

---

**(2020) 02 CHH CK 0135**

**In the Chhattisgarh High Court**

**Case No :** Writ Appeal No. 620 Of 2019, 10, 24, 36, 48, 50, 54, 55, 59, 63, 64  
Of 2020

Prakash Tiwar And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

---

**Date of Decision :** 24-02-2020

**Acts Referred:**

Chhattisgarh Police Act, 2007 — Section 50  
Constitution Of India, 1950 — Article 309

**Citation :** (2020) 02 CHH CK 0135

**Hon'ble Judges :** P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

**Bench :** Division Bench

**Advocate :** Naushina Afrin Ali, Topilal Bareth, Nitansh Kumar Jaiswal, Ajay Kumrani, S.C. Verma, Mateen Siddiqui

**Final Decision :** Allowed

---

## Judgement

@JUDGMENT-JUDGMENT

P.R. Ramachandra Menon, CJ

1. Cancellation of the entire selection process for appointment of Police Constables (General Duty), in which about 3,86,320 candidates participated, after the written examination (result of which is not declared so far) which came to be upheld by the learned Single Judge is put to challenge in these appeals. In fact, the cancellation was merely with reference to non-publication of the amended rules regarding the 'Physical Efficiency Test' in the official gazette on the date of advertisement (belated by 18 days from the last date for submitting the application), though the advertisement was issued incorporating the amended norms and all the candidates had participated in the process of selection with full knowledge of the rules (as

amended).

2 Writ Appeal No. 620 of 2019 {arising out of Writ Petition (S) No. 8650 of 2019} is treated as the lead case and the parties and proceedings are

referred to as given therein, except where it is separately referred to.

3 The main ground of challenge is that, absolutely no reason is stated in Annexure P/1 order of cancellation dated 27.09.2019 passed by the 2nd

Respondent, but for some apprehension as to the ""legal complications (if challenged by anybody)"" which cannot be a reason to cancel the entire

process of selection. This is more so, when the process/procedure or the rules were not questioned by anybody and further when cancellation of the

entire process of selection for hyper-technical reason stands deprecated by the Hon'ble Supreme Court in Chandra Prakash Tiwari & Others v.

Shakuntala Shukla & Others; (2002) 6 SCC 127.

4 Way back on 29.12.2017, an advertisement was issued by the Respondents for filling up of 2259 posts of Police Constable (General Duty) having

the requisite qualification as specified therein. Scheme of selection was to consist of a 'physical efficiency test', followed by written examination which

was open only for those who cleared the physical efficiency test. Based on the performance in the written test, the selection was to be finalised and

appointment was to be effected. In fact, the State Government had already notified Chhattisgarh Police Executive Force Constable (Appointment and

Conditions of Service) Rules, 2007 (for short 'the 2007 Rules'), as per which the physical efficiency test had to be conducted in five different

disciplines such as 100 mtrs. race, 800 mtrs. race, shot put, long jump and high jump, each of which was to carry 20 marks, constituting a total of 100

marks. This, however was sought to be changed, allegedly for wider participation, and according to the Petitioners, in relaxation of the said norms, the

draft rules with regard to the physical efficiency test without effecting any change as to the written examination/subjects/marks were framed and

notified in the website of the Police Department. As per the amended draft rules, the physical efficiency was to be tested only in one item i.e. 1500

mtrs. race in the case of men (which was to be cleared in 5.40 minutes) whereas, in the case of women, it was 800 mtrs. race (to be cleared in 3.20

minutes) as the qualifying requirement. No marks were prescribed in the above event and all those who cleared the requirement as specified were to

be given admit card to participate in the written examination, leading to selection and appointment.

5. As per Annexure P/3 advertisement, applications had to be submitted online, which commenced from 03.01.2018 and the last date for submission of

the application was 04.02.2018. The amended Rules as to the physical efficiency test was incorporated in Annexure P/3 advertisement and shown in

the website of the Police Department, based on which applications were submitted by all the candidates. However, the amendment came to be

published in the official gazette only 18 days later on 23.02.2018, as disclosed from Annexure P/5. Absolutely no change was there between the draft

rules and the finalised Rules as contained in Annexure P/5, and after conducting the physical efficiency test in respect of 1500 mtrs. race for men and

800 mtrs. race for women, the successful candidates were subjected to the physical measurements as notified (no change in the 2007 Rules or in the

Amended Rules) and the written test which was held on 30.09.2018.

6. After the written examination, Annexure P/6 model answers were uploaded in the website of the Police Department on 04.10.2018. Some

candidates objected to certain questions and after verifying the authenticity by a Committee constituted by the competent authority in this regard, some

questions were deleted and the marks for the said questions were equally distributed to the remaining questions. In respect of some questions, the

suggested answers were changed and in respect of the others, the objections were overruled. The final answer score sheet, after considering the

objections as above was published, as borne by Annexure P/8.

7. Despite the lapse of several months, the result of the written examination was not declared, which made some of the candidates to approach this

Court by filing Writ Petition (S) No. 1923 of 2019 seeking to direct the Respondents to publish the result immediately and finalise the process of

selection pursuant to Annexure P/3. The said writ petition was disposed of as per Annexure P/9 judgment dated 18.03.2019 directing the 2nd

Respondent to finalise the matter by taking a decision within 60 days. Even after the said direction, nothing took place positively which made the said

writ petitioners to file Contempt Case (Civil) No. 445 of 2009 as disclosed from Annexure P/10 order dated 01.10.2019. The Respondents submitted

before the Court that an order dated 27.09.2019 (Annexure P/1) had been

passed by the 2nd Respondent whereby the recruitment process pursuant to Annexure P/3 advertisement was cancelled in toto. In view of the turn of events, the contempt matter was disposed of and the Petitioners were set at liberty to challenge the said order, if they were aggrieved. It was in the said context, that the aggrieved persons approached this Court by filing various writ petitions with the specific prayers as contained in WP(S) No. 8650 of 2019 (from which WA No. 620 of 2019 arises) as given below:

10.1 That the Hon'ble court may kindly be pleased to call for the entire records pertaining to the case of the petitioners.

10.2 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and quash the impugned order dated 27.09.2019 issued by Respondent No.2 (Annexure P/1)

10.3 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and direct the respondent authorities i.e. Respondent No.2 to declare the results of the written examination of the Constable (GD) held 30th September 2018.

10.4 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and direct the respondent authorities to take all consequential steps to make the appointments of the petitioners on the post of Constable in the event of their selection after the declaration of results.

10.5 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and restrain the Respondent No.2 from issuing fresh advertisement for recruitment of Constable (GD) in the District Police Force as only the declaration of result and publication of select/merit list of candidates is to be finalized by the respondent authorities for the recruitment process for the year 2017-18.

10.6 Any other relief/reliefs which the Hon'ble court may deem fit and proper in the facts and circumstances of the case may also kindly be granted.

8. An interim order of stay was passed by the learned Single Judge on 18.10.2019, directing that no fresh recruitment process may be carried out by the State pursuant to Annexure P/1 order dated 27.09.2019 cancelling the selection. The prayers were opposed from the part of the Respondents mainly pointing out that the field of recruitment was covered by the 2007 Rules, which clearly stipulated the manner in which the physical efficiency

test was to be conducted. The said rules were framed by the State Government in exercise of the power under Article 309 of the Constitution of

India, whereas the amendment was brought about by the Home (Police) Department as published in the website of the Police Department invoking

the power under Section 50 of the Chhattisgarh Police Act, 2007. It was also pointed out that on the date of advertisement, the 2007 Rules still

governed the field and the amendment was notified in the official gazette only on a subsequent date i.e. on 23.02.2018 as borne by Annexure P/5, by

which time the applications were invited and the selection process had already begun. The norms of selection which had already begun on issuing

Annexure P/3 advertisement on 29.12.2017, when the unamended 2007 Rules were in operation, could not have been changed after commencement

of the selection process by virtue of the law declared by the Apex Court and that the reduction of standard would be detrimental to the rights and

interest of the State/Force. It was further pointed out that the results were not declared and absolutely no right had accrued upon the Petitioners. The

Respondents also contended that no vested right was there even for a select listed candidate to get appointed in view of the binding judicial precedents

on the point, and in the instant case, it was too premature and even the selection was not finalised, as the results were not declared. The Respondents

also brought to the notice of this Court that the opinion obtained from the Law Department of the State was to the effect that there was chance to

have legal complications, the vacancies having been notified contrary to the 2007 Rules and in conducting the physical efficiency test without getting

the Rules properly amended and notified in the gazette, if at all any change was necessary.

1 After hearing both the sides and after considering the undisputed facts, the learned Single Judge held that no writ of mandamus can be issued in

favour of the Petitioners and it was accordingly, that all the writ petitions were dismissed, correctness of which is under challenge in these appeals.

1 Heard Ms. Naushina Afrin Ali, the learned counsel appearing for the Appellants/ Petitioners who submits that serious prejudice has been caused to

the Appellants because of setting aside of the selection process in toto. It is pointed out that the course pursued by the learned Single Judge is quite

hyper-technical and is not in conformity with the law declared by the Apex Court in Chandra Prakash Tiwari (supra) (paragraphs 39 and 41) whereby

it has been held that the entire selection process cannot be set aside for hyper-technical reasons. The learned counsel submits that the selection with regard to the physical efficiency test, was conducted using Radio Frequency Identification (for short, 'the RFID') which was used for the first time in the State to avoid/reduce human intervention in testing the physical fitness and to make the proceedings transparent in all respects. It is further pointed out that the amended norms were notified in the website of the Police Department and were clearly incorporated in Annexure P/3 recruitment notification. The Government approved the same and proper Notification in the official gazette was issued vide Annexure P/5 dated 23.02.2018 i.e. 18 days after the last date for submission of the applications. There was no change in respect of any other norms with regard to the written test, its subjects or such other requirements, but for manner of testing the physical fitness. According to the learned counsel, nearly 4 Lacs candidates submitted their applications for contesting for the post of Constable (GD) with the clear knowledge as to the manner in which their physical efficiency was going to be tested as per the norms contained in the draft Rules and as notified in Annexure P/3 advertisement, followed by the same set of norms as notified in the official gazette as per Annexure P/5. This being the position, there was no chance for anybody to make any complaint and there was no complaint as well. As it stands so, the apprehension expressed by the Law Department, which has been glibly swallowed by the 2nd Respondent to cancel the entire selection process as per Annexure P/1 dated 27.09.2019 is not correct or sustainable and that Annexure P/1 order does not show any legally acceptable reason to cancel the entire selection. The learned counsel further submits that, by filing returns/reply, the Respondents have chosen to invent and add more and more reasons/ explanations which, however, do not find a place in Annexure P/1 and as such, the correctness of Annexure P/1 cannot be tested in the light of the return/ counter-affidavit filed supplementing the reasons in view of the law declared by the Apex Court in *Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Others*; {AIR 1978 SC 851}.

11. The learned counsel for the Appellants/Petitioners submits that the core issue involved is whether the non-publication of the amended Rules in the

official gazette before issuing the advertisement is fatal or not? The necessity to have the Rules amended was very much felt to the authorities

concerned. It was amended accordingly, which was notified in the website of the Police Department, and the same was forwarded for publication in

the official gazette. It was in the said context, that Annexure A/3 advertisement was issued on 29.12.2017 prescribing the last date for submitting the

application as 04.02.2018. The gazette publication was effected just 18 days thereafter as borne by Annexure P/5 dated 23.02.2018, leading to the

written test conducted on 30.09.2018. It was nobody's case that the course pursued was wrong in any manner and no complaint was ever filed by any

candidate as to the denial, loss or reduction of opportunity to participate in the process of selection. This being the position, the so-called reason shown

in Annexure P/1 to cancel the entire selection process is not a reason at all, which was not properly analysed or appreciated by the learned Single

Judge while passing the judgment under challenge, more so, in the light of the judgment rendered by the Apex Court Chandra Prakash Tiwari (supra).

Reliance is also sought to be placed on Annexure A/2 and A/3 judgments passed by Co-ordinate Benches of this Court in this regard.

12. The learned counsel further points out that cancellation of the selection process has been upheld by the learned Single Judge simply accepting the

version of the Respondents that rules of the game cannot be changed after commencement of the game {as held by the Apex Court in K. Manjusree

v. State of Andhra Pradesh & Another; (2008) 3 SCC 512}. In the instant case, no such Rule has been changed after commencement of the game

i.e. after publication of the Annexure A/3 advertisement which contains the Rules as contained in the amended draft Rules that came to be approved

and notified by the Government as contained in Annexure P/5 dated 23.02.2018. How the law became changed detrimental to the interest of anybody

has neither been demonstrated by the Respondents nor has it been properly considered by the learned Single Judge. The entire effort taken by the

lakhs of candidates for preparation and participation in the written examination has been simply thrown to wind (result of which is still to be declared)

absolutely for no fault on their part. The mistake, if any, committed by the Departmental authorities is only a matter of irregularity, which cannot vitiate

the entire selection process, more so, when there is no complaint from anybody. As held by the Apex Court in Chandra Prakash Tiwari (supra)

(paragraphs 39 and 41) a fresh selection will take much more time causing to lose much more energy, expense and such other hardship; under which

circumstance, it was for the learned Judge to have taken a pragmatic view where the Judge has gone wrong.

13. The learned counsel for the Appellants/Petitioners sought to place reliance on the verdict passed by the Apex Court in Chandigarh Administration

v. Usha Kheterpal Waie and Others; (2011) 9 SCC 645. It was a case involving appointment to the post of Principal. Ph.D was not a requirement as

per the original norms, which however came to be added on by amending the rules. Though the UGC approved it, it was not gazetted. Advertisement

was issued based on the amended draft rules and the appointment was made which came to be set aside by the Central Administrative Tribunal.

Ultimately, when the matter reached the Apex Court, a question was raised as contained in paragraph 14 and it was answered in the subsequent

paragraphs 15 to 18, which is to the effect that interference made was not proper. Publication in the gazette is only a formality and in the instant case,

the amended draft rules were notified in the website of the Police Department. Selection was initiated based on the said Rules/norms as given in the

Annexure P/3 advertisement dated 29.12.2017. The said set of norms came to be approved and notified by the Government as per Annexure P/5 in

the official gazette on 23.02.2018 and all the candidates had participated in the process of selection with the norms as amended above with regard to

which, there was no grievance or complaint for anybody during the past two years. Under this circumstance, the selection process ought to have been

upheld and Annexure P/1 order ought to have been interdicted by the learned Single Judge, directing the results in the written examination to be

published and to finalise the process of selection accordingly, submits the learned counsel.

14. It is pointed out by the learned counsel for the Appellants/Petitioners that the effect of non-gazettation of the amended Rule in the instant case

was specifically argued, but not properly appreciated by the learned Single Judge. Similarly, Annexure A/2 and Annexure A/3 verdicts dated

18.02.2016 and 09.11.2016 respectively, passed by Co-ordinate Benches of this Court under similar circumstances were also brought to the notice of

the learned Single Judge, but they have been omitted to be discussed anywhere in the judgment. As per Annexure A/2, it has been held in paragraph

15, that the process of public advertisement and recruitment is cumbersome, time consuming and has financial implications. As held therein, if there

are gross illegalities and blatant violation of law, the entire process has to be set aside, irrespective of all consequences, but if the irregularities alleged

are trivial or do not constitute an irregularity and the process of advertisement and selection do not stand vitiated completely, every infraction will not

call for complete setting aside of the selection process. Observing that the draft rules had already been published without any modifications, the

Division Bench interdicted the impugned orders. Almost similar is the situation in respect of Annexure A/3 judgment passed by another Co-ordinate

Bench as well, where the Bench observed in paragraph 19, that the issue considered was, if the employer makes a mistake in issuing the

advertisement, can the employer himself set aside the selection process when no person has come to the Court challenging the selection process.

The dictum therein is stated as in favour of the Appellants herein.

15. The State, as a model employer, has to act in a fair and reasonable manner which unfortunately is lacking in the case in hand. The learned counsel

further submits that similar rules regarding the assessment of physical fitness (stipulating completion of 1500 mtrs. qualifier race (in 5.4 minutes for

men) and 800 mtrs. race (in 3.2 minutes for women) for selection of Police Constable (Telecommunication) were published in the website of the

Chhattisgarh Police Department as borne by Annexure P/11 and advertisement (Annexure P/12) was issued on 14.05.2018 commencing the date of

submission of applications from 15.05.2018 to 14.06.2018. However, the above amended norms came to be published in the official gazette only on

14.06.2018 (Annexure P/13), much after issuance of Annexure P/12 advertisement. Still, no interference was made with regard to the said process of

selection and after testing the physical fitness, based on the result in the written examination, the selection process was finalised and the selected

persons were appointed from Annexure P/14 select list. Reference is also made to Annexure P/15 advertisement dated 07.03.2019 and P/16 dated

20.07.2018 issued in respect of the selection of 'Security Guards' and to the post of 'Assistant Marshall' in the Chhattisgarh Vidhan Sabha Secretariat,

stipulating exactly similar norms for testing the physical efficiency {1500 mtrs. qualifying race (to be completed in 5.40 minutes)}. After conducting

the physical efficiency test, the successful candidates were called for written test, the selection was finalised and appointments have been given to the

persons included in Annexure P/17 select list. Absolutely nothing is mentioned from the part of the Respondents with regard to the course pursued in

this regard and as such, Annexure P/1 is clear instance of arbitrariness and discrimination, which has been omitted to be properly considered by the learned Single Judge.

16. Shri Mateen Siddiqui, the learned Deputy Advocate General representing the State/Respondents supports the course and proceedings leading to

Annexure P/1 in the light of the pleadings set forth and submits that the verdict passed by the learned Single Judge is perfectly in order, being in

conformity with the law declared by the Apex Court and hence, cannot be assailed. It is pointed out that the norms mentioned in Annexure P/3

advertisement did not have any valid existence in the eye of law, as the said norms were published in the official gazette only on 23.02.2018, as borne

by Annexure P/5. At the time of issuance of Annexure P/3 advertisement, the law that governed the field was the 2007 Rules. Since the norms

stipulated in the advertisement were clearly contrary to the norms stipulated in the 2007 Rules, the candidates could not have been selected contrary to

the existing Rules and hence, the entire process had to be cancelled, as ordered in Annexure P/1, which has been upheld by the learned Single Judge.

17. The learned counsel for the State/Respondents submits that, pursuant to the Annexure P/3 advertisement, a total number of 3,86,320 applications

were received. After the physical efficiency test (1500 mtrs. of race to be completed in 5.40 minutes in case of men and 800 mtrs. of race to be

completed in 3.20 minutes in case of women), 61,511 candidates cleared the same who were called for the written examination. In the written

examination conducted on 30.09.2018, only 48,761 candidates appeared, but the result has not been declared so far. It is in the meanwhile, that the

vital defect in the advertisement, contrary to the Rules 2007, was noted and hence opinion of the Law Department was sought for. The 2nd

Respondent was informed by the Law Department that the course pursued would not be sustainable in law, as there was a chance to have it

challenged, which made the 2nd Respondent to cancel the selection process as per Annexure P/1. The learned Deputy Advocate General submits that

there is absolutely no merit to sustain the challenge as there is no vested right even to the candidates included in the select list to get appointed, as

declared by the Constitution Bench of the Apex Court in *Sankarshan Dash v. Union of India*; (1991) 3 SCC 47 and the subsequent verdicts as

reported in *Rakhi Ray & Others v. High Court of Delhi & Others*; (2010) 2 SCC 637 (paragraph 24) and *Kulwinder Pal Singh & Another v. State of*

*Punjab & Others*; (2016) 6 SCC 532 (paragraph 10).

18. After hearing both the sides, the questions to be considered are: whether the 2nd Respondent was justified in cancelling the entire process of

selection, after crossing the stage of written examination, merely on an apprehension of a chance to challenge/legal complication? Could the non-

publication of the amended norms for determining the physical efficiency test in the official gazette, before issuing the advertisement, when nobody

was having any complaint in this regard and all the candidates had participated in the process of selection as per the norms shown in the advertisement

(same as in the amended norms) be fatal or merely technical?

19. The undisputed facts reveal that there is no much difference between the 2007 Rules and the amended Rules notified in the gazette as per

Annexure P/5, except in the case of testing the physical efficiency. As mentioned already, as per the 2007 Rules, the physical efficiency was to be

tested under five different heads such as 100 mtrs. race, 800 mtrs. race, shot put, long jump and high jump, each of which was to carry 20 marks,

constituting a total of 100 marks. According to the Appellants/Petitioners, this was sought to be relaxed, intending wider participation of candidates in

the process of selection and it was accordingly, that the norms were amended by stipulating the same as clearance of 1500 mtrs. race (in 5.40 minutes

for men) and 800 mtrs. race (in 3.20 minutes for women). The draft rules were notified in the website of the Police Department and it was sent for

publication in the official gazette. The selection proceedings were initiated in the said context and the amended norms alone were shown in Annexure

P/3 advertisement dated 29.12.2017, followed by the gazette notification on 23.02.2018. All the candidates who submitted applications pursuant to

Annexure P/3 offered their candidature with a clear knowledge as to the way in which they would be tested with regard to the physical efficiency and

the test was conducted accordingly. The persons who cleared the test as above, were permitted to participate in the written examination, which was

conducted on 30.09.2018 and the result was awaited. The undue delay in

publication of the result was questioned in Writ Petition (S) No 1923 of 2019, where Annexure P/9 judgment was passed to take a decision within 60 days. Still, no action was taken by the Respondents which led to Contempt of Court case bearing No. 445 of 2019. It was only in the course of the said proceedings, that the Respondents informed the Court that the 2nd Respondent had taken a decision on 27.09.2019 to cancel the selection, based on the opinion given by the Law Department, apprehending the chance for litigation for having issued the Advertisement contrary to the 2007 Rules, without publishing the amended norms in the official gazette before issuing the advertisement.

20. There cannot be any dispute with regard to the declaration of law made by the Apex Court as discussed above. However, an important aspect to be noted in this context is that, after cancelling the selection as per Annexure P/1 on 27.09.2019, the Respondents had issued another notification on the same date, as published in the official gazette dated 27.09.2019 (Annexure P/19), whereby the norms as per the 2007 Rules with regard to testing of the physical efficiency came to be restored. The Appellants/Writ Petitioners have not challenged Annexure P/19 anywhere in these writ petitions and the said Rules stand as it is.

21. It is settled position of law that there cannot be any recruitment contrary to the rules. Then, the questions are:

What is the relevant Rule so far as the present selection process is concerned?

Whether the proposed amendment subsequently published in the official gazette as per Annexure P/5 dated 23.02.2018 could be made applicable, as

the same norms were stipulated in Annexure P/3 advertisement dated 29.12.2017?

Â What would be the effect of restoring the 2007 Rules/norms as per Annexure P/19 dated 27.09.2019?

Â Is it a case where the rules of the game have been changed after commencement of the game, should the entire process of selection be cancelled after completion of the written examination (which is not affected by the disputed norm for testing the physical efficiency); the result of which is still to be declared?

Should the candidates, who have participated in the process of selection with clear knowledge as to the norms shown in Annexure P/3 advertisement

and Annexure P/5 gazette notification be made to suffer, after participating in the written examination, by causing them to compete again, due to the mistake on the part of the Respondents?

Â Is the delay in publication of the modified norms in the official gazette before issuing Annexure P/3 advertisement dated 29.12.2017 fatal?

22. The discussion made above reveals that all the 3,86,320 candidates who submitted online applications, pursuant to Annexure P/3 advertisement

dated 29.12.2017, were aware as to the norms for conducting the physical efficiency test as contained in Annexure P/3 advertisement, which is the

same as the norms notified in the official gazette vide Annexure P/5. Nobody had a case that they should have been tested under the 'five' different

heads as contained in 2007 Rules and hence, the process and proceedings of selection were bad in any manner. On the other hand, the Writ

Petitioners/Appellants themselves concede that the amendment was virtually an instance of 'relaxation' of the norms, with an intent to provide more

participation. This being the position, it cannot be said that any of the candidates/applicants was aggrieved in any manner because of non-assessment

of the physical efficiency test as per the 2007 Rules, instead of following the norms in Annexure P/3 Advertisement or Annexure P/5 Notification.

23. As mentioned already, the original norms as contained in the 2007 Rules stipulated the physical efficiency to be tested under 5 different heads

carrying 20 marks each, whereas, under the amended Rules, clearance in 1500 mtrs. (in 5.4 minutes for men) and 800 mtrs. race (in 3.2 minutes for

women), without stipulating any marks, was adequate enough. According to the Appellants, it was intended as a measure of 'relaxation' of the norms,

with an intent to provide wider participation. The test was conducted with the RFID, stated as used for the first time in the State giving more

transparency and reducing manual intervention for conducting the test and to remove unnecessary allegations/ controversies. All the candidates had

spent much of their time for studying the various subjects for the written examination, which was to be the sole basis for conducting the selection,

once they satisfied the physical efficiency. Having prepared extensively and participated in the written examination (the result of which is awaited),

was it necessary to cancel the entire process of selection, detrimental to the rights and interest of such candidates or could it be saved in any other

manner without compromising the purpose for which the physical fitness test is conducted, is the question.

24. After making a threadbare analysis of the facts and figures and the relevant rulings cited across the Bar including Chandra Prakash Tiwari

(supra), Annexure A/2 and A/3 judgments rendered by the Co-ordinate Benches of this Court and also such other rulings referred to by the learned

Single Judge, this Court is of the view that the entire process of selection need not be set aside and that it can be salvaged by other appropriate means.

3 As pointed out already, since there cannot be any dispute to the legal position and the judicial precedents as discussed by the learned Single Judge,

the finding rendered by the learned Single Judge that no writ of 'mandamus' can be issued to grant relief to the Petitioners is not liable to be

interdicted; insofar as prayer No. 10.4 seeks to direct the Respondents to take all consequential steps to make appointment to the post of Constable.

This is more so, when the 2007 Rules have been restored as per Annexure P/19 dated 27.09.2019 and it has not been subjected to challenge. But, to

the question whether the entire selection should be set aside for this reason, the answer is 'No', since according to this Court, the desired result can be

achieved by other means as well. This is more so since, it is a case where the benefit of the so-called 'relaxation' as to the norms for testing the

physical efficiency as per Annexure P/3 advertisement and Annexure P/5 gazette notification has been extended to everybody who had applied for

the post pursuant to Annexure P/3 advertisement. There is no case that no 'level playing field' was set in connection with the selection process. It is

not a case where the notified norms of selection were caused to be altered after commencement of the process of selection i.e. Annexure P/3

advertisement by placing some or other hurdle in any form, either by increasing the rigor or by stipulating something else detrimental to the interest of

the participants. There cannot be a case for anybody that he would have applied for selection to the post of Police Constable (General Duty), had the

norms for testing the physical efficiency were as per the 2007 Rules (100 mtrs. race, 800 mtrs. race, shot put, long jump and high jump) or that some

prejudice has been caused by confining the norm to only one head (1500 mtrs. race to be cleared in 5.40 minutes in the case of men and 800 mtrs. of

race to be cleared in 3.20 minutes in the case of women). As such, the written test undertaken by all the participants, based on the subjects notified

and the norms specified which are the same even as per the 2007 Rules and as per the Annexure P/5 amended Rules, need not be set at naught and if

at all any 're-evaluation' is necessary, it can only be with reference to 'physical efficiency test'.

26. Viewed in the above angle, this Court is of the view that, since this is not a case where any malpractice is involved in conducting the written test,

nor is it a case where any leakage of question paper is noted, the written test conducted for the 61,511 candidates, which was attended by 48,761

candidates who cleared the physical efficiency test as per the modified norms need not be cancelled at all and the said part can be saved intact. The

only remaining question is whether the Respondents should be directed to go by the modified norms to assess the 'physical efficiency' or whether the

Appellants can be heard to say that their physical fitness cannot be tested with reference to the 2007 Rules (which came to be restored as per

Annexure P/19 dated 27.09.2019 and not challenged).

27. Admittedly, the selection is to the posts of Police Constables (General Duty) which is a disciplined force, where physical fitness matters much.

Recruitment to any force is, of course, on the basis the knowledge and skill the candidates possess in different subjects/fields, which may vary from

force to force. But one thing that is quite common is the basic requirement as to the 'physical efficiency' which matters much for recruitment to all

disciplined forces. Minimum physical measurements and fitness are stipulated in this regard and the fitness has to be proved to get entry into the force.

There is no point in conducting a written test for all the applicants, if they do not satisfy the minimum physical measurements and satisfy the physical

efficiency. It is presumably for this reason, that the physical efficiency test and physical measurements are taken before conducting the written test,

as entry and selection is always limited to those who satisfy the said requirements. Further, it would reduce the number of persons actually to be

permitted to participate in the written test, thus, saving much time and energy of all concerned.

(xxviii) It is true that the Appellants have cleared their physical efficiency test (1500 mtrs. race in 5.40 minutes in the case of men and 800 mtrs. race

in 3.20 minutes in the case of women) as per the notified norms in Annexure P/3 advertisement and Annexure P/5 gazette notification. What shall be

the physical test or physical requirement to get enrolled as a member of the disciplined force is for the Force/Employer to determine. The purpose of any selection is to identify the best persons from the lot and once the minimum requirement is satisfied with regard to the physical efficiency, the rest is based on the marks they secure in the written examination. Since Annexure P/19 Rules which govern the field even as on date, clearly stipulate testing of physical efficiency under 'five' disciplines such as long jump, high jump, shot put, 100 mtrs. race and 800 mtrs. race, carrying 20 marks each, the Respondents cannot be heard to say that physical efficiency can be tested only as done in their case i.e. 1500 mtrs. race (to be completed in 5.40 minutes in the case of men) and 800 mtrs. of race (to be completed in 3.20 minutes in the case of women) as per the Annexure P/3 Advertisement and P/5 Gazette Notification and that there cannot be any test in respect of the norms as contained in 2007 Rules or Annexure P/19 Rules. Physical fitness is not a requirement to be possessed on a given date alone, but is a trait which is to be maintained throughout, though the norms/rules of evaluation may vary by the passage of time. When the Appellants/Petitioners contend that they are physically fit and have cleared the test, they should be fit to clear the norms as it was existing under the 2007 Rules as well, which still governs the field, having been brought back as per the Annexure P/19 dated 27.09.2019. This is more so, since the Appellants themselves concede that the amended norms were introduced by way of 'relaxation' to have wider participation and when the ultimate selection can only be of the fittest among the fit candidates. If a fresh selection is conducted, they have to satisfy Annexure P/19 norms (same as 2007 Rules) brought back on 27.09.2019, which is not put to challenge. The attempt of this Court is only to save the written test already conducted with regard to which, there is no complaint from any corner. The organisational requirement to have the optimum extent of physical fitness cannot be compromised and it is presumably with this intent, that the norms under the 2007 Rules have been brought back by the Government as per Annexure P/19 Notification dated 27.09.2019 and this cannot be questioned by this Court. In the said circumstance, this Court holds that non-conducting of the physical efficiency test as per the 2007 Rules (which stands restored as per Annexure P/19), is an irregularity which can be cured by permitting the Respondents to test the physical fitness with reference to such norms in respect of the 48,761

candidates who attended the written examination on 30.09.2018, with liberty to declare the results only in respect of those candidates who clear the

physical efficiency test in the 'five' disciplines i.e. 100 mtrs. race, 800 mtrs. race, shot put, high jump and long jump, carrying 20 marks each

(constituting a total of 100 marks). The Appellants cannot successfully contend that they were physically fit in the last year when the physical

efficiency test was conducted and cannot be tested as on the date of finalisation of the process of selection (which is still to be finalised). We find that

modification is necessary to the above extent.

& In the course of arguments, we were given to understand that the fee for submitting the application for participating in the process of selection was

Rs. 200/- and since 3,86,320 applicants had applied, a sum of nearly Rs. 7.73 Crores was pumped in, which was also to meet the necessary

expenditure in this regard. Since there was no fault from the part of any of the candidates and since the cancellation effected as per Annexure P/1

was only because of the mistake on the part of the Respondents, the State has to refund the entire amount to all the participants or else to permit all

such candidates to participate in the process of selection once again without charging any fees, if such a course is thought about and ordered by the

Court.

& On seeking instructions, it was submitted before the Court that the State was ready to comply with the orders to be passed by this Court, even by

returning the amount to sustain the cancellation and to proceed with proper selection of physically fit and suitable candidates. To return the fees to all

the contesting candidates, conducting a re-test, either causing the fee already collected to be returned or by permitting all the participants to contest

again without any fee, will of course involve huge financial commitment; besides consuming much time and energy. Much of the taxpayers' money

may have to be used by the State in this regard. When the written test participated by the 48,761 candidates who cleared the physical efficiency test

based on Annexure P/3 advertisement norms/Annexure P/5 Gazette Notification, is not under attack from any corner and the dispute is only with

regard to the physical efficiency test already conducted, this Court, taking a pragmatic view, finds it appropriate to cause to sustain the written test and

permit the Respondents to conduct a 'physical fitness test' in respect of such

48,761 candidates who participated in the examination. Whether such physical fitness test is conducted before the written test or after the written test is in no way relevant as far as process of selection is concerned, since only the physically qualified persons can be identified and they can be appointed on the basis of their performance in the written test.

(xxxi) In the above circumstances, the verdict passed by the learned Single Judge stands modified. The cancellation of the entire process of selection

ordered by the 2nd Respondent as per Annexure P/1 stands set aside. The written examination participated by 48,761 candidates stands sustained,

subject to proving the physical efficiency by the said candidates, as per the 2007 Rules which was governing the field on the date of Annexure P/3

Advertisement dated 29.12.2017 and restored as per Annexure P/19 Notification dated 27.09.2019, which is not put to challenge. The Respondents

are permitted to conduct a 'physical efficiency test' under the 5 different heads (Long Jump, High Jump, Shot put, 100 mtrs. race and 800 mtrs. race,

carrying 20 marks each) in respect of the above 48,761 candidates also by using RFID, wherever it is applicable. The result of the written examination

shall be published only in respect of such candidates who qualify in the 'physical efficiency test' to be notified and conducted by the Respondents as

above. The date, time and venue for conducting such physical efficiency test shall be intimated to the above 48,761 candidates well in advance. After

conducting the test as above, the result of the written examination in respect of such candidates who cleared the physical efficiency test shall be

declared and the select list shall be published accordingly, for filling up the notified vacancies on merit. The entire process shall be finalised as above,

as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this judgment.

The appeals are allowed in part. No costs.