut-off marks for preparation of select list. Process of final selection had to be closed at some stage. In this case, Circular dated 15.11.1999 directed for preparation of select list of the candidates equal to the number of vacancies. Thus merit of last person in different category is the cut-off marks of the merit. As soon as select list is published on 24.06.2000, selection process was closed. No direction can be issued for lowering the merit, after closure of the selection process.

33. In **Sri Kant Tripathi v. State of U.P.**²⁷ it was held "An applicant, whose name appears in the wait list, does not get an enforceable right for being appointed to a post....." In **Surinder Singh and others vs. State of Punjab and another**²⁸ the Court held "The candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative." Subsequently, in **State of Bihar and others Vs. Amrendra Kumar Mishra**²⁹ after referring to various earlier judgments on the issue, the Hon'ble Apex Court held "The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

34. In **U.P. State Road Transport Corporation and another vs. Gobardhan and another**³⁰ while upholding the contention of the learned counsel for the Corporation that the wait list candidate has no right, the Hon'ble Apex Court held "since the Corporation itself has taken decision to appoint a person from the wait list, such a wait list candidate is entitled to be appointed". This view has again been reiterated in **State of J & K and others Vs. Sanjeev Kumar and**

26 . (2007) 8 SCC 100

27 . AIR 2001 SC 3757

28 . (1997) 8 SCC 488

29 . JT 2006(12) SC 304

30 . AIR 1997 SC 1840

others³¹ and Hon'ble Apex Court held "As it clearly spelt from the quoted portion, the Government can by a policy decision appoint people from the waiting list."

35. A Division Bench of this Court in **U.P. Public Service Commission, Allahabad and another versus State of U.P. and another**³² held as under:

"However, it is neither obligatory nor mandatory for the employer to prepare simultaneously a wait list or to keep a wait list intact as and when any selection is made besides the select list, unless a provision is made making it obligatory to prepare a wait list. It is always open to the employer not to prepare any wait list and after declaring the result of the selected candidates, to make appointment therefrom and in case any vacancy remained unfilled, to make a fresh selection instead of looking for a wait list."

36. It was followed again by a Division Bench in **Kumar Sanjay Vs. U.P. Public Service Commission and others**³³ wherein it was held :

"On the contrary, the law is well settled that unless Rules require, waiting list need not be prepared. Even otherwise, a candidate who has not been selected has no legal right to seek a writ of mandamus commanding the respondents to prepare a waiting list in the absence of statutory rules."

37. A coordinate Bench of this Court has also considered similar relief and Rule 15 of the Rules, 2015 in **Chandra Prakash Yadav vs. State of UP and 3 others**³⁴ and dismissed the writ petition on 27.1.2021 with following observations:-

"This petition has been preferred seeking the following reliefs:-

"I. Issue an ad-interim mandamus directing the respondents to consider the claim of the petitioner with regard to his selection on the post of Constable (Civil Police) against the vacant post in the selection of Constable (Civil Police) and Constable (P.A.C.) Direct Recruitment-2018 initiated vide advertisement dated 14.01.2018 issued by the Additional Secretary (Recruitment) U.P. Police Recruitment and Promotion Board, Lucknow within the stipulated period of time as fixed by this Hon'ble Court."

Undisputedly, under the 2015 Rules which apply, a specific provision has been engrafted prohibiting the preparation of a waiting list in respect of seats which may remain unfilled. The Court has also not been apprised of whether the vacancies which remained have not been carried forward or included in a subsequent recruitment. In any case, the petitioner does not

31. 2005 (1) SCC 148

32. 2007(5) ADJ 280

33. Civil Misc.Writ Petition No.8530 of 2009), decided on 3.7.2009

34. Writ A No.401 of 2021

rest his case on any statutory provision which may oblige the respondents to fill the remainder vacancies by lowering the merit. The action of the respondents is also not established to be arbitrary. In view of the aforesaid, the Court finds no justification to issue the writs as prayed for.

Petition is dismissed.”

38. Again this Court has considered similar relief in **Ankit Yadav vs. State of UP and 3 others**³⁵ and dismissed the writ petition with following observations:-

“The petitioner herein seeks writ of mandamus commanding the respondents to consider his candidature on the post of Police Constable and Constable PAC by lowering down the cutoff marks in O.B.C category, against the vacancy which occurred on account of non-availability or non-joining of OBC candidates in the selection which was held pursuant to the advertisement dated 29.12.2015 issued by the U.P Police Recruitment and Promotion Board, Lucknow.

Placing Rule 15 of the U.P. Civil Police and PAC Service Rules 2015 which governs recruitment process to the said posts, it is argued that the Rule 15 provides for carrying forward the resultant vacancies to be filled in the next selection process. There is no justification of sticking to the cut-off merit when the recruitment board did not find suitable candidates for filling up the quota. The merit was, therefore, required to be lowered to select the remaining candidates, who were otherwise eligible.

There is no challenge to the provision of Rule 15. Even otherwise, it is noteworthy that the result of the recruitment examination held pursuant to the advertisement dated 29.12.2015 was declared in the year 2018. Thereafter, two recruitment processes were conducted by the Selection Board in the year 2018. This means that the resultant vacancies of the recruitment conducted pursuant to the advertisement dated 29.12.2015 were notified in the subsequent recruitment process in the year 2018 and filled. The prayer in the present writ petition filed in the month of January, 2021 after a period of two years of conclusion of the selection process is found wholly misconceived.

Even otherwise, it is well settled that once the recruitment process is over, the resultant vacancies occurred on account of non availability or non joining of the candidates can only be filled in the next selection process and the cutoff of merit cannot be lowered. There is no provision of preparation of waiting list.

For the aforesaid facts, the writ petition is dismissed.”

39. Apex Court in the case of **Union of India and another Vs. Raghubir Singh (Dead) by LRS. Etc.**³⁶ held as under:-

"It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser

35. Writ A No.1334 of 2021

36. (1989) 2 SCC 754 (Para Nos. 27 and 28)

number of Judges. This principle has been followed in India by several generations of Judges.

We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court."

40. In the case of **State of Tripura Vs. Tripura Bar Association and others**³⁷, it is held that as under:-

"We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of Durgadas Purkayastha. If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger bench."

41. In the case of **Brijendra Kumar Gupta and others Vs. State of U.P. and others**³⁸ held as under:-

8.6. We remind ourselves of the following observations made by a 5 Judges Constitution Bench of the Supreme Court in Sub-Committee of Judicial Accountability v. Union of India and others : AIR 1992 SC 63 :

".....Indeed, no coordinate bench of this Court can even comment upon, let one sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another co-ordinate bench..... Judicial propriety and discipline as well as what flows from the circumstances that each Division Bench of this Court functions as the Court itself renders any interference by one bench with a Judicial matter before another lacking as much in propriety as in jurisdiction."

The principle enunciated aforementioned equally applies to a High Court as it exercises its judicial functions through its different Benches--Single or Division Bench or Full Bench or Special Bench and while doing so each Bench constitutes the High Court itself.

8.8 The principle laid down by the Apex Court was also held to be applicable to the High Courts as well as by the Apex Court itself in Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. etc. v. State of Andhra Pradesh and others, : AIR 1972 SC 51. in following words :

"It is strange that a coordinate Bench of the same High Court should have tried to sit on judgment over a decision of another Bench of that Court. It is regrettable that the learned Judges who decided the latter case overlooked the fact that they were bound by the earlier decision. If they wanted that the earlier decision should be reconsidered, they should have referred to the question in issue to a larger Bench and not to ignore the earlier decision."

42. In the case of **Rajasthan Public Service Commission and another Vs. Harish Kumar Purohit and others**³⁹, Hon'ble Supreme Court in para Nos. 12 and 13 (relevant portion quoted) held as under:-

37 . (1998) 5 SCC 637

38 . 2000 (18) LCD 886 (Para Nos. 8.6 and 8.8)

39 . (2003) 5 SCC 480

Para No. 12 - Unfortunately, the Division Bench hearing the subsequent applications did not even refer to the conclusions arrived at by the earlier Division Bench. The earlier decision of the Division Bench is binding on a Bench of coordinate strength. If the Bench hearing matters subsequently entertains any doubt about the correctness of the earlier decision, the only course open to it is to refer the matter to a larger Bench.

Para No. 13 - If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench.

43. In the case of **Sant Lal Gupta and others Vs. Modern Co-operative Group Housing Society Ltd. and others**⁴⁰, it is held as under:-

Para 19- The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues. If the latter bench wants to take a different view than that taken by the earlier bench, the proper course is for it to refer the matter to a larger bench.

44. In the case of **Safia Bee Vs. Mohd. Vajahath Hussain alias Fasi**⁴¹ held as under:-

Para No. 27 - The learned Judges were not right in over-ruling the statement of the law by a Co-ordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well accepted and desirable practice is that the later Bench would refer the case to a larger Bench.

Para No. 29 - In *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.*: (2005) 2 SCC 673, (para 12), a Constitution Bench of this Court summed up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

45. In view of the above exposition of law of the Apex Court as well

40. 2010 (28) LCD 1688 (Para No. 19)

41. (2011) 2 SCC 94 (Para Nos. 27 and 29)

as Division Bench and coordinate Bench of this Court, which are binding on this Court, I am not inclined to accord any relief to the petitioners.

46. For the aforesaid reasons, all the writ petition are dismissed.

Order Date :-21.06.2021

RKP