
(2021) 01 P&H CK 0437
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 719 Of 2021

Lovepreet Singh

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Orissa Superior Judicial Service And Orissa Judicial Service Rules, 2007 — Rule 24

Citation : (2021) 01 P&H CK 0437

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Sunil Kumar Nehra, Rajni Gupta, Kanwal Goyal

Final Decision : Dismissed

Judgement

Harsimran Singh Sethi, J

1. Present writ petition has been filed by the petitioner challenging the result of the written examination dated 01.01.2021 declared by the Haryana

Public Service Commission (hereinafter referred to as the 'Commission') for the posts of Assistant Engineer (Civil), which were advertised by the

respondent-Commission vide Advertisement No. 5 dated 17. 11.2015 (Annexure P-1), on the ground that the answers in the answer key to the

questions in the written examination were not correct and the objections submitted by the petitioner to the said answer keys have been rejected

summarily without any application of mind.

2. The brief facts leading to filing of present writ petition are that the respondent-Commission issued an Advertisement No. 5 of 2015 (Annexure P-1)

advertising the posts of Assistant Engineer (Civil) and Assistant Engineer (Mechanical). 27 posts of Assistant Engineer (Civil) were advertised out of

which 6 posts were reserved for the Backward Class A (BCA) candidates. The criteria for the selection for the said posts was that there would be three objective type papers and two conventional papers of 200 marks each and viva-voce will be for 125 marks. The objective type papers were General Ability Test, Civil Engineering Paper-I and Civil Engineering Paper-II. As per the terms and conditions stipulated in the advertisement, in order to qualify for interview, a candidate has to obtain at least 40% marks in each paper and not less than 50% marks in aggregate in all the papers which he/she will undertake.

3. Petitioner appeared in the examination, which were held from

3. 09.2020 to 05.09.2020 and the result of the said written examination was declared by the respondent-Commission on 01.01.2021. Petitioner was not found successful in the written examination and therefore, was not called for interview.

4. Petitioner has approached this Court with the grievance that the answer key uploaded by the respondent-Commission in respect of the written

examination held on 08.09.2020, does not carry correct answers. The grievance has been raised by the petitioner qua Question No. 45 of the Civil

Engineering Paper-I, Question No. 27 of the Civil Engineering Paper-II and Question Nos. 25, 62, 97, 98 of the General Ability Test .

5. As the petitioner remained unsuccessful in convincing the respondents qua the alleged faulty answer key in respect of Question Nos. 97 and 98 of

the General Ability Test, the petitioner has approached this Court with a prayer that the result of the written examination, which has been declared by

the respondents on 01.01.2021, be scrapped/set-aside and the same be declared afresh by correcting the answer key to the questions, in respect of

which, the petitioner has raised objections.

6. After notice of motion, respondents have filed reply to the writ petition. The contention of the respondents in the reply is that the answer key to the

questions, in respect of which the petitioner had raised objections, was correct and the respondents have defended the answer key, which was

uploaded. In the reply, the respondents have submitted that keeping in view the various objections received from the students including the petitioner,

the same were put before the Expert Committee for their consideration and keeping in view the recommendations of the Expert Committee, the

Commission had taken following decisions :-

â??a) Objection regarding question No. 45 of Civil Engineering Paper-1 has been accepted.

b) Questions No. 25 and 62 of General Ability Paper have been found to be ambiguous and hence recommended for deletion by the Expert

Committee.

c) Objections regarding question No. 27 of Civil Engineering Paper-II and question No. 97 and 98 of General Ability Paper have not been accepted by

the

Expert Committee.

Consequently, appropriate action has been taken by the answering respondent-Commission by accepting the recommendations of the subject Expert

Committee. Accordingly, the petitioner has been given the benefit in respect of his objection qua question no. 45 of Civil Engineering Paper-1 and

question Nos. 25 and 62 of General Ability Paper. Thus, the answering respondent-Commission has rightly declared the result of written examination

as per the report of the Expert Committee.â??

7. The respondents in their reply have also clarified the answer key qua Question Nos. 97 and 98 of General Ability Paper, to which the petitioner had

raised objections.

8. At this stage, learned counsel for the petitioner submits that the petitioner does not press his petition qua the quashing of the result declared by the

respondent-Commission on 1st of January, 2021 keeping in view the reply filed by the respondent-Commission.

9. Learned counsel for the petitioner further submits that as two questions have been deleted from the question paper by the respondent-Commission

on the advice of the Expert Committee, 40% marks required to clear a particular paper has consequently been lowered and now petitioner's score

stands raised to 39.9% marks in the General Ability Test and the said score should be rounded off to 40% so as to make the petitioner eligible to be

called for interview. Learned counsel for the petitioner further submits that as only five candidates against 6 posts reserved for the Backward Class A

(BCA) have qualified the written examination, the marks scored by the petitioner be rounded off from 39.9% to 40% in the General Ability Test and

he should also be called for interview which are now scheduled to be held in the last week of January, 2021.

10. Learned counsel for the respondents raises objection to the said argument of the learned counsel for the petitioner on the ground that there is no

prayer in the present petition with regard to rounding off the marks secured by the petitioner from 39.9% to 40% so as to make him eligible to be

called for interview and even otherwise, once the minimum marks of 40% have been prescribed as per the terms and conditions mentioned in the

advertisement to be secured by a candidate in order to become eligible to be called for interview and there is no relaxation provided under any rules or

in the terms and conditions of the advertisement, the prayer of the petitioner for rounding off the score from 39.9% to 40% may kindly be rejected

being not maintainable.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. As noticed above, learned counsel for the petitioner has not pressed his prayer for setting-aside the result of the written examination declared on

1st of January, 2021 by the Commission for the post of Assistant Engineer (Civil), as advertised vide Advertisement No. 5 dated 17. 11.2015

(Annexure P-1).

13. The only prayer of the learned counsel for the petitioner for consideration of this Court, is for rounding off 39.9% marks secured by the petitioner

in the General Ability Test to 40% so as to make him eligible to be called for interview. It is an admitted fact that as per the terms and conditions

prescribed in the advertisement, a candidate was required to obtain 40% marks in each subject and 50% marks in aggregate so as to be treated as

qualified to be called for interview by the Commission. The scheme of examination in the advertisement clearly stipulates the said condition without

there being any relaxation permissible to the said candidate. As of now, it is also not in dispute that petitioner, who has secured 39.9 percent marks in

the General Ability Test, is not eligible to be called for interview.

14. As far as the prayer of the petitioner for the rounding off the marks is concerned, learned counsel for the petitioner places reliance upon the

judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 4079 of 2004, titled as State of U.P. and another Vs. Pawan Kumar Tiwari and

others, 2005 (1) SCT 524, decided on 04.01.2005. Learned counsel for the petitioner contends that where, the fraction of percentage is one half or

more its value has to be increased to one and if the fraction is less than half then only the same has to be taken as it is. Learned counsel for the

petitioner argues that in the present case, the percentage secured by the petitioner in the examination is 39.9%, and the same is more than one half,

hence needs to be increased to one and be treated as 40% instead of 39.9%. Learned counsel for the petitioner further relies upon the judgment of a

Division Bench of the Hon'ble Supreme Court of India in Appeal (Civil) No. 6168 of 2001 titled as Bhudev Sharma Vs. District Judge, Bulandshahr

and another, 2008(1) SCC 233, decided on 31.10.2007, wherein also, the Hon'ble Supreme Court of India has rounded off 0.6 to one.

15. Both the judgments, which are being relied upon by the learned counsel for the petitioner, have been taken into consideration by the Hon'ble

Supreme Court of India in Civil Appeal No. 6201 of 2011 titled as Orissa Public Service Commission and another Vs. Rupashree Chowdhary and

another, 2011(4) SCT 49, decided on 02.08.2011. Hon'ble Supreme Court of India after noticing both the judgments has held that where a candidate is

seeking increase of marks by rounding off the same so as to treat the said candidate eligible, the rounding off is not permissible. Hon'ble Supreme

Court of India held that in Pawan Kumar Tiwari's case (supra) and Bhudev Sharma's case (supra), the question was for ascertaining the number of

posts required to be filled on the basis of percentage of reservation for a particular reserved category and thus, the rounding off was permitted, which

benefit is not available when a candidate's eligibility is to be seen, especially, where minimum required marks for clearing a particular examination has

been envisaged in the advertisement itself. The relevant paragraphs of the judgment in Orissa Public Service Commission's case (supra) are as under

:-

â??7. Learned counsel appearing for the respondents during the course of his arguments relied upon the decisions of this Court in State of Orissa and

Another v. Damodar Nayak reported in (1997) 4 SCC 560, State of U.P. and Another v. Pawan Kumar Tiwari and Others reported in (2005) 2 SCC

10, Union of India v. S. Vinodh Kumar reported in (2007) 8 SCC 100 and Bhudev Sharma v. District Judge, Bulandshahr and Another reported in

(2008) 1 SCC 233. On scrutiny, we find that the findings recorded in the above referred cases are not applicable to the facts of the present case.

Facts and findings recorded by this Court in the above referred cases are distinguishable to facts of the case in hand. Almost all the aforesaid cases

dealt with post or vacancies where it was allowed to be rounded off to make one whole post. Understandably there cannot be a fraction of a post.

8. In the light of the detailed records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The

appointment to the post of Civil Judge (J.D.) under the Orissa Judicial Services is guided by Orissa Superior Judicial Service and Orissa Judicial

Service Rules, 2007 and Rule 24 thereof specifically deal with the criteria for determining of candidates for interview. Rule 24 reads thus: -

24. Determination of number of candidates for interview "The Commission shall call the candidates for interview who have secured not less

than forty-five per centum of marks in aggregate and a minimum of thirty three per centum of marks in each paper in the Main written examination."

9. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a

minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the Main examination.

When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be

obtained by the concerned candidate there cannot be a question of relaxation or rounding off.

10. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the

minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution

or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or

relaxation.

11. We may also draw support in this connection from a decision of this Court in District Collector & Chairman, Vizianagaram Social Welfare

Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi reported in (1990) 3 SCC 655. In the said judgment this Court has

laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter

only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the

appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

12. The entire record of the main written examination was also produced before us which indicates that there are also candidates who have got more

than the respondent in the aggregate but has not been able to get 33% marks in each paper and have missed it only by a whisker. In case, the

contention of the counsel appearing for the respondent is accepted then those candidates who could not get 33% marks in each paper in the Main

written examination could and should have also been called for viva-voce examination, which would amount to a very strange and complicated

situation and also would lead to the violation of the sanctity of statutory provision.

13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to

give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two

conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no

rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.

14. The High Court, in our considered opinion, has also committed an error apparent on the face of the records by allowing two more persons, who

secured marks between 44.5% and 45%, to be called for interview who were not even parties before it and who had not even shown interest

subsequently to be appointed subsequent to the declaration of the results of the examination but despite the said fact the High Court directed them also

to be called for the interview only on the ground that they have secured more than 44.5% of marks but less than 45% marks in the main written

examination in aggregate.â??

16. The same view was reiterated by the Hon'ble Supreme Court of India while deciding Civil Appeal No. 6205 of 2011 titled as Bhanu Pratap Vs.

State of Haryana and others, 2011(4) SCT 67, decided on 02.08.2011.

In the said case, the candidate had secured 49.8% marks against 50% minimum required to become eligible for selection as subordinate Judge under

the Haryana Civil Services (Judicial Branch) examination. Hon'ble Supreme Court of India held that once, there is no power provided in the statute

and there is no stipulation in the advertisement for grant of grace marks or rounding off the marks so as to bring up the candidate to the minimum

requirement, no such rounding off or relaxation is permissible.

The relevant paragraphs of the said judgment are as under :-

12. Counsel appearing for the appellant submitted before us that since the appellant had received 49.8% in aggregate in all the tests including viva-

voce, the same could and should have been rounded off to 50% in aggregate which would have entitled the appellant to be selected for appointment to

the aforesaid post. Counsel also submitted that during the earlier selection immediately preceding the selection in question there was the requirement

of grading under three factors/categories only and the same came to be varied/increased in the selection in question from three to six. He contended

that this increasing of grading factors/categories from three to six envisages much wider criteria in the selection process in question which amounted

to arbitrariness.

13. The aforesaid submissions of the counsel appearing for the appellant were however refuted by counsel appearing for the respondents by

submitting that the respondents have strictly and minutely followed and complied with the Rules which are statutory in nature and, therefore, the

present appeal has no merit at all. He also submitted that there cannot be addition of any marks unless the same is specifically permitted and provided

either under the Rules or in the advertisement and, therefore, there was no illegality or arbitrariness in the selection in question.

14. In the light of the records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The relevant

Rules have already been extracted above. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written

examination a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written

papers. The further mandate of the rules is that a candidate would not be

considered as qualified in the examination unless he obtains at least 50% marks in the aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off as sought to be submitted by the counsel appearing for the appellant.

15. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation.

16. We may also draw support in this connection from a decision of this Court in *District Collector & Chairman, Vizianagaram Social Welfare*

Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi reported in (1990) 3 SCC 655. In the said judgment this Court has

laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter

only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the

appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

17. In the case of *Umrao Singh Vs. Punjabi University, Patiala and Ors.* reported in (2005) 13 SCC 365 this Court while dealing with the power of

Selection Committee for relaxation of norms held thus: -

“Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of

duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily

established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected

candidate is concerned gets vitiated. In *P.K. Ramchandra Iyer and Ors. v. Union of India and Ors.* (1984) 11 LLJ 314 SC this Court held that once it is

established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the

established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.â??

18. Let us also examine the issue from another angle. If rounding off is given to the appellant as sought for by him there has to be similar rounding off

for a person who has missed 33% in one of the papers just by a whisker. To him and to such a person who could not get 50% in aggregate in the

written test, if this rule of rounding off is offered then they would also get qualified. In that event, there would be no meaning of having a rule wherein

it is provided that a person must at least have the minimum marks as provided for thereunder. Somewhere a line has to be drawn and that line has to

be strictly observed which is like a Lakshman Rekha and no variation of the same is possible unless it is so provided under the Rules itself. Both the

Selection Committee as also the appointing authority are bound to act within the parameters of the Rules which are statutory in nature and any

violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which

would be illegal.â??

17. Same question of rounding off the marks so as to gain the eligibility again came up for consideration before the Hon'ble Supreme Court of India in

Writ Petition (Civil) No. 764 of 2017 titled as Taniya Malik Vs. The Registrar General of the High Court of Delhi, decided on

16. 02.2018. Hon'ble Supreme Court of India again held that once an eligibility criteria has been prescribed for a particular examination, a person

needs to meet the said criteria without any relaxation and enhancement of marks by rounding off method so as to make up the minimum aggregate is

not permissible. The relevant paragraphs of the said judgment are as under :

â??20. With regard to question as to rounding off of the marks, in our opinion, when a particular aggregate is prescribed for eligibility, a person must

meet the criteria without relaxation. It is not permissible to enhance the marks by rounding off method to make up the minimum aggregate.

21. This Court, in *The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore v. G. Hemlatha and Ors.*, 2012(4) S.C.T. 157 : (2012) 8 SCC

568, held as impermissible the rounding off of eligibility criteria in relation to

qualifying examination for admission to the PG Course in Msc (Nursing).

Relying upon the decision rendered in Orissa Public Service Commission & Anr. v. Rupashree Chowdhary and Anr., 2011(4) S.C.T. 49 : (2011) 8

SCC 108, this Court observed:

8. In Orissa Public Service Commission and Anr. v. Rupashree Chowdhary and Anr. 2011(4) S.C.T. 49 : (2011) 8 SCC 108 this Court in somewhat

similar fact situation considered whether the eligibility criteria could be relaxed by the method of rounding-off. The Orissa Public Service Commission

published an advertisement inviting applications from suitable candidates for the Orissa Judicial Service Examination, 2009 for direct recruitment to fill-

up 77 posts of Civil Judges (JD). Pursuant to the advertisement, the first Respondent therein applied for the said post. She took the preliminary written

examination. She was successful in the said examination. She, then, took the main written examination. The list of successful candidates, who were

eligible for interview, was published in which the first Respondent's name was not there. She received the mark sheet. She realized that she had

secured 337 marks out of 750 i.e. 44.93% of marks in the aggregate and more than 33% of marks in each subject.

9. As per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 (for short "the Orissa Rules"), the candidates who

have secured not less than 45% of the marks in the aggregate and not less than a minimum of 33% of marks in each paper in the written examination

should be called for viva voce test. Since the first Respondent therein had secured 44.93% marks in aggregate she was not called for interview/viva

voce. The first Respondent approached the Orissa High Court. The High Court allowed the writ petition. The appeal from the said order was carried

to this Court.

10. After considering the Orissa Rules, this Court in Rupashree Chowdhary case (2011) 8 SCC 108 held that Rule 24 thereof made it clear that "in

order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% marks in

the aggregate in all the written papers in the main examination." (SCC p. 111, para 10)

This Court observed that when emphasis is given in the rule itself to the minimum marks to be obtained, there can be no relaxation or rounding-off. It

was observed that no power was provided in the statute/rules permitting any such rounding-off or giving grace marks. It was clarified that: (SCC p.

112, para 10)

10.... The [Orissa] Rules are statutory in nature and no dilution or amendment to such rules is permissible or possible by adding some words to the

said statutory rules for giving the benefit of rounding-off or relaxation.

11. In our opinion, the ratio of this judgment is clearly applicable to the facts of this case. Judgment of the Full Bench of Allahabad High Court in Vani

Pati Tripathi v. Director General, Medical Education and Training and Ors. 2003(3) S.C.T. 492 : AIR 2003 All 164 and judgment of the Full Bench of

Punjab and Haryana High Court in Kuldeep Singh, Legal Assistant, Punjab Financial Corporation v. The State of Punjab and Ors., 1998(1) S.C.T. 339 :

(1997) 117 PLR 1, were cited before us because they take the same view. However, in view of the authoritative pronouncement of this Court in

Orissa Public Service Commission (supra), it is not necessary for us to discuss the said decisions.

12. No provision of any statute or any rules framed thereunder has been shown to us, which permits rounding-off of eligibility criteria prescribed for

the qualifying examination for admission to the PG course in M.SC (Nursing). When eligibility criteria is prescribed in a qualifying examination, it must

be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding

that learned Single Judge was right in rounding-off of 54.71% to 55% so as to make Respondent 1 eligible for admission to PG course. Such rounding-

off is impermissible.

22. Thus the principle of rounding off method could not be applied in view of requirement to obtain minimum aggregate marks to be called for

interview in the instant case.â??

18. The judgment in Pawan Kumar Tiwari's case (supra), which is being relied upon by the learned counsel for the petitioner, has been considered and

distinguished by a Co-ordinate Bench of this Court while deciding CWP No. 15973 of 2014 titled as Babil Sidhu Vs. State of Punjab and another, on

02.09.2014. In the said writ petition, petitioner therein, lost out on his eligibility by 0.28% marks which fell below the minimum 40% marks required and

petitioner therein approached this Court for the rounding off the percentage to

40% so as to make him eligible. The Co-ordinate Bench of this Court held that Pawan Kumar Tiwari's case (supra), which related to the ascertaining of the number of posts required to be filled on the basis of the percentage provided for reservation of a particular category, where rounding off is permissible, has no applicability, where eligibility of a candidate is to be determined in respect of minimum percentage of marks required. The relevant paragraph of the said judgment is as under :-

“The petitioner, who lost out on his eligibility by 0.28% marks that fell below 40%, has a grievance that if the percentage of marks was rounded off to the nearest whole number, he would have been treated as eligible and that is how his case must have been considered for determining his eligibility for admission to MBBS course. Learned Senior Counsel would rely on a Division Bench ruling of the Bombay High Court in Anup Prakash Vyas Versus University of Pune 2013 (2) AIR Bombay, 695 that held, while considering the eligibility of a candidate for admission to Bachelor of Architecture course, that when the eligibility was 50% and a candidate had obtained 49.846% in aggregate, the fraction must be ignored and it could be rounded off to the nearest whole number. Learned Senior counsel would refer to the fact that the Bombay High Court was relying on a three member Bench judgment of the Supreme Court in State of U.P. And another Vs. Pawan Kumar Tiwari and others (2005) 2 SCC 10, where the Supreme Court was considering a case of application of prescribed percentage apportionment to general and reserved categories for appointment and while noticing the treatment of a fraction of vacancies, the court held that if the fraction was $\frac{1}{2}$ or more it should be treated as 1 and if it is less than $\frac{1}{2}$, it should be ignored. With respect, I hold that the reliance on the three members Bench judgment of the Supreme Court in Pawan Kumar Tiwari's (supra) simply does not answer the issue, for, the total number of vacancies can never be in terms of a fraction, for, no person other than a whole individual could be appointed. In the very nature of things, a fraction of vacancy to the post has no meaning. Fraction in marks perfectly is tenable and possible at all times. Importing the principle of rounding off vacancy to appointment to an institute to round off marks was clearly wrong in my view, and I am unable to persuade myself to accept the ruling of the Division Bench of the Bombay High Court in that regard.”

19. Faced with this situation, learned counsel for the petitioner submits that the judgments, which are being relied upon to oust the claim of the petitioner, cannot be made applicable as the judgment in Pawan Kumar Tiwari's case (supra) is a Division Bench Judgment consisting of three Hon'ble Judges, whereas the other judgments are rendered by Division Bench of Hon'ble Supreme Court of India consisting of two Hon'ble Judges and hence, the judgment rendered by a Bench consisting of three Hon'ble Judges will prevail over a judgment given by a Bench consisting of two Hon'ble Judges.

20. The said question also came up for consideration before the Hon'ble Supreme Court of India in Writ petition (Criminal) 972 of 1984, titled as Javed Ahmed Abdul Hamid Pawala Vs. State of Maharashtra, decided on 09.11.1984. Though, the Hon'ble Supreme Court did not divulge much on the said aspect but has expressed certain views with regard to a Division Bench consisting of two Hon'ble Judges and a Division Bench consisting of three Hon'ble Judges. The question before the Hon'ble Supreme Court of India was whether a Division Bench consisting of three Hon'ble Judges can overrule a judgment of the Division Bench consisting of two Hon'ble Judges merely because three is larger than two. The Hon'ble Supreme Court of India held that the Supreme Courts sits in divisions of two and three judges for the sake of convenience and it may be inappropriate for a Division Bench consisting of three Hon'ble Judges to purport to overrule the decision of a Division Bench judgment consisting of two Hon'ble Judges. Relevant paragraph of the said judgment is as under :-

4. xxx xxx xxx xxx xxx

The case also raises the further question whether a Division Bench of three judges can purport to overrule the judgment of a Division Bench of two judges merely because three is larger than two. The Court sits in Divisions of two and three judges for the sake of convenience and it may be in appropriate for a Division Bench of three judges to purport to overrule the decision of a Division Bench of two judges. Vide *Young V. Bristol Aeroplane Co. Ltd.*, 1944(2) All England Reporter 293. It may be otherwise where a Full Bench or a Constitution Bench does so. We do not however desire to embark upon this question in this case. In the present case we are satisfied that an overall view of all the circumstances appears to

us to entitle the petitioner to invoke the protection of Article 21 of the Constitution. We accordingly quash the sentence of death and substitute in its place the sentence of imprisonment for life.

Order accordingly.â??

21. Even otherwise question whether, a later decision of a smaller bench, which analysed and explained the earlier larger bench judgment, will be

binding or not came up for consideration before the Full Bench of this Court in CWP No. 3923 of 1986, titled as Subhash Chander Kamlesh Kumar

Vs. State of Punjab and others, decided on 09.03.1990, wherein it was held that where a smaller bench has taken into consideration the earlier larger

bench judgment and has analysed the same and explained/ distinguished the same, then the later judgment, which though is rendered by a smaller

bench judgment, will be binding. The relevant paragraph of the said judgment is as under :-

â??19. Shri Sibal contended that the decision in K.K. Puri's case (supra) was binding on this Court in preference to the later smaller Bench decisions.

For this contention, he relied on The State of U.P. v. Ram Chandra Trivedi, AIR 1976 Supreme Court 2547. In paragraph 22 it was laid down as

under :-

Where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court; it cannot disregard or skirt the

views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India v. K.S.

Subramanian Civil Appeal No. 212 of 1975 decided on July 30, 1976) to which one of us was a party, is to try to find out and follow the opinion

expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice hardened, as it has, into a

rule of law is followed by this Court itself"".

Reference is also made to Ganapati Sitaram Balvalkar and another v. Waman Shripad Mage AIR 1981 Supreme Court 1956, and State of Orissa and

others v. Titaghur Paper Mills Company Limited and another, 1985 (Supp.) SCC 280.

It will be seen that none of the cases relied upon by the learned counsel for the petitioners dealt with a case where the latter Benches may have

analysed and explained the earlier judgment of the larger Bench of the Supreme

Court. The abstract proposition that where there is a conflict between the law declared by a larger Bench and a smaller Bench, the former will prevail, does not help in resolving the present problem. In the present case, the smaller Benches analysed and explained the earlier Judgment of the Constitution Bench. This very question was explained by a Full Bench of our Court in *Ms. Daulat Ram Trilok Nath and others v. The State of Punjab and others*, AIR 1976 Punjab and Haryana 304. It was held that construction which the Supreme Court itself places on an earlier precedent is obviously binding and authoritative. To the same effect is another decision of a Full Bench of this Court in *the State of Punjab v. Teja Singh*, 1976 CrLJ 1648. It was observed :

.....When an earlier judgment of the Supreme Court is analysed and considered by a later Bench of that Court then the view taken by the latter as to the true ratio of the earlier case is authoritative in any case, that view is binding on the High Courts".

A Full Bench of the Gujarat High Court in *Nizamuddin Suleman v. The New Shorrock Spg. & Mfg. Mills Co. Ltd., Nadiad* and another 1979 Gujarat Law Reporter 290 after SC 2433, concluded the legal position in the following words :-

Of course, if the view expressed earlier by a larger bench of the Supreme Court have been explained even by a smaller Bench in a subsequent decision, the explanation by a smaller bench of the Supreme Court would be required to be followed by High Courts before whom the earlier decision of the larger bench and the subsequent explanation of the same judgment by the smaller bench are cited. Otherwise, as indicated by Beg, J., in *Union of India v. K.S. Subramanian* (supra) the High Court is bound to follow the decision of the larger Bench of the Supreme Court".

Having considered the matter carefully, we are of the view that the later decisions, even though by smaller Benches, have analysed and explained the observations of the Constitution Bench in *K.K. Puri's case* (supra) and the law as explained in those later decision is binding on us.??

22. In the present case, the Division Bench of Hon'ble Supreme Court of India consisting of three Hon'ble Judges in *Pawan Kumar Tiwari's case* (supra), has already been taken into consideration and explained by a Division Bench consisting of two Judges of the Hon'ble Supreme Court of India

in Rupashree Chowdhary's case (supra). That being so, the later Division Bench judgment though, rendered by a Division Bench consisting of two

Hon'ble Judges, has a binding precedence and cannot be ignored, as being prayed by the learned counsel for the petitioner.

23. Keeping in view the settled principles of law noticed here-in-before, the prayer of the petitioner for rounding off his percentage from 39. 9% to

40% in respect of his General Ability Test is not permissible and the said prayer is contrary to the settled principles of law and hence, the same is

rejected.

24. Keeping in view the above, the prayers of petitioner are devoid of merits and the same are consequently rejected.

25. Writ petition is dismissed with no order as to costs.