

(2013) 07 AHC CK 0194

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1476, 2469, 2471, 3116, 3184, 3914, 3122, 4783, 4788, 5026, 5777, 6029, 6663, 7071, 7272, 7782, 19110, 6147, 19779, 9150, 21337, 21342, 21859, 20511, 20674, 21663, 31271, 37806, 8479, 9765, 9624, 9786, 9821, 9904,

Anil Giri and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 8 ADJ 665 : (2014) 3 ALJ 482 : (2014) 4 AWC 3792 : (2013) 4 UPLBEC 2834

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Vinod Kumar Singh, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—In this bunch of writ petitions the declaration of result of Preliminary Written Test (hereinafter referred to as the "PWT") held for recruitment of Sub-Inspector (Civil Police) (hereinafter referred to as the "SICP") and Platoon Commander, Provincial Armed Constabulary (hereinafter referred to as the "PC, PAC") Combined Examination-2011 has been challenged on the ground that respondent-authorities, authorised to conduct aforesaid recruitment, have acted wholly illegally and deviating the provisions of statutory rules, have added something which is not provided in the rules which has the effect of changing procedure of selection, though the Selection Committee/Recruitment Board had no such power or authority and, therefore, this action of Recruitment Board is patently illegal, unauthorised and without jurisdiction. The leading case, i.e., Writ Petition No. 1476 of 2013 (hereinafter referred to as the "first petition") is preferred by fourteen petitioners who are candidates in aforesaid recruitment and has been argued by Sri Vinod Kumar Singh, Advocate.

2. In other connected matter, i.e., Writ Petition No. 2469 of 2013 (hereinafter

referred to as the "second petition"), wherein there are nineteen petitioners, Sri Vijay Gautam, Advocate has put in appearance on behalf of petitioners and advanced his submissions.

3. In all other connected matters, the learned counsels appearing for petitioners have adopted arguments advanced by above mentioned two learned counsels.

4. For the purpose of reference of documents and narration of fact, I treat the first and second petition as leading cases and pleadings and documents shall be referred therefrom.

5. The respondents have filed counter-affidavit in first writ petition and some other writ petitions. Since the issues raised in all the connected matters are common, it has been requested that defence taken in the counter-affidavit filed in first petition be read in all other matters, to which request made by learned Standing Counsel, the other side, i.e., counsels for petitioners, have no objection and, hence, the defence taken in this counter-affidavit shall be read in all connected matters.

6. As requested and agreed by learned counsels for the parties, I proceed to hear the matter finally at this stage and decide the same by this common judgment under the Rules of the Court.

7. The general police force is governed by Police Act, 1861 (hereinafter referred to as the "Act, 1861"), enacted with the assent of the then Governor General, granted on 22.3.1861, with an objective to reorganise the police and to make it more efficient instrument for prevention and detection of crime. Apparently, it is a pre-constitutional law and has continued to be operating by virtue of Articles 313 and 372 of the Constitutions as held in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, ; *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, ; and, *Vijay Singh and Others Vs. State of Uttar Pradesh and Others*, .

8. Section 2 of Act, 1861 talks of constitution of force and provides that entire police establishment under State Government shall, for the purposes of Act, 1861, be deemed to be one police force. Section 2 authorises the State Government to lay down conditions of service of members of subordinate ranks of police force by issuing orders, subject to condition that the same are not inconsistent with Act, 1861. The procedure for framing rules is prescribed in Section 46 of Act, 1861.

9. In exercise of powers under Sections 2 read with 46 of Act, 1861, the U.P. Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 (hereinafter referred to as the "CPR, 2008") were promulgated which came into force on 2.12.2008, vide Section 1(2) thereof. The recruitment to the post of Sub-Inspector in Civil Police is thus, governed by CPR, 2008. The aforesaid Rules, 2008 have also been amended from time to time and I shall refer the same as and when that would be necessary.

10. For the purpose of Provincial Armed Constabulary (hereinafter referred to as the "PAC") the U.P. State Legislature enacted, "U.P. Pradeshik Armed Constabulary Act, 1948" (hereinafter referred to as the "PAC Act, 1948"), which is a small Act, having 16 Sections and one schedule. It was enacted to provide for the constitution and regulation of United Provinces Armed Constabulary. Section 3 thereof talks of constitution of PAC and says that there shall be raised and maintained, by the State Government, a force, to be called PAC, and it shall be constituted in one or more Companies, in such manner and for such period, as may be prescribed.

11. The provisions of Act, 1861 in so far as they were not inconsistent with PAC Act, 1948 were applied to the members of PAC vide Section 5 of PAC Act, 1948. Section 15 confers power upon State Government to frame Rules. In exercise of powers conferred u/s 15 of PAC Act, 1948, the State Government enacted, "U.P. Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2008 (hereinafter referred to as the "PAC Rules, 2008"), which contain provisions for recruitment and conditions of service of member of PAC in the various cadres including Platoon Commander.

12. Since in the present case this Court is concerned with procedure of direct recruitment of SICP and PC, PAC, I would confine myself to the relevant provisions governing the procedure applicable thereto.

13. Rule 15 of CPR, 2008 lays down procedure for direct recruitment to the post of SICP. The procedure for receiving applications is provided in Clause (a) of Rule 15 and thereafter procedure for issuing call letters is provided in Clause (b). The candidates applying for recruitment under CPR, 2008 have to undergo Physical Standard Test [Rule 15(c)]; Preliminary Written Test [Rule 15(d)]; Physical Efficiency Test [Rule 15(e)]; Main Written Examination [Rule 15(f)]; Medical Examination [Rule 15(g)]; and, Group Discussion [Rule 15(h)].

14. Rule 15 as enacted initially in CPR, 2008 came to be amended by First Amendment Rules, 2009, published on 2.4.2009, as corrected by notification dated 10.6.2009 in Hindi translation; by 4th Amendment Rules, 2011, published in gazette dated 14.1.2011; and, by 5th Amendment Rules, 2013, published in gazette dated 1.3.2013. However, there is no change or alteration throughout in Rule 15(d). Though in 4th Amendment Rules, 2011 there is a substitution of existing clause by new one but I do not find that in substance there is any change at all. Rule 15(d) of CPR 2008, reads as under:

(emphasis added)

"D" Preliminary Written Examination

The candidates declared successful in Physical Standard Test under Clause "C", shall be required to appear in Preliminary Written Examination of an objective type/qualifying nature. This test will be of 200 marks.

It shall have three parts, i.e. General Knowledge (Current Affairs, History,

Geography, Constitution of India, Freedom Struggle etc.) of 100 marks, Numerical Ability Test of 50 marks and Reasoning Test of 50 marks. The candidates securing atleast 50% marks shall be declared successful in the aforementioned examination." (emphasis added) (English translation by the Court)

15. Simultaneously, for direct recruitment under PAC Rule, 2008, it is Rule 15 which prescribes the procedure. The stages therein are a Physical Standard Test (Rule 18(c) read with Appendix-7); Preliminary Written Test [Rule 18(d)]; Physical Efficiency Test (Rule 18(e) read with Appendix-8); Main Written Test (Rule 18(f) read with Appendix-9); Medical Examination (Rule 18(g) read with Appendix-10); and, Group Discussion (Rule 18(h) read with Appendix-9).

16. In the present case, we are concerned with the stage of PWT which is governed by Rule 18(d), which is *pari materia* to Rule 15(d) of CPR 2008 but for convenience, it is reproduced as under:

18(d) Preliminary Written Test.--The Candidates who were declared successful in the Physical Standard Test under Clause (c) shall be required to appear in an objective type/Preliminary Written Test of qualifying nature. This test shall carry 200 marks.

It shall comprise of three sections, namely General Knowledge (Current Affairs, History, Geography, Constitution of India, Freedom Struggle etc.) of 100 marks, Numerical ability test of 50 marks and Reasoning of 50 marks. The candidates who secure minimum fifty percent marks in the said test shall be declared successful.

17. The State Government, further, in exercise of powers conferred u/s 2 of Act, 1861 read with Section 15 of PAC Act, 1948, issued a notification dated 2.12.2008, as amended on 2.4.2009, so as to constitute a Police Service Recruitment and Promotion Board (hereinafter referred to as the "Recruitment Board"), assigning it the responsibility of recruitment and promotion of police officers of all subordinate ranks governed by aforesaid two sets of Rules, i.e., CPR, 2008 and PAC Rules, 2008. The copy of aforesaid notification is on record as Annexure 15 to the second petition. Para 2 thereof provides the duties of Recruitment Board. It, however, nowhere authorises the Recruitment Board to make any improvement upon the procedure, specifically provided in rules with regard to recruitment in the aforesaid services. The Recruitment Board has been impleaded as respondent No. 2 in both the petitions.

18. An advertisement was published by Recruitment Board on 19.5.2011 (Annexure-3 to the second petition) notifying vacancies of SICP and PC, PAC as under:

English Translation by the Court

19. In the second column recruitment procedure was also described and Clause 2 thereof reads as under:

(emphasis added)

Serial No. 2 Procedure-Preliminary Written Examination: Candidates who are declared successful in Physical Standard Test shall be required to appear in Preliminary Written Examination of qualifying nature. This examination shall comprise objective type questions of 200 marks having three parts - (1) General Knowledge - 100 marks, (2) Numerical Ability Test - 50 marks, (3) Reasoning Test - 50 marks.

Only those candidates securing atleast 50% marks in this examination shall be declared successful. Special: Qualifying, only those candidates who are declared successful in it shall be eligible for Physical Efficiency Test.

(emphasis added)

(English translation by the Court)

20. An instruction book was also supplied alongwith application form by Recruitment Board, copy whereof has been filed as Annexure-4 to the second petition, and therein also in para 2.5 the procedure and other conditions for PWT were mentioned as under:

(emphasis added)

Preliminary Written examination: Preliminary Written Examination shall be of qualifying nature. Only the candidates securing atleast 50% marks in this examination shall be declared successful. Depending on merit based on the marks obtained, from amongst these successful candidates, only a maximum of 18 times as many candidates as vacancies shall qualify to appear in the Physical Efficiency Test. The Syllabus for Preliminary Written Examination (Point 4.1 of Instruction Booklet) is available in the Instruction Booklet.

This examination shall comprise objective type questions of 200 marks with the following three parts:

- (1) General Knowledge - 100 marks
- (2) Numerical Ability Test - 50 marks
- (3) Reasoning Test - 50 marks

(emphasis added)

(English translation by the Court)

21. Here this Court finds one condition added therein that out of the successful candidates on the basis of merit, eighteen times candidates, qua the vacancies, shall be declared successful so as to participate in next stage of selection, i.e., physical efficiency test under para 2.6, i.e., Rule 15(e) of CPR, 2008 and Rule 18(e) of PAC Rules, 2008. In other respect, the instructions contained in para 2.5 are the same as contained in Rules.

22. All the petitioners initially participated in physical standard test and have qualified therein. They were required to participate in the second stage of recruitment, i.e., PWT.

23. The PWT was held on 11.12.2011 at different centers and result thereof was declared on 1.1.2013. The petitioners though secured more than 100 marks out of total 200, but were declared fail. On an inquiry made, it came to their notice that Recruitment Board issued a notice dated 1.1.2013 wherein it was provided that only those candidates, who would secure 40% marks in each sections, and aggregate 50% marks, shall be eligible for next stage of selection. The petitioners though secured 50% and more marks in aggregate, but in individual sections, they could not secure 40% and more in each, hence declared fail, in PWT. It is this change in the criteria for declaring the candidates, qualified, which resulted in disqualifying the petitioners for further participation in this recruitment which has been assailed in all these writ petitions.

24. Though initially there was another challenge also that six questions, namely, five in the subject of general knowledge and one of mathematics, were invalid and the same, therefore, have to be cancelled and pro rata marks ought to be awarded to all the candidates but on this aspect learned counsels for the parties did not address this Court and confined their challenge only to the question, "whether Recruitment Board can provide additional qualification that a candidate must secure minimum 40% in each sections/part of PWT, over and above the qualifying marks prescribed in Rules, i.e., 50% aggregate". This Court, therefore, has confined itself to consider the aforesaid question only and would endeavor to answer the same.

25. A counter-affidavit has been filed on behalf of respondent No. 2, Recruitment Board. It has been sworn by Sri Awadh Bihari Rakesh, Deputy Superintendent of Police, Uttar Pradesh Police Recruitment and Promotion Board, Lucknow. The initial paragraphs 1 to 7 make reference to various provisions of Act, 1861 and the Rules, namely, CPR, 2008 and the amendments made therein. Making reference to the Government Notification dated 2.12.2008, in para 9, it has been said that the Recruitment Board was entrusted with the duty of getting entire evaluation process completed from the stage of issuance of call letters till stage of declaration of result. It is then said in para 13 that before the date of PWT, i.e., 11.12.2011, a notice/instruction put on website of Recruitment Board, as also in newspapers, published on 24.11.2011 and 26.11.2011, according whereto, the candidates will have to secure atleast 40% marks in each part, subject to aggregate of 50% marks in the test, i.e., PWT. A copy of such notice/instruction issued by respondent No. 2 has been placed on record as Annexure-CA-1. This notice has been issued by Sri P.K. Mishra, Examination Controller, U.P. Police Recruitment and Promotion Board, Lucknow and the date mentioned under his signature is 24.11.2011. Para 5 thereof reads as under:

(emphasis added)

5. In this Preliminary Written Examination of qualifying nature, only those candidates shall be declared successful who secure atleast 40% marks in each part of the question paper and atleast 50% marks in aggregate out of the total marks. In accordance with the reservation policy of the State and depending on merit based on the marks obtained, only a maximum of 18 times as many candidates as vacancies, shall from amongst the successful candidates be eligible to participate in the Physical Efficiency Test."

(emphasis added)

(English translation by the Court)

26. Annexure-CA-2 has been filed in order to show that aforesaid notice/memorandum of Examination Controller, was also published in newspaper, Amar Ujala dated 26.11.2011.

27. It is then pleaded in para 14 that aforesaid notice is consistent with Rules and instructions contained in booklet. In para 16 it is said that para 2(IV)(Kha), (V) and (VII) of notification dated 2.12.2008 (as amended on 2.4.2009) empowers and authorises the Board to take such decision as are necessary for evaluation of answer-sheets and it is in exercise of such power, the aforesaid notice has been issued.

28. It is in the context of aforesaid pleading in counter-affidavit, I find it appropriate to reproduce para 2(V), (VI)(Kha) and (VIII) of the notification dated 2.12.2008 (as amended on 2.4.2009) as under:

(V) Various responsibilities:

Upon receiving the requisition of vacancies from the office of Director General of Police, the Board shall be responsible for the preparation of recruitment-related advertisement and OMR application forms, their dispatch as also of call letters; and for the conduct of Physical Standard Test, Physical Efficiency Test, Medical Examination, printing of OMR question sheets related to written examination, preparation of question papers to be dispatched, their printing and fetching them back to headquarters, evaluation of answer sheets, etc. in cooperation with District Magistrate/Senior Superintendent of Police/Superintendent of Police of the districts, and thus for all the proceedings until the declaration of results starting with the issue of call letters.

(VI)...

(b) The Board shall identify rooms at every identified centres and available seats in every room. In accordance with the norms prescribed by the Uttar Pradesh Public Service Commission/ Union Public Service Commission, the allotment of seats shall be undertaken with the numbering of rooms to be so done, also making it clear how many lines and seats are there in a particular room. Candidates shall not at any cost be seated in excess of the fixed seats in a room, Rooms should be of concrete construction with arrangement of sufficient light

and ventilation. Examination Centres shall be chosen by SP/ SSP in cooperation with District Magistrate. Complete information must reach the Police Services Recruitment and Promotion Board three months prior to the advertisement.

(VIII) Selection of external agency and its responsibilities:

For printing of application forms and call letters, scanning, issuance of admit cards for written examination, conduct of written examination, evaluation of computerized answer sheets, awarding of marks, finalization of results and for developing appropriate software to be used for aforesaid tasks, the Board, on the central level, shall utilize the services of high level authorised external agency which has satisfactorily performed for different State Public Service Commissions (in atleast two or three states), Combined Engineering/Medical Entrance Examinations or Union Public Service Commission, etc., and is equipped with sufficient infrastructure facilities. In case of faulty and irregular processes being adopted, penal proceedings shall be initiated after registering FIR against concerned erring external agency.

(a) Provision has been made for conduct of preliminary and main written examinations by external agency for direct recruitment to the post of Sub-Inspector, Civil Police/Platoon Commander, PAC. On the same pattern, provision has also been made for external agency to be outsourced for direct recruitment to the post of constable, Civil Police/Constable, PAC.

(b) Memo of Understanding (MOU) with external agency:

The Board shall sign a Memo of Understanding (MOU) with external agency. Detailed conditions mentioned in MOU shall be determined by the Government. The MOU shall have complete provision for check and balance system. After detailed examination of draft/conditions of MOU, it shall be signed by external agency/Police Services Recruitment and Promotion Board only after their being legally examined by the Legal/Finance Department. Conditions of MOU shall be predetermined. It shall be kept a top secret by the Board that they are "outsourcing" an external agency for various tasks. So as to maintain secrecy, this Board shall be exempted from inviting open tenders for selection of external agency.

(emphasis added)

(English translation by the Court)

29. However, it is worthy to mention here that there is no Para 2(IV)(Kha) in the aforesaid notification and it appears that in para 16 of the counter-affidavit there is some typographical mistake.

30. The arguments advanced on the part of learned counsels for the petitioners are that the respondent No. 2 has no power of adding to the efficacy of statutory provisions, by providing an additional condition to qualify PWT, over and above what is already provided in Rule 15 and 18 of the relevant Rules, respectively. It

is said that alleged notification dated 2.12.2008 (as amended on 2.4.2009) nowhere permits or authorises the Recruitment Board to make alteration by way of addition or omission or in any other manner, to the specific provisions with regard to procedure for selection contained in CPR 2008 and PAC Rules, 2008. When something is already provided in the Rules, it has to be observed and proceeded in that particular manner. It was not open to respondent No. 2 to proceed by making an additional condition which has the effect of altering procedure prescribed in Rules or adding to the efficacy of Rules. The reliance is placed on various authorities of Apex Court and this Court, which I shall refer while discussing the matter further in detail.

31. Per contra, learned Standing Counsel vehemently contended that in view of power of evaluation etc. conferred upon Recruitment Board under notification dated 2.12.2008 (as amended on 2.4.2009), the Recruitment Board possesses enough power to provide minimum qualifying marks in different subjects also, even if it is not so provided in statutory rules, namely, CPR, 2008 and PAC Rules, 2008. The objective of Recruitment Board in providing such minimum marks in each subject is for enhancing the standard of selection so as to get the best possible candidates in recruitment which is in the larger interest of the service concerned. Further, to avoid the scope of any undue advantage to a candidate, efficient in one part and not in the others, and to have a equitable and rational credit to all the candidates, prescription of minimum marks in each section has been provided so that a selected candidate must have a fair idea of all the subjects, to a particular minimum level, which would ultimately help to make an efficient officer who has to undertake important social responsibility of maintaining law and order etc. He contended that the authorities cited at the Bar, have no application to the case in hand, and the notice dated 24.11.2011 published by Examination Controller is well within competence of respondent No. 2 and cannot be said to be illegal, unauthorised or lacking jurisdiction.

32. I have heard learned counsel for the parties at great length and also perused the record as also the authorities cited at Bar.

33. It is admitted at the Bar that in the recruitment in question, PWT is a qualifying test. In the ultimate merit list, which is to be prepared for selection of candidates, the marks obtained in PWT would be of no assistance. It is a kind of test to short-list the number of candidates. It is also evident from the manner in which the different stages of recruitment procedure has been provided. The very first, i.e., physical standard test, in fact, is a kind of general physical requirement commensurating to the requirement of service. The candidates whose applications after initial scrutiny are in accordance with basic requirement of eligibility and qualifications etc., they are called to participate for the first level test, i.e., physical standard test wherein the general physical standards like height, weight etc. are considered. Those who qualify/ satisfy the minimum requirement thereof, are declared pass, and become entitled for the next stage of recruitment, i.e., PWT.

34. The object of PWT is to examine level of efficiency of candidate in regard to his intelligence, alertness, general awareness of day to day affairs etc. One who shows an average level of performance is declared qualified so as to proceed to the next stage of recruitment wherein the physical efficiency test contemplates the examination of candidate's level of endurance, physical labour etc.

35. It is with this view of the matter, the rule framing authority, i.e., the State Government, in its wisdom has provided various steps of test which includes PWT, the maximum marks for entire test as also the individual parts of test, and also the level of efficiency it desires to have in a candidate, successful therein. It has not been left to the discretion/domain of selection body or Recruitment Board.

36. The rule framing authority did not find it necessary to provide that a candidate must possess a minimum or optimum or a particular level or standard of efficiency in each and every part of PWT and that is why it did not prescribe any condition that a candidate must secure marks up to a particular level in individual sections so as to qualify PWT. The rule framing authority, on the contrary, found it appropriate that a candidate, if has secured, in total, 50% of marks, i.e., 100 marks or more, out of 200, he shall be declared qualified in PWT and only such qualified candidate shall be allowed to go for the next level of recruitment test.

37. The Recruitment Board, in my view, did not possess any authority or jurisdiction to tinker with the requirement of statutes with regard to procedure for selection, the manner in which selection is to be held, the requisite steps etc. It is not a case where rules are silent on the particular aspect with which we are concerned. The Rules contemplate, kind of test, maximum marks to be prescribed therefor, and also, the level at which a candidate would stand qualified, if has shown his worth to that extent. The authority of Recruitment Board is not to sit in appeal over the wisdom of rule framing authority. When the rule framing authority has considered upon a certain aspect of the matter and in its wisdom has decided to lay down a particular standard for the purpose of recruitment or appointment, it is not open to selection committee to sit over such wisdom of rule framing authority, so as to make an improvement thereupon, with an impression that whatever said by the selection body that would be more in the interest of service and what has been laid down by employer itself or rule framing authority, either lacks requisite standard or sort of that or has any/some scope of improvement by selecting body. I have no hesitation in holding that such authority cannot be usurped by a selection body particularly in the case, when, rule is very clear and there is no ambiguity.

38. In *Umesh Chandra Shukla Vs. Union of India (UOI) and Others*, , the Court said that selection committee does not possess any inherent power to lay down its own standard in addition to what is prescribed under rules.

39. In *Durgacharan Misra Vs. State of Orissa and Others*, , the Court said that

selection committee had no jurisdiction to prescribe minimum marks which a candidate had to secure at vive-voce.

40. In *Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others*, , the Court said:

The selection committee does not even have the inherent jurisdiction to lay down norms for selection nor such power can be assumed by necessary implication.

41. Following the above decisions, i.e., *Umesh Chandra Shukla (supra)* and *Durgacharan Misra (supra)*; in *Secretary, A.P. Public Service Commission Vs. B. Swapna and Others*, , the Court referred to *B.S. Yadav and Others Vs. State of Haryana and Others*, , and said, that, rule making function under Article 309 is legislative and not executive, hence a selection committee or selection board cannot have jurisdiction to lay down any standard or basis for selection as would amount to legislating a rule of selection.

42. The decisions taking above view in *Maharashtra State Road Transport Corporation and others v. Rajendra Bhimrao Mandve (supra)* and *Secretary, A.P. Public Service Commission v. B. Swapna (supra)* have also been followed in *Umrao Singh Vs. Punjabi University, Patiala and Others*, .

43. The power to lay down rules/ guidelines/standards/policy for recruitment or promotion by laying down the eligibility criteria, qualifications, procedure etc. vests with employer or where the employer is a body like the State Government, who possess statutory power to make rules etc., to such rule framing authority. In *K. Samantaray Vs. National Insurance Co. Ltd.*, , in para 11 the Court said:

It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.

44. The Court further said that the employer, while laying down promotion policy or rule, can always specify the area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, or has the effect of violating any statutory provision.

45. In *Ramesh Kumar Vs. High Court of Delhi and Another*, , in para 15, the Court said, that, 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 bench marks for written test as well as for interview.

46. In *State of Orissa and Another Vs. Mamata Mohanty*, , in para 51 of the

judgment, the Court said:

More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over.

47. In the present case, nobody has disputed that State Government in exercise of statutory powers under the two statutes, namely, Act, 1861 and PAC Act, 1948, has power to frame rules, laying down criteria and procedure for recruitment in service. In the present case, Rule 15 and 18 of the two sets of rules on their own are not silent but contain a specific provision as to when and with what standard or level, a candidate, if has performed, would be declared successful/qualified in PWT. Here the alteration has been made by adding to that requirement, incorporating one more condition by Recruitment Board. The status of Recruitment Board is like that of selection body or examining body. This is impermissible. Here the Recruitment Board has exceeded its jurisdiction and authority.

48. The argument of learned Standing Counsel that the power of evaluation of answer-sheets for performance of candidate is vested with Recruitment Board and, therefore, it can also prescribe the manner in which performance has to be judged, so as to qualify a particular test, also has no legs to stand.

49. The term "evaluation" itself does not mean introduction of qualifying marks in the test. The meaning of word "evaluation" in P. Ramanatha Aiyer "The Law Lexicon The Encyclopedic Law Dictionary with Legal Maxims, Latin Terms and Words and Phrases" 2nd Addition, Reprint 2007, at page 660 is as under:

Evaluation Act or process of evaluating or ascertaining the value.

50. Evaluation is the process of assessment, computation and a performance of somebody. It does not incorporate within its ambit the procedure of a test, prescription of minimum or maximum marks or qualifying marks etc. The evaluation is a small part of entire process of test or examination. For example where the students appeared in secondary examination, the examining body has a right to get the papers set by itself or its agency who prescribes the maximum and passing marks and to provide the manner in which assessment of performance of students shall be made is called evaluation. A particular examiner who checks the answer-sheets of students, considering the reply given by students for their performance, award marks, that process is called evaluation. It cannot be extended so much so that prescription of minimum qualifying marks or qualifying standards can be laid down by such evaluator. It appears that Recruitment Board has completely mistaken and swayed away from its role, authority and power in conducting the recruitment in question. It has to abide strictly by the standard and procedure prescribed in the rules by rule framing authority. It cannot either subtract, reduce or add to what has been prescribed in the Rules. In the garb of evaluation or process of evaluation the Recruitment Board cannot go to lay down guidelines, procedure or norms for recruitment

particularly when the field is already occupied by Rules.

51. It is in this view of the matter also, I do not find that Recruitment Board possesses any such power under the notification dated 2.12.2008 (as amended on 2.4.2009) and, therefore, I have no hesitation in holding that Recruitment Board has clearly exceeded in its jurisdiction by prescribing qualifying marks in respect of different sections in PWT. The relevant statutory rules contemplate not individual qualifying marks for different sections but aggregate qualifying marks in entire test, i.e., 50% or more. The decision of Recruitment Board, therefore, to prescribe 40% marks as qualifying in each part of PWT is wholly illegal, without jurisdiction and is ultra vires of the authority of Recruitment Board.

52. Even if one can go to the extent of saying something in favour of respondents, in this particular case, I do not find any scope of such extension of power to the Recruitment Board for the reason that rules are not silent and instead contain each and every aspect as to the level at which the candidates have to perform so as to qualify in qualifying test. Thus in the present case there is no such scope open for Recruitment Board.

53. Faced with above difficulty, learned Standing Counsel contended that notification dated 2.12.2008 (as amended on 2.4.2009) itself is a statutory order and though it is not a rule framed, referable to Section 46 of Act, 1861 and Section 15 of PAC Act, 1948 yet it is a statutory order and, therefore, shall have the effect and capacity of changing rules and, thereby, authorising the Recruitment Board to take such decision as would help it in selecting the best candidates. According to him, introduction of qualifying marks with reference to three sections in PWT, is nothing but a process of evaluation and, therefore, it is well within the domain of Recruitment Board. So far as the argument founded on the term evaluation is concerned, I have already negated it.

54. The rest of the submission is also patently misconceived. It is true that an order issued by State Government and not notified as rule, has a statutory flavour or is a statutory order, as observed by Apex Court in *Chandra Prakash Tiwari v. Shakuntala Shukla* (supra) but such an order has to be consistent with the Act which would include the statutory rules framed under the Act. It is so provided in Section 2, Act, 1861 itself. A rule notified in gazette can be amended by following the same procedure in which it was made as is provided in Section 22 of U.P. General Clause Act. The CPR, 2008 or PAC Rules, 2008 cannot be amended by issuing even a statutory order though administrative in nature and referable to Section 2 of Act, 1861. In any case such an executive order, though has a statutory flavour, yet it cannot be given status of a statutory rule notified in the gazette and framed u/s 46 or 15 as the case may be, unless the same procedure is followed. Therefore, the aforesaid notification dated 2.12.2008 and its amendment cannot be treated as if it has the effect of amending CPR, 2008 and PAC Rules, 2008.

55. There is one more aspect of the matter. The rule framing authority itself,

having anticipated this kind of situation, has provided that the rules aforesaid shall have overriding effect over any law providing otherwise.

56. In CPR, 2008, Rule 30 was inserted vide Second Amendment Rule, 2010 published in gazette dated 19.1.2010 which reads as under:

30. Overriding effect: The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules, Government Orders or Administrative Instructions, made or issued by State Government.

(emphasis added)

57. A similar amendment came to be made in PAC Rules, 2008 vide Second Amendment Rules, 2011 published in gazette dated 10.4.2011, whereby Rule 47 was inserted and relevant Rule 47(1) reads as under:

47. Overriding effect.--(1) The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules, Government order or Administrative instructions made or issued by the State Government.

(emphasis added)

58. Then comes another angle of the argument that such an alteration in the midst of selection is impermissible.

59. The recruitment process commenced with advertisement of vacancies. The Recruitment Board notified the procedure for recruitment absolutely consistent with Rules. The candidates following the same, participated at the first level of recruitment test and those who qualified, proceeded for the second level of recruitment test, i.e., PWT. It is at this stage, the Recruitment Board has come up with a decision to alter the requirement of level of qualifying PWT by providing that besides 50% and more in aggregate, one has to secure atleast 40% marks in each part/ section of three part written test in PWT and only then he shall be declared qualified and not otherwise.

60. At this stage, none of counsels for the petitioners has objected to the fact that the number of total candidates which are to be declared qualified has been confined by Recruitment Board to eighteen times, vis a vis vacancies, though, it is not so provided in the Rules. Therefore, I am not touching this aspect of the matter but that would make no difference in the present case inasmuch as, it is an admitted position that the number of candidates declared successful by Recruitment Board, after PWT, on the basis of modified qualifying standard, are about eight times of the vacancies only.

61. Learned counsel for the petitioners contended that it amounts to change of rules of game in between when game has already commenced which is neither it is fair, nor permissible, nor otherwise valid, in the midst of game.

62. The law as presently operating and holding the field supports what has been contended on behalf of petitioners.

63. Deprecating the practice of changing guidelines, procedure or standard, once process of selection or recruitment or promotion has commenced, the Courts repeatedly, not only have deprecated such attitude or action, but have held, for umpteen times, that it is not permissible.

64. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , the selection process was held under I.C.A.R. Rules, 1977. The Rules provided for minimum marks only in the written examination and not in interview. The Agricultural Service Recruitment Board on its own provided a further qualification regarding minimum marks in interview also. The Court said that the power to prescribe minimum marks in interview should be explicit and cannot be read by implication for the obvious reason that such deviation from rules is likely to cause irreparable and irreversible harm. The Court also said that there was no power under the Rules for selection board to prescribe an additional qualification for securing minimum marks in interview. The restriction was impermissible.

65. In Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, , it was said:

The criteria for selection cannot be altered by authority concerned in the middle or after the process of selection has commenced.

66. In K. Manjusree Vs. State of A.P. and Another, , in para 27 of the judgment the Court said that introduction of the requirement of minimum marks for interview, after the entire selection process was complete, would amount to changing the rules of game after game was played, which is clearly impermissible.

67. In Hemani Malhotra Vs. High Court of Delhi, , an argument was advanced that in K. Manjusree (supra) the Court deprecated change of rules, once the game is over but where the game is continuing, such change may not be bad. Rejecting this submission the Court said:

There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.

(emphasis added)

68. In T. Nadu Computer SC B.Ed. G.T. Welf. Society Vs. Higher Sec. Scl. Computer Tech. Assn. and Others, , the Court followed the dictum laid down in

Hemani Malhotra (supra) and observed that in a recruitment process change in rules of game during selection process or when it is over, are not permissible.

69. In Barot Vijaykumar Balakrishna and Others Vs. Modh Vinaykumar Dasrathlal and Others, , the Court considered the question, whether cut of marks for vive-voce was rightly introduced after interview was over. The Court found that there was a provision under the Rules for minimum qualification marks in the written test as well as interview but due to omission in advertisement, requirement of cut of marks in interview was not specified. In these facts, the Court held, that, once the rule permits such introduction, the same could have been implemented even if the interview was over but not otherwise.

70. I am aware that the above proposition regarding change of rules of game, i.e., during selection process or after the process is over, has been referred to a Larger Bench, recently, in Tej Prakash Pathak and others v. Rajasthan High Court and others, Civil Appeal No. 2634 of 2013 and the matter is still pending, but so long as it is not otherwise decided by Larger Bench, this Court is bound by the authorities, operating the field and are presently law of the land.

71. In view of above discussion, I have no hesitation in holding that Recruitment Board did not possess power to introduce qualifying marks in PWT and this introduction is wholly without jurisdiction. It cannot be doubted, where the rules specifically provide something, nobody on administrative side, can tinker with efficacy of rule in any manner. Such a deviation on the part of selection body would be wholly unauthorised, illegal and lack jurisdiction. The qualifying marks when are prescribed in rules, over and above thereto, the selection body had no jurisdiction to make, on its own, an additional qualifying marks with respect to individual sections also, though it was not so desired by rule framing authority. When something is required to be done in a particular manner, the things have to be done strictly in accordance thereto and not otherwise. Moreover such alteration is not permissible in the midst of selection.

72. Before parting I may also add that the decision of this case in favour of petitioners will not affect the candidates already selected, so as to bring one or some of them outside the list of qualified candidates, for the reason that all those candidates admittedly have obtained aggregate 50% marks and above and, therefore, have been declared qualified. This decision only would add to the list of qualified candidates by bringing in all those who have secured 50% and more in PWT irrespective of whether in individual parts/sections they have secured 40% more or less and hence none shall be prejudiced in any manner except of having a few more competitors but then that is the consequence of application of Rule of Law.

73. In the result, the writ petitions are allowed. The respondents are directed to finalise PWT in view of discussions and observations made above, and, those candidates, who have secured, in aggregate, 50% marks and above, shall be treated to qualify the aforesaid test and shall be permitted to appear in next level

of recruitment. The petitioners shall also be entitled to costs, which I quantify to Rs. 1000/- for each set of writ petition.