2024 INSC 847

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2634 OF 2013

TEJ PRAKASH PATHAK & ORS. ... APPELLANT(S)

VERSUS

RAJASTHAN HIGH COURT & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.2635 OF 2013

CIVIL APPEAL NO.2636 OF 2013

J U D G M E N T

MANOJ MISRA, J.

The ideal in recruitment is to do away with unfairness[1]

REFERENCE

1. A three-Judge Bench of this Court while accepting the salutary principle that once the recruitment process commences the State or its instrumentality cannot tinker with the "rules of the game" insofar as the prescription of eligibility criteria is concerned, wondered whether that should apply also

[1] UNITED NATIONS HANDBOOK OF CIVIL SERVICE LAWS AND PRACTICES.

to the procedure for selection. In that context, doubting the correctness of a coordinate Bench decision in ***K. Manjusree***[2] for not having noticed an earlier decision in ***Subash Chander Marwaha***[3], *vide* order[4] dated 20 March 2013, it was directed that the matter be placed before the Chief Justice for constituting a larger Bench for an authoritative pronouncement on the subject.

THE FACTUAL CONTEXT FOR THE REFERENCE

2. The relevant facts giving rise to the reference are as follows:

(a) The Rajasthan High Court[5] *vide* notification dated 17 September 2009 invited applications from amongst Judicial Assistants and Junior Judicial Assistants, having an experience of three years in the establishment of the High Court and possessing degree of M. A. in English Literature, for appointment on 13 posts of Translators. Preference was to be accorded to law graduates.

(b) At the relevant time, 'The Rajasthan High Court Staff Service Rules 2002'[6] framed by the Chief Justice of the High Court under Article 229 (2) of the Constitution of India[7] governed the appointments.

[2] K. Manjusree v. State of A.P., (2008) 3 SCC 512.
[3] State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220.
[4] Tej Prakash Pathak & Others v. Rajasthan High Court and Others, (2013) 4 SCC 540.
[5] The High Court.
[6] 2002 Rules.
[7] Constitution.

(c) Under the 2002 Rules, the Chief Justice of the High Court *vide* Office Order dated 5 December 2002, *inter alia*, specified the qualifications as well as the method of recruitment for the post of 'Translator' (Ordinary Scale) in the following terms:

> "TRANSLATORS (ORDINARY SCALE)
> Recruitment to the post of Translators (Ordinary Scale) shall be made on the recommendation of a Committee nominated by the Appointing Authority on the criteria of selection from amongst the graduate Upper Division Clerks or officials in equivalent or above grade but below the grade of Translators (Ordinary Scale), with Hindi or English Literature as one of the optional subject in Graduation or Lower Division Clerks with Hindi or English Literature as subject in post-graduation and having minimum experience of five years.
>
> COMPETITIVE EXAMINATION
> A qualifying examination shall be held to test the ability of the candidates of translation from English to Hindi and Hindi to English.
> Paper-I English to Hindi translation 100 marks
> Paper-II Hindi to English translation 100 marks
>
> Explanation: For the qualifying examination the officials appearing therein shall be given passages for translation from English to Hindi and Hindi to English from the judgment and records.
>
> Personal Interview:
> There shall be a personal interview of the candidate. 50 marks
>
> Note: A candidate who secures in aggregate 75% marks and minimum 60% marks in each paper shall only be called for interview."

(d) Later, *vide* Office Order dated 24 July 2004, amendments were made in the Office Order dated 5 December 2002 thereby substituting the provision

relating to recruitment of Translators (Ordinary Scale) by the following:

> "TRANSLATORS
>
> Recruitment shall be made from amongst the judicial assistants or junior judicial assistants having experience of 3 years by holding a test in English and Hindi translation. Candidates shall be given passages in English from the judgments and records and shall be asked to translate them into Hindi. Similarly passages in Hindi from the records or from some other books etc. shall be given and the candidates shall be asked to translate them into English.
>
> Minimum qualification shall be Graduate
> Preference shall be given to a Law Graduate"

(e) Thereafter, on 8 September 2009, the Office Order dated 5 December 2002 was further amended to substitute the specified minimum qualification with the following:

> "Minimum qualification shall be Post Graduate in English Literature from any recognized University established by law in India"

(f) On 19 December 2009 examination was held. Twenty-one aspirants appeared in the examination. Result was declared on 20 February 2010, wherein only 3 candidates were declared successful. This was so, because the Chief Justice of the High Court ordered that only those candidates who secured a minimum of 75% marks will be selected to fill up the posts in question. As only three candidates could secure a minimum of 75% marks, the list of successful candidates comprised of only three candidates.

(g) Some of the unsuccessful candidates filed writ petition before the High Court questioning the decision of the Chief Justice of the High Court in fixing the cut off at 75% on the ground that it amounted to "changing the rules of the game after the game is played". The High Court on its administrative side defended the decision of the Chief Justice by claiming it to have been taken in good faith for appointing a suitable candidate.

(h) The writ petition came to be dismissed by the High Court *vide* judgment under appeal dated 11 March 2011. The High Court took the view that on mere placement in the select list no indefeasible right accrues to a candidate for appointment. The employer may fix a higher benchmark to ensure that a person suitable to the post is appointed.

(i) On a special leave petition challenging the judgment of the High Court, while granting leave, *vide* order dated 20 March 2013, the matter was referred for an authoritative pronouncement by a larger Bench of this Court.

RELEVANT EXTRACTS FROM THE REFERENCE ORDER

3. To have a clear understanding of the scope of the reference, the relevant paragraphs of the reference order are extracted below:

> "**5**. Admittedly, the requirement of securing the minimum qualifying marks of 75% is not a stipulation of the Service Rules (referred to earlier) of the first respondent High Court as on the date of initiation of the recruitment process in question (i.e. 17-9-2009). It appears that such a prescription had existed earlier under the Rules, but by

an amendment, the said prescription was dropped with effect from 14-7-2004.

6. Therefore, the appellants challenged the selection process on the ground that the decision of the Chief Justice to select only those candidates who secured a minimum of 75% marks would amount to "changing the rules of the game after the game is played"—a cliché whose true purport is required to be examined notwithstanding the declaration of this Court in *Manjusree case* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] that it is "clearly impermissible".

7. The question whether the "rules of the game" could be changed was considered by this Court on a number of occasions in different circumstances. Such question arose in the context of employment under the State which under the scheme of our Constitution is required to be regulated by "law" made under Article 309 or employment under the instrumentalities of the State which could be regulated either by statute or subordinate legislation. In either case the "law" dealing with the recruitment is subject to the discipline of Article 14.

8. The legal relationship between employer and employee is essentially contractual. Though in the context of employment under the State the contract of employment is generally regulated by statutory provisions or subordinate legislation which restricts the freedom of the employer i.e. the "State" in certain respects.

9. In the context of the employment covered by the regime of Article 309, the "law"—the recruitment rules in theory could be either prospective or retrospective subject of course to the rule of non-arbitrariness. However, in the context of employment under the instrumentalities of the State which is normally regulated by subordinate legislation, such rules cannot be made retrospectively unless specifically authorised by some constitutionally valid statute.

10. Under the scheme of our Constitution an absolute and non-negotiable prohibition against retrospective law-making is made only with reference to the creation of crimes. Any other legal right or obligation could be created,

altered, extinguished retrospectively by the sovereign law-making bodies. However, such drastic power is required to be exercised in a manner that it does not conflict with any other constitutionally guaranteed rights, such as, Articles 14 and 16, etc. Changing the "rules of game" either midstream or after the game is played is an aspect of retrospective law-making power.

11. Those various cases [(*a*) *C. Channabasavaih* v. *State of Mysore*, AIR 1965 SC 1293; *State of Haryana* v. *Subash Chander Marwaha*, (1974) 3 SCC 220 : 1973 SCC (L&S) 488; *P.K. Ramachandra Iyer* v. *Union of India*, (1984) 2 SCC 141 : 1984 SCC (L&S) 214; *Umesh Chandra Shukla* v. *Union of India*, (1985) 3 SCC 721 : 1985 SCC (L&S) 919; *Durgacharan Misra* v. *State of Orissa*, (1987) 4 SCC 646 : 1988 SCC (L&S) 36 : (1987) 5 ATC 148; *State of U.P.* v. *Rafiquddin*, 1987 Supp SCC 401 : 1988 SCC (L&S) 183 : (1987) 5 ATC 257; *Maharashtra SRTC* v. *Rajendra Bhimrao Mandve*, (2001) 10 SCC 51 : 2002 SCC (L&S) 720; *Pitta Naveen Kumar* v. *Narasaiah Zangiti*, (2006) 10 SCC 261 : (2007) 1 SCC (L&S) 92; *K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841; *Hemani Malhotra* v. *High Court of Delhi*, (2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203; *K.H. Siraj* v. *High Court of Kerala*, (2006) 6 SCC 395 : 2006 SCC (L&S) 1345; *Ramesh Kumar* v. *High Court of Delhi*, (2010) 3 SCC 104 : (2010) 1 SCC (L&S) 756; *Rakhi Ray* v. *High Court of Delhi*, (2010) 2 SCC 637 : (2010) 1 SCC (L&S) 652; *Hardev Singh* v. *Union of India*, (2011) 10 SCC 121 : (2012) 1 SCC (L&S) 390 — Where procedural rules were altered.(*b*) *P. Mahendran* v. *State of Karnataka*, (1990) 1 SCC 411 : 1990 SCC (L&S) 163 : (1990) 12 ATC 727; *M.P. Public Service Commission* v. *Navnit Kumar Potdar*, (1994) 6 SCC 293 : 1994 SCC (L&S) 1377 : (1994) 28 ATC 286; *Gopal Krushna Rath* v. *M.A.A. Baig*, (1999) 1 SCC 544 : 1999 SCC (L&S) 325; *Umrao Singh* v. *Punjabi University*, (2005) 13 SCC 365 : 2006 SCC (L&S) 1071; *Mohd. Sohrab Khan* v. *Aligarh Muslim University*, (2009) 4 SCC 555 : (2009) 1 SCC (L&S) 917 — Where the eligibility criteria were altered.] deal with situations where the State sought to alter (1) the eligibility criteria of the candidates seeking employment, or (2) the method and manner of making the selection of the suitable candidates. The latter could be termed as the procedure adopted for the selection, such as, prescribing minimum cut-off marks to be secured by the candidates either in the

written examination or viva voce as was done in *Manjusree* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] or the present case or calling upon the candidates to undergo some test relevant to the nature of the employment (such as driving test as was in *Maharashtra SRTC* [*Maharashtra SRTC* v. *Rajendra Bhimrao Mandve*, (2001) 10 SCC 51 at pp. 55-56, para 5 : 2002 SCC (L&S) 720]).

12. If the principle of *Manjusree case* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] is applied strictly to the present case, the respondent High Court is bound to recruit 13 of the "best" candidates out of the 21 who applied irrespective of their performance in the examination held. In such cases, theoretically it is possible that candidates securing very low marks but higher than some other competing candidates may have to be appointed. In our opinion, application of the principle as laid down in *Manjusree case* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery.

13. This Court in *State of Haryana* v. *Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] while dealing with the recruitment of Subordinate Judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant rule prescribed minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into the service of the State have

no legal right to be appointed. In the context, it was held: (*Subash Chander Marwaha case* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] , SCC p. 227, para 12)

> "*12.* … In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for more (sic mere) eligibility."

14. Unfortunately, the decision in *Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] does not appear to have been brought to the notice of Their Lordships in *Manjusree* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] . This Court in *Manjusree* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] relied upon *P.K. Ramachandra Iyer* v. *Union of India* [(1984) 2 SCC 141 : 1984 SCC (L&S) 214] , *Umesh Chandra Shukla* v. *Union of India* [(1985) 3 SCC 721 : 1985 SCC (L&S) 919] and *Durgacharan Misra* v. *State of Orissa* [(1987) 4 SCC 646 : 1988 SCC (L&S) 36] . In none of the cases, was the decision in *Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] considered.

15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the "rules of the game" insofar as the prescription of eligibility criteria is concerned as was done in *C. Channabasavaih* v. *State of Mysore* [AIR 1965 SC 1293] , etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the "rules of the game" stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard."

(Emphasis supplied)

SCOPE OF THE REFERENCE

4. Public services broadly fall in two categories. One, where services are in connection with the affairs of the State/ Union. Second, where services are under the instrumentalities of the State. In either category, law governing recruitment must conform to the overarching principles enshrined in Articles 14 and 16 of the Constitution.

5. In various judicial pronouncements, the law governing recruitment to public services has been colloquially termed as 'the rules of the game'. The 'game' is the process of selection and appointment. Courts have consistently frowned upon tinkering with the rules of the game once the recruitment process commences. This has crystallised into an oft-quoted legal phrase that "the rules of the game must not be changed mid-way, or after the game has been played". Broadly-speaking these rules fall in two categories. One which prescribes the eligibility criteria (i.e., essential qualifications) of the candidates seeking employment; and the other which stipulates the method and manner of making the selection from amongst the eligible candidates.

6. Cut-off date with reference to which eligibility has to be determined is the date appointed by the relevant service rules; where no such cut-off date is provided in the rules, then it will be the date appointed in the advertisement inviting applications; and if there is no such date appointed, then

eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received.[8]

7. The law is settled that after commencement of the recruitment process the eligibility criteria is not to be altered because candidates even if eligible under the altered criteria might not apply by the last date under the belief that they are not eligible as per the advertised criteria.[9] Such alteration/ change, therefore, deprives a person of the guarantee of equal opportunity in matters of public employment provided by Article 16 of the Constitution. The reference order therefore acknowledges this legal position and in clear terms accepts that 'the rules of the game' cannot be changed after commencement of the recruitment process insofar as the eligibility criteria is concerned.

8. However, in regard to changing the rules of the game *qua* method or procedure for selection, the three-Judge Bench in the reference order doubted the correctness of the decision in ***K. Manjusree*** (supra) *inter alia* on the ground that it failed to notice an earlier decision in ***Subash Chander Marwaha*** (supra). Accordingly, the reference order seeks an authoritative pronouncement in that regard from a larger Bench of this Court. The scope of the reference is therefore limited to (a) whether ***K. Manjusree*** (supra) lays down the correct law; and (b) whether the rules of the game *qua* method

[8] Shankar K. Mandal v. State of Bihar, (2003) 9 SCC 519.
[9] Mohd. Sohrab Khan v. Aligarh Muslim University and others, (2009) 4 SCC 555.

and manner of making selection can be changed or altered after commencement of the recruitment process.

SUBMISSIONS

9. We have heard a battery of counsels both in support as well as against the strict applicability of the doctrine. During their arguments, they have either questioned or supported the decision of the High Court. For an effective analysis of their submissions and to properly adjudicate upon the issues which would arise while addressing the reference, we deem it appropriate to segregate their submissions into two parts. One which propounds that after commencement of the recruitment process, the stipulated procedure (i.e., rules of the game) for selection cannot be changed mid-way, or after the game is played, and the other which propounds that it is permissible to change / alter the stipulated procedure or method for selection to ensure that the most meritorious person, who is suitable for the post, gets appointed.

SUBMISSIONS AGAINST CHANGE

10. Submissions propounding that 'rules of the game' *qua* the procedure for selection must not be changed in the midst of the game, or after the game is played, are summarised below:

(a) Equality of opportunity in matters of public employment and fairness in State action are guaranteed by Articles 16 and 14, respectively, of the Constitution which proscribe a change in the rules of the game *qua*

selection criteria, once the game has begun. These rights would be infringed if candidates, otherwise eligible, are excluded from the zone of consideration based on a *post facto* change in the selection criteria.

(b) Candidates have a right to know, before the selection process commences, the standards/ criteria on which they will be assessed/ evaluated so that they could modulate their level of preparedness accordingly.

(c) A change in the advertised cut off marks for eligibility to be placed in the select list, after the game is played, may seriously prejudice a candidate on two counts. First, the candidate may not put in effort more than required for achieving the advertised cut off marks. Second, the interviewer or evaluator may unknowingly place the candidate in a non-eligible category while imagining that he has been placed in an eligible category. Thus a change in the eligibility cut off, after evaluation is done, denies the evaluator an opportunity to modulate the marks for placing the candidate in a category to which he/she, in the view of the evaluator, is entitled to be placed.

(d) If eligibility cut-off marks is to be prescribed, it should be done before the test or the interview so that both the examinee and the examiner are aware as to how many marks would qualify a candidate for further consideration.

(e) Recruitment to public services must not only be fair but must appear to be so. A change in the selection criteria mid-way would create an impression that the State is not acting fairly and the change is to favour certain individuals. It thus violates transparency in decision making process, which is fundamental to rule out arbitrariness, and fosters nepotism.

(f) Discretion is antithesis to the Rule of law which is the hallmark of our Constitution. Rule of law suffers when rules of the game are left to be altered at the discretion of the employer.

(g) ***K. Manjusree*** (supra) is not in conflict with ***Subash Chander Marwaha*** (supra). ***Subash Chander Marwaha*** proceeds on the principle that existence of vacancies does not confer a right to a candidate placed in the select list to be appointed. ***K. Manjusree*** on the other hand deals with a situation where a candidate is denied placement in the select list only because after the interviews were over, minimum marks for the interviews, not prescribed earlier, were prescribed. The two decisions, therefore, operate in different fields.

SUBMISSIONS PROPOUNDING CHANGE IS PERMISSIBLE

11. Submissions propounding that change in the selection procedure or criteria is permissible even in the midst of the recruitment process are summarised below:

(a) In absence of service rules, or the advertisement, prescribing or proscribing a cut off, employer has discretion to fix cut-off as may be considered necessary to appoint a candidate suitable to the post.

(b) Even if no cut-off is stipulated for eligibility *qua* placement in the merit list, the employer may choose to appoint only such of those from the merit list who are higher than a particular cut-off and such cut-off may be fixed later. This is so, because no selected candidate has an indefeasible right to be appointed.

(c) Considering the nature of the post, cut-off even if not prescribed by the Rules or the advertisement can be prescribed to appoint a person suitable to the post. Fixation of such cut-off would not be deemed arbitrary, as efficiency in service is the paramount consideration for the employer.

(d) A change in the selection criteria which does not bear on the merit list but only affects appointment based thereupon, would not fall foul of either Article 16 or Article 14 of the Constitution if such a change is in the larger interest of efficiency in the service.

ANALYSIS

12. To effectively analyse and adjudicate upon the questions referred, we would divide our discussion into following parts:

(a) When the recruitment process commences and comes to an end;

(b) Basis of the doctrine that 'rules of the game' must not be changed during the course of the game, or after the game is played;

(c) Whether the decision in ***K. Manjusree*** (supra) is at variance with earlier precedents on the subject;

(d) Whether the above doctrine applies with equal strictness *qua* method or procedure for selection as it does *qua* eligibility criteria;

(e) Whether procedure for selection stipulated by Act or Rules framed either under the proviso to Article 309[10] of the Constitution or a Statute could be given a go-bye;

(f) Whether appointment could be denied by change in the eligibility criteria after the game is played.

(A) COMMENCEMENT/END OF THE RECRUITMENT PROCESS

[10] **Article 309. Recruitment and conditions of service of persons serving the Union or a State.—**
Subject to the provisions of this Constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.
Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

13. The process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment.[11]

(B) BASIS OF THE DOCTRINE

14. The doctrine proscribing change of rules midway through the game, or after the game is played, is predicated on the rule against arbitrariness enshrined in Article 14[12] of the Constitution. Article 16[13] is only an instance of the

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[11] A.P. Public Service Commission v. B. Sarat Chandra, (1990) 2 SCC 669; and Rakhi Ray v. High Court of Delhi, (2010) 2 SCC 637.

[12] **Article 14. Equality before law. -** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

[13] **Article 16. Equality of opportunity in matters of public employment. -** (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, or State or Union territory, any requirement as to residents within that State or Union territory prior to such employment or appointment.
(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the State.
(4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the sealing of 50% reservation on total number of vacancies of that year.
(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.
(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any economically weaker sections of citizens other than the classes

application of the concept of equality enshrined in Article 14. In other words Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the concept of equality in all matters relating to public employment. These two articles strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles alike to all similarly situate and not to be guided by any extraneous or irrelevant considerations.[14] In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest.[15]

15. The principle of fairness in action requires that public authorities be held accountable for their representations. Good administration requires public authorities to act in a predictable manner and honour the promises made or practices established unless there is good reason not to do so.[16]

16. Candidates participating in a recruitment process have legitimate expectation that the process of selection will be fair and non-arbitrary. The basis of doctrine of legitimate

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mentioned in clause (4) in addition to the existing reservation and subject to a maximum of 10% of the posts in each category.

[14] E. P. Royappa v. State of T.N., (1974) 4 SCC 3.

[15] State of Jharkhand v. Brahmputra Metallics Ltd., (2023) 10 SCC 634.

[16] Sivanandan CT & Ors. v. High Court of Kerala & Ors., 2023 INSC 709.

expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. This doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure.[17] However, the doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.[18]

[17] Sivanandan CT (supra), paragraph 18.
[18] Sivanandan CT (supra), paragraph 37.

17. In ***Sivanandan CT***[19], the Constitution Bench, speaking through one of us (Dr. D.Y. Chandrachud, CJ), held that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens. It was also highlighted that the doctrine of legitimate expectation lays emphasis on predictability and consistency in decision-making which is a facet of non-arbitrariness. In addition, the Court observed:

> "43. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. ……. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14."

(C) K. MANJUSREE IS NOT AT VARIANCE WITH EARLIER PRECEDENTS

18. In ***K. Manjusree*** (supra) the recruitment exercise was for selection and appointments to the posts of District & Sessions Judges (Grade II). The extant rules prescribed the eligibility qualifications but were silent on the procedure for selection. The manner and method of selection was therefore to be decided by the High Court for every selection as and when the vacancies were notified for selection. The vacancies

[19] See Footnote 13, paragraph 38.

were notified by the State Government. As per the advertisement for selection a written examination followed by an interview were to be held. By a resolution dated 30.11.2004, the Administrative Committee of the High Court resolved to conduct written examination for 75 marks and interview for 25 marks. It was also resolved that the minimum qualifying marks for the OC[20], BC[21], SC[22] and ST[23] candidates shall be as prescribed earlier. Following the High Court's direction, written examination was held on 30.1.2005, and its results were declared on 24.2.2005 wherein 83 candidates were successful. Interviews were held in March 2006. Thereafter, the marks obtained by those 83 candidates were aggregated and a consolidated merit list was prepared in the order of merit on the basis of the aggregate marks. The merit list *inter alia* contained marks secured in the written examinations out of 100; marks secured in the interview out of 25; and the total marks secured in the written examination and interview out of 125. Based on that list, the Administrative Committee approved the selection of ten candidates as per merit and reservation. However, the Full Court did not agree with the select list prepared. Consequently, the Chief Justice constituted a Committee of Judges for preparing a fresh list. The Committee recommended that in place of 100 marks for the written examination and 25 marks for the interview, the candidates should be evaluated with reference to 75 marks for

[20] Open Category or Unreserved Category.
[21] Backward Class Category.
[22] Scheduled Caste Category.
[23] Scheduled Tribe Category.

the written examination and 25 marks for the interview in line with earlier resolution dated 30.11.2004. The Committee also recommended that the minimum pass percentage applied for the written examination to determine the eligibility of the candidates for appearance in the interview should also be applied for interview marks, and those who failed to secure such minimum marks in the interview should be considered as having failed. Based on the recommendation of the Committee, the minimum percentage for passing the written examination (i.e., 50% for OC, 40% for BC, and 35% for SC and ST) was applied for interview and, therefore, only those candidates who secured the minimum of 12.5 marks in OC, 10 marks in BC and 8.7 marks in SC and ST were considered as having succeeded in the interview. As a result, only 31 candidates were found to have qualified both in the written examination and interview. In consequence, a revised merit list of only 31 successful candidates was prepared wherein few candidates, earlier selected, were ousted and few others who did not find place in the earlier select list gained entry. However, out of those 31 candidates only 9 were recommended for appointment.

19. In that factual context, two candidates whose names found mention in the first list, and who got excluded in the second list, filed writ petitions by claiming that High Court's decision to prepare selection list by prescribing minimum qualifying marks for the interview was arbitrary and illegal. They thus sought a direction to the High Court to redraw the

select list without adopting minimum qualifying marks for the interview. The writ petitions were dismissed by the High Court. Being aggrieved, the writ petitioners preferred SLPs[24] before this Court. This Court while granting leave and allowing the appeal of the writ petitioners held that the High Court, though was correct in scaling down marks of written examination from 100 to 75, was not legally justified in directing that only those candidates would be placed in the merit list who obtained such minimum marks in the interview as was specified by the Committee. Key observations of this Court in ***K. Manjusree*** (supra) are being extracted below:

> "22. … the interview Committee conducted the interviews on 13.3.2006 … on the understanding that there were no minimum marks for interviews, that the marks awarded by them would not by itself have the effect of excluding or ousting any candidate from being selected, and that marks awarded by them in the interviews will merely be added to the written examination marks, for preparation of the merit list and selection list. We are referring to this aspect, as the matter of conducting interviews and awarding marks in interviews, by five members of the interviewing committee would have been markedly different if they had to proceed on the basis that there were minimum marks to be secured in the interview for being considered for selection and that the marks are awarded by them would have the effect of barring or ousting any candidate from being considered for selection. Thus, the entire process of selection – from the stage of holding the examination, holding interviews and finalising the list of candidates to be selected – was done by the Selection Committee on the basis that there was no minimum marks for the interview. To put it differently the game was played under the rule that there was no minimum marks for the interview.

[24] Special Leave Petitions.

> 27. …Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process consisting of written examination and interview was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible.
>
> 33. …We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection committee prescribe minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."
>
> (Emphasis supplied)

20. The discernible ratio in ***K. Manjusree*** (supra) is that the criterion for selection is not to be changed after completion of the selection process, though in absence of rules to the contrary the Selection Committee may fix minimum marks either for written examination or for interview for the purposes of selection. But if such minimum marks are fixed, it must be done before commencement of selection process. This view has been followed by another three-Judge Bench of this Court in

Ramesh Kumar v. High Court of Delhi[25] wherein the law on the issue has been summarized thus:

> "15. ... in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written tests as well as for viva voce."

21. What is important in ***K. Manjusree*** (supra) is that the minimum marks for the interview was fixed after the interviews were over. In that context, it was observed (a) that the game was played under the rule that there was no minimum marks for the interview, therefore introduction of the requirement of minimum marks for interview, after the entire selection process consisting of written examination and interview was completed, would amount to changing the rules of the game after the game was played; and (b) if the interviewers had to proceed on the basis that there were minimum marks to be secured in the interview for being considered for selection and that the marks awarded by them would have the effect of barring or ousting any candidate from being considered for selection, the awarding of marks might have been markedly different. The above observation (b) lends credence to the submission made before us that a change in the eligibility cut off, after evaluation is done, denies the evaluator an opportunity to modulate the marks for placing

[25] (2010) 3 SCC 104.

the candidate in a category to which he/she, in the view of the evaluator, is entitled to be placed.

22. In the reference order the correctness of the decision in ***K. Manjusree*** has been doubted on two counts: (a) if the principle laid down in K. Manjushree is applied strictly, the High Court would be bound to recruit 13 of the "best" candidates out of the 21 who applied irrespective of their performance in the examination held, which would not be in the larger public interest or the goal of establishing an efficient administrative machinery; and (b) the decision of this Court in ***Subash Chander Marwaha*** (supra) was neither noticed in ***K. Manjusree*** nor in the decisions relied upon in ***K. Manjusree***.

23. Insofar as the first reason to doubt ***K. Manjusree*** is concerned, we are of the view that the apprehension expressed in the referring order that all selected candidates regardless of their suitability to the establishment would have to be appointed, if the principle laid down in ***K. Manjusree*** is strictly applied, is unfounded. Because ***K. Manjusree*** does not propound that mere placement in the list of selected candidates would confer an indefeasible right on the empanelled candidate to be appointed. The law in this regard is already settled by a Constitution Bench of this Court in ***Shankarsan Dash***[26] in the following terms:

> "7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of

[26] Shankarsan Dash v. Union of India, (1991) 3 SCC 47, which has been consistently followed. See also All India SC & ST Employees Association v. A. Arthur Jeen & Others, (2001) 6 SCC 380; M. Ramesh v. Union of India, (2018) 16 SCC 195; and Rakhi Ray and others v. High Court of Delhi and others, (2010) 2 SCC 637.

> 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 license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* 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".

24. As regards the second reason (i.e., ***K. Manjusree*** not considering earlier decision in ***Subash Chander Marwaha***), it would be appropriate for us to first examine the facts of ***Marwaha's*** case. In ***Subash Chander Marwaha*** (supra) against 15 vacancies in Haryana Civil Service (Judicial Branch) a select list of 40 candidates, who obtained minimum 45% or more marks in the competitive examination, was prepared. The State Government, however, which was the appointing authority, made only 7 appointments from amongst top seven in the select list. Candidates who were ranked 8, 9 and 13 filed writ petitions in the High Court for a direction to the State Government to fill up the remaining vacancies as per the order of merit in the select list. State Government contested the petitions by claiming that in its view, to maintain high standards of competence in judicial service, candidates getting less than 55% marks in the examination were not suitable to be appointed as subordinate judges. The High Court allowed the writ petition by taking a view that the State Government was not entitled to impose a

new standard of 55% of marks for selection as that was against the rule which provided for a minimum of 45% only.

25. After taking note of the relevant extant rules (i.e., Rules 8 and 10)[27] this Court allowed State's appeal with the following observations:

> "**10.** … The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 …… is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (*i*) shall not make such appointments by travelling outside the list, and (*ii*) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, Rule 10 does not impose any other constraint. There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence.
>
> **11.** It must be remembered that the petition is for a mandamus. This Court has pointed out in *Dr Rai Shivendra Bahadur* v. *Governing Body of the Nalanda College* [AIR 1962 SC 1210 : 1962 Supp (2) SCR 144 : (1962) 2 SCJ 208 : (1962) 1 Lab LJ 247 : (1962) 4 FIR 507.] that in order that mandamus may issue to compel an authority to do something, it must be shown that the

[27] Rule 8. -No candidate shall be considered to have qualified unless he obtains 45% marks in the aggregate of all the papers and at least 33% marks in the language paper, that is, Hindi (in Devnagri script).

Rule 10.- (*i*) The result of the examination will be published in the Punjab Government Gazette;
(*ii*) Candidates will be selected for appointment strictly in the order in which they have been placed by the Punjab Public Service Commission in the list of those who have qualified under Rule 8;…."

statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived.

12. It was, however, contended by Dr Singhvi on behalf of the respondents that since Rule 8 ..... makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(*ii*) .... speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That

> the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of ....."

26. A close reading of the judgment in ***Subash Chander Marwaha*** (supra) would disclose that there was no change in the rules of the game *qua* eligibility for placement in the select list. There the select list was prepared in accordance with the extant rules. But, since the extant rules did not create any obligation on the part of the State Government to make appointments against all notified vacancies, this Court opined that the State could take a policy decision not to appoint candidates securing less than 55% marks. With that reasoning and by taking into account that appointments made were of top seven candidates in the select list, who had secured 55% or higher marks, this Court found no merit in the petition of the writ petitioners. On the other hand, in ***K. Manjusree*** (supra), the eligibility criteria for placement in the select list was changed after interviews were held which had a material bearing on the select list. Thus, ***Subash Chander Marwaha*** (supra) dealt with the right to be appointed from the select list whereas ***K. Manjusree*** (supra) dealt with the right to be placed in the select list. The two cases therefore dealt with altogether

different issues. For the foregoing reasons, in our view, ***K. Manjusree*** (supra) could not have been doubted for having failed to consider ***Subash Chander Marwaha*** (supra).

27. In ***K. H. Siraj v. High Court of Kerala & Ors.***[28] the High Court of Kerala invited applications for appointment to the post of Munsif Magistrate in the Kerala Judicial Service. Out of more than 1800 candidates who had applied, 1292 applications were found valid. 118 candidates passed the written examination. Out of the said candidates, 88 passed the interview and select list was prepared from amongst these 88 candidates. Candidates who were not selected as they had not secured the prescribed minimum marks in the interview filed writ petitions contending that in the absence of specific legislative mandate prescribing cut-off marks in interviews, the fixing of separate minimum cut-off marks in the interview for further elimination of candidates after a comprehensive written test touching the required subjects in detail, was violative of the statute. The writ petitions were allowed by a single judge of the High Court against which intra-court appeal was filed before division bench of the High Court. The division bench set aside the order of the learned single judge against which appeals came before this Court. While dismissing the appeals upon interpretation of Rule 7 of the Kerala Judicial Service Rules, 1991[29], this Court held:

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[28] (2006) 6 SCC 395.

[29] **Rule 7.**- *Preparation of lists of approved candidates and reservation of appointments.* – (1) The High Court of Kerala shall, from time to time, hold examinations, written and oral, after notifying the probable number of vacancies likely to be filled up and prepare a list of candidates considered suitable for appointment to category 2. The list shall be prepared after following such procedure as the High Court deems fit and by

"50. What the High Court has done by the notification dated 26.3.2001 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well-accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (IAS, IFS, etc) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as benchmark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high-powered body like the High Court to evolve its own procedure as it is the best judge in the matter.....

xxx xxx xxx

62. Thus it is seen that apart from the amplitude of the power under rule 7 it is clearly open for the High Court to prescribe benchmarks for the written test and oral test in order to achieve the purpose of getting the best available talent. There is nothing in the rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always supplement the rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court to supplement the rule with a view to implement them by prescribing relevant standards in the advertisement for selection."

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following the rules relating to reservation of appointments contained in Rules 14 to 17 of part 2 of the Kerala State and Subordinate Services Rules, 1958.

(2) The list consisting of not more than double the number of probable vacancies notified shall be forwarded for the approval of the Governor. The list approved by the Governor shall come into force from the date of the approval and shall remain in force for a period of two years or until a fresh approved list is prepared, whichever is earlier.

After observing as above, in ***K.H. Siraj*** (supra), this Court distinguished its earlier decision in ***P.K. Ramachandra Iyer v. Union of India***[30] with the following reasoning:

> "65. … In Ramachandra Iyer case Rule 14 (…..) mandated that the marks at the written test and the oral examination have to be aggregated and the merit list prepared on the basis of such aggregation of marks. Therefore, the marks obtained at the written test and the oral test were both relevant whatever be the percentage, in the preparation of the merit list. Nevertheless, the examining board prescribed minimum for viva voce test and eliminated those who failed to get the minimum. Resultantly, candidates who would have found a place in the rank list based on the aggregate of the marks for the two tests stood eliminated because they did not get the minimum in the test. This was contrary to Rule 14 and that was the reason why the prescription of minimum marks for viva voce test was held invalid in Ramachandra Iyer case."

28. The decision in ***K.H. Siraj*** (supra) makes it clear that if the rules governing recruitment provides latitude to the competent authority to devise its procedure for selection it may do so subject to the rule against arbitrariness enshrined in Article 14 of the Constitution. Even ***K. Manjusree*** (supra) does not proscribe fixing minimum marks for either the written test, or the interview, as an eligibility criterion for selection. What ***K. Manjusree*** (supra) does is to regulate the stage at which it could be done. This is clear from the decision of this Court in ***Hemani Malhotra v. High Court of Delhi***.[31] In ***Hemani*** (supra) a contention was raised that the decision in ***K. Manjusree*** (supra) should be regarded as per incuriam for not having noticed earlier decisions in ***Ashok Kumar Yadav v.***

[30] (1984) 2 SCC 141.
[31] (2008) 7 SCC 11.

State of Haryana[32] as well as ***K.H. Siraj*** (supra). Rejecting the contention, this Court observed:

> "16. ... what is laid down in the decisions relied upon by the learned counsel for the respondent is that it is always open to the authority making the rules regulating the selection to prescribe the minimum marks both for examination and interview. The question whether introduction of the requirement of minimum marks for interview after the entire selection process was completed was valid or not, never fell for consideration of this Court in the decisions referred to by the learned counsel for the respondent. While deciding the case of K Manjusree the Court noticed the decisions in P K Ramachandra Iyer v. Union of India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa, and has thereafter laid down the proposition of law..... . On the facts and in the circumstances of the case this Court is of the opinion that the decisions rendered by this court in K. Manjusree can neither be regarded as judgment per incuriam nor good case is made out by the respondent for referring the matter to the larger Bench for reconsidering the said decision."

29. The ultimate object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favoritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.[33] It is now well settled that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While

[32] (1985) 4 SCC 417.
[33] Lila Dhar v. State of Rajasthan and others, (1981) 4 SCC 159 paragraph 4.

written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity.[34] Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection.[35]

30. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/ procedure to select a candidate most suitable for the post *albeit* subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the Rules/ Statute governing service and reservation. Thus, in our view, the appointing authority/ recruiting authority/ competent authority, in absence of Rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the

[34] See paragraph 5 of Lila Dhar (supra)
[35] See paragraph 6 of Lila Dhar (supra)

recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/ examiner/ interviewer is taken by surprise. The decision in ***K. Manjusree*** (supra) does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates mal practices in preparation of select list.

(D) RULE DOES NOT APPLY WITH EQUAL STRICTNESS TO STEPS FOR SELECTION

31. As already noticed in Section (A), a recruitment process *inter alia* comprises of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Subject to the rule against arbitrariness, how tests or viva voce are to be conducted, what questions are to be put, in what manner evaluation is to be done, whether a short listing exercise is needed are all matters of procedure which, in absence of rules to the contrary, may be devised by the competent authority.

Often advertisement(s) inviting applications are open-ended in terms of these steps and leave it to the discretion of the competent authority to adopt such steps as may be considered necessary in the circumstances *albeit* subject to the overarching principle of rule against arbitrariness enshrined in Article 14 of the Constitution.

32. To elucidate the above proposition we shall notice few instances where the procedure devised by the recruiting body has been approved by this Court. In ***Santosh Kumar Tripathi v. U.P. Power Corporation***[36]**,** this Court was required to consider whether the Rule enabling Service Commission to examine, interview, select and recommend suitable candidates would include power to hold written examination. This Court accepted the High Court's view that power to 'examine' would include holding of written examination.

33. In ***M.P. Public Service Commission v. Navnit Kumar Potdar***[37] the question which arose before this Court was as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. In that context it was observed:

> "6. … It may be mentioned at the outset that whenever applications are invited for recruitment to the different

[36] (2009) 14 SCC 210.
[37] (1994) 6 SCC 293.

> posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate."

34. Likewise in ***Union of India v. T. Sundararaman***[38] where the eligibility conditions referred to a minimum of 5 years' experience, the selection committee was held justified in shortlisting those candidates with more than 7 years' experience having regard to the large number of applicants compared to the vacancies to be filled. The relevant observations are being extracted below:

> "4. ....Note 21 to the advertisement expressly provides that if a large number of applications are received the Commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In the case of *M.P. Public Service Commission* v. *Navnit Kumar Potdar* [(1994) 6 SCC 293 : 1994 SCC (L&S) 1377 : (1994) 28 ATC 286 : JT (1994) 6 SC 302] this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for

[38] (1997) 4 SCC 664.

> calling candidates for an interview. This was upheld by this Court. In the case of *Govt. of A.P.* v. *P. Dilip Kumar* [(1993) 2 SCC 310 : 1993 SCC (L&S) 464 : (1993) 24 ATC 123 : JT (1993) 2 SC 138] also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate…."

35. Similarly, in ***Tridip Kumar Dingal v. State of W.B.***[39] it was held that shortlisting is permissible on the basis of administrative instructions provided the action is *bona fide* and reasonable. The relevant observations in the judgment are extracted below:

> **"**38. … The contention on behalf of the State Government that written examination was for shortlisting the candidates and was in the nature of "elimination test" has no doubt substance in it in view of the fact that the records disclose that there were about 80 posts of Medical Technologists and a huge number of candidates, approximately 4000 applied for appointment. The State authorities had, therefore, no other option but to "screen" candidates by holding written examination. It was observed that no recruitment rules were framed in exercise of the power under the proviso to Article 309 of the Constitution and hence no such action could be taken. In our opinion, however, even in absence of statutory provision, such an action can always be taken on the basis of administrative instructions—for the purpose of "elimination" and "shortlisting" of huge number of candidates provided the action is otherwise bona fide and reasonable."

36. Another example is in respect of fixing different cutoffs for different subjects having regard to the relative importance

[39] (2009) 1 SCC 768.

of the subjects and their degree of relevance.[40] These instances make it clear that this Court has been lenient in letting recruiting bodies devise an appropriate procedure for successfully concluding the recruitment process provided the procedure adopted has been transparent, non-discriminatory/ non-arbitrary and having a rational nexus to the object sought to be achieved.

(E) PROCEDURE PRESCRIBED IN THE EXTANT RULE NOT TO BE VIOLATED

37. In ***Sivanandan C.T.*** (supra) the issue before the Constitution Bench was whether for selection minimum marks could be prescribed contrary to the extant rules and the advertisement. Answering in the negative, the Constitution Bench, speaking through one of us (Dr. D.Y. Chandrachud, CJ), held:

> "15. The Administrative Committee of the High Court decided to impose a cut off for the viva-voce examination actuated by the bona fide reason of ensuring that candidates with requisite personality assume judicial office. However laudable that approach of the Administrative Committee may have been, such a change would be required to be brought in by a substantive amendment to the rules which came in much later as noticed above. This is not a case where the rules of the scheme of the High Court were silent. Where the statutory rules are silent, they can be supplemented in a manner consistent with the object and spirit of the Rules by an administrative order.
>
> 16. In the present case, the statutory rules expressly provided that the select list would be drawn up on the basis of the aggregate marks obtained in the written examination and the viva-voce. This was further elaborated in the scheme of examination which prescribed that there would be no cut off marks for the viva- voce. This position is also reflected in the notification of the High

[40] Banking Service Recruitment Board, Madras v. V. Ramalingam, (1998) 8 SCC 523.

> Court dated 30 September 2015. In this backdrop we have come to the conclusion that the decision of the High Court suffered from its being ultra vires the 1961 Rules besides being manifestly arbitrary."

38. Following ***Sivanandan CT*** (supra), a three-Judge Bench of this Court in ***Salam Samarjeet Singh v. The High Court of Manipur at Imphal & Anr***[41] held:

> "31. … Prescribing minimum marks for viva-voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules. The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the unamended rules is clearly violative of the substantive legitimate expectation of the petitioner. It also fails the tests of fairness, consistency and predictability and hence is violative of Article 14 of the Constitution of India."

39. There can therefore be no doubt that where there are no Rules or the Rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the Rules. In that event administrative instructions would govern the field provided they are not *ultra vires* the provisions of the Rules or the Statute or the Constitution. But where the Rules expressly or impliedly cover the field, the recruiting body would have to abide by the Rules.

(F) APPOINTMENT MAY BE DENIED EVEN AFTER PLACEMENT IN SELECT LIST.

40. In Section (C) above, we have already noticed the Constitution Bench decision of this Court in ***Shankarsan Das*** (supra) where it was held:

[41] 2024 INSC 647.

> "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 license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* 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."

41. Thus, in light of the decision in ***Shankarsan Das*** (supra), a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar was the view taken by this Court in ***Subash Chander Marwaha*** (supra) where against 15 vacancies only top 7 from the select list were appointed. But there is a caveat. The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidate, the burden is on the State to justify its decision for not making appointment from the Select List.

CONCLUSIONS

42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment

process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in ***K. Manjusree*** (supra) lays down good law and is not in conflict with the decision in ***Subash Chander Marwaha*** (supra). ***Subash Chander Marwaha*** (supra) deals with the right to be appointed from the Select List whereas ***K. Manjusree*** (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for

bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

43. Let the appeals be placed before appropriate Bench for decision in terms of the answers rendered above, after obtaining administrative directions from Hon'ble the Chief Justice.

.....**CJI.**
(Dr. Dhananjaya Y. Chandrachud)

.....**J.**
(Hrishikesh Roy)

.....**J.**
(Pamidighantam Sri Narasimha)

.....**J.**
(Pankaj Mithal)

.....**J.**
(Manoj Misra)

New Delhi;
November 7, 2024