

(2014) 08 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. Nos. 332 and 356 of 2014 (O&M)

Subeg Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Constitution of India, 1950 — Article 142
Land Acquisition Act, 1894 — Section 4(1), 6(1)

Citation : (2015) 1 SCT 48

Hon'ble Judges : Satish Kumar Mittal, J; Arun Palli, J

Bench : Division Bench

Advocate : Gurminder Singh, R.L. Bhatta, Senior Advocates, Raman Preet Singh Bara and Nikhil Batta, Advocates for the Appellant; Gaurav Garg Dhuriwala, D.A.G, Advocates for the Respondent

Judgement

Arun Palli, J.—These are intra-court appeals, under Clause X of the Letters Patent, against a judgment rendered by the learned Single Judge dated 30.01.2014, vide which the civil writ petitions i.e. C.W.P. Nos. 15645 & 15646 of 2011 and C.W.P. No. 3825 of 2012, were allowed by a common order. Appellants in LPA No. 332 of 2014 are serving as Information and Public Relations Officers and LPA No. 356 of 2014 is preferred by Assistant Public Relations Officers, in the Information and Public Relations Department, Punjab. In short, what was assailed and in question before the learned Single Judge was the selection and resultant appointments to the post of Information and Public Relations Officer. The impugned selection was set aside. Authorities were directed to recast the merit list after ignoring five extra marks awarded to the candidates who had qualified the Middle and Matriculation Examinations from the schools in rural areas and offer appointments to the candidates, who fall in the fresh select list as per the vacancies advertised.

2. What indeed led to this stage, is something, that would be expedient to notice.

3. Eleven posts of Information and Public Relations Officer were advertised by

the Information and Public Relations Department, Punjab, vide publication in "Ajit" on 11.09.2009. Five posts out of the total advertised posts, were meant for General Category, one for Scheduled Castes, one for Scheduled Castes (Sportsman), two for Scheduled Castes (BM), one for Scheduled Castes (ESM & others) and one for Backward Classes. The educational qualifications required were Master's degree in Public Relations and Journalism or Mass Communications or Journalism from a recognized University or Degree of Master of Arts in Punjabi or English from a recognized University and one year Post Graduate diploma in Mass Communications or Journalism or Public Relations. Document (Annexure P-5), which is a part of the file noting, revealed that the departmental selection Committee headed by the Chief Minister, Punjab, finalized the criteria for selection to the posts in question, in its meeting held on 12.03.2009. Evidently, it provided marks for qualifications/publications, interview etc. The departmental selection Committee was constituted on 03.06.2009, to execute the process of selection. Advertisement, inviting applications from the eligible candidates was published on 11.09.2009. Besides the qualifications, experience and other necessary details, it was envisaged that candidates will have to appear in the written test. And that was held on 04.07.2010. As is discernible from the records, post written test, the issue in terms of the policy of the State as regards awarding five extra marks to the candidates, who had qualified their Middle and Matriculation Examinations from the schools in rural areas, was raised. Records revealed that in reference to another advertisement issued on 05.09.2007, for recruitment of Teachers, it was emphasized that a provision was made for providing weightage of five extra marks to the candidates from rural areas and the said policy was even approved by the Cabinet. It further recites that such weightage was affirmed by the Division Bench of this Court on 20.04.2010 in *Sudesh Rani and Others Vs. State of Punjab and Others*, . Thus, a proposal to provide five extra marks to the candidates in the aforesaid category was made. Since the provision for awarding five extra marks was never a part of the criteria originally prescribed, an approval of the Chief Minister was solicited. The Chief Minister approved the said proposal on 03.10.2010. Resultantly, the total marks were increased from 100 to 105. Candidates in the aforesaid category were required to produce the relevant certificates at the time of interview, which were held from 06.12.2010 to 08.12.2010. Benefit of five extra marks was awarded at the time of preparation of final select list in April, 2011. Followed by appointments in July, 2011. As stated above, the said selections and consequent appointments were assailed by a civil writ petition, filed in August, 2011.

4. Learned Single Judge, on a consideration of the matter in issue and the material on record, concluded that document i.e. office noting (Annexure P-5) showed that the departmental selection Committee, in its meeting held on 12.03.2009, had finalized the criteria for selection to the posts in question. And that clearly provided for marks for qualifications, publications, interview etc. All what the advertisement, issued on 11.09.2009, envisaged was that the

candidates will have to appear in the written test, which was a part of the selection process and was held on 04.07.2010. Even though, the decision in Sudesh Rani's case (supra) was pronounced on 20.04.2010, yet no provision was made for amending the criteria before conducting the written test. Concededly, the issue as regards to awarding five extra marks to the candidates in the aforesaid category was raised as late as on 23.09.2010 and approved by the Chief Minister on 03.10.2010. That is after over a year of issuance of the advertisement and when even the written test had already been held. As there was no such provision in the advertisement, the certificates in support of the claim were required to be produced at the time of interview and marks were awarded at the time of preparation of final select list in April, 2011. Thus, the learned Single Judge in reference to Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, observed that the issue, as to whether the rules of the game, namely, the criteria for selection can be changed/altered after the selection process has commenced, had been examined by Hon'ble the Supreme Court on a number of occasions. Accordingly, it was held that the selection on the basis of a revised criteria will have to be set aside. It would be apposite, at this juncture, to refer to the conclusion arrived at by the learned Single Judge, which reads as thus:

"...In the present case, it is established from the facts on record that the criteria for selection was changed not only after the advertisement had already been issued in terms of the criteria, which had already been finalised, but after the written test had already been held, hence, the selection made on the basis of revised criteria will have to be set aside and the result has to be re-worked out after reducing the extra marks awarded on account of qualification of Middle and Matriculation examination from the schools of rural areas, which was provided for after the selection process had already been started, hence, the selection is bad even on that account."

5. Additionally, what was urged on behalf of the petitioners before the learned Single Judge was that the very policy of the Government to award five extra marks was in issue before the Full Bench of this Court in Abhishek Rishi Vs. State of Punjab and Others, , and the said policy was held to be ultra vires the Constitution and the Division Bench's decision of this Court in Sudesh Rani's case (supra) was specifically overruled. Therefore, selection and consequent appointments inevitably stood vitiated.

6. Per contra, the State and private respondents argued in unison that it was in the year 2007, in the case of selection of Teachers, the Government had taken a policy decision to award five extra marks to the candidates in the aforesaid category and subsequently the said policy was even affirmed by a Division Bench of this Court on 20.04.2010 in Sudesh Rani's case (supra). It was urged that selection process in the present case was complete and appointments had already been made in terms of the law laid down by this Court in Sudesh Rani's case (supra), when the Full Bench of this Court in Abhishek Rishi's case (supra)

set aside the policy of the State and overruled the decision of the Division Bench in Sudesh Rani's case (supra). Since judgment in Abhishek Rishi's case (supra) was pronounced on 03.04.2013, therefore, the decision of the Full Bench would have a prospective application. Learned Single Judge on a detailed and comprehensive consideration of the issue in question, repelled the contention of the appellants, as there was no such observation made by the Full Bench of this Court that the said decision will apply prospectively. It would be equally crucial, at this juncture, to refer to the conclusions recorded by the learned Single Judge in this regard and the same read as thus:

"...Even the judgment of Full Bench of this Court in Amarbir Singh's case (supra), which has been cited by learned counsel for the private respondents in support of this argument, provides an answer against him. While referring to various judgments of Hon"ble the Supreme Court on the issue, it was opined that prospective declaration of law is a device innovated to avoid re-opening of settled issues. However, there shall be no prospective over-ruling unless it is so indicated in a particular judgment. The relevant paras thereof are extracted below:

"65. The preposition of doctrine of prospective overruling has been considered in several other decisions as well i.e. Ashok Kumar Gupta and Another Vs. State of U.P. and Others, , M/s. Raymond Limited and Another, Vs. Madhya Pradesh Electricity Board and Others, Etc. Etc., , M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, , Harsh Dhingra Vs. State of Haryana and Others, , M.A. Murthy Vs. State of Karnataka and Others, , Dr. Saurabh Choudhary and Others Vs. Union of India (UOI) and Others, , Employees State Insurance Corporation and Others Vs. Jardine Henderson Staff Association and Others, , Amrik Singh Lyallpuri Vs. Union of India (UOI) and Others, .

66. The consistent view of the Supreme Court is that prospective declaration of law is a device innovated to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. The object of prospective declaration of law is that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in larger public interest. According to the Supreme Court, it was a rule of "all judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly effecting the rights of people who acted upon the law adopted prior to the date of judgment overruling the previous law. There shall be no prospective overruling unless it is so indicated in the particular decision by the Supreme Court under Article 142 of the Constitution. Recently in Bangalore City Cooperative Housing Society Ltd. v. State of Karnataka and others, 2012 (3) RCR (Civil) 779 : 2012 (3) Recent Apex Judgments (R.A.J.) 497 : Bangalore City Cooperative Housing Society Ltd. Vs. State of Karnataka and Others, , the Supreme Court has upheld the quashing of the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 on the ground

that there was no useful scheme approved by the State Government prior to the issue of notifications. In the absence of such approval the land could not be acquired for public purpose. The society's prayer for invoking the doctrine of prospective overruling in favour of those members of the society who had already constructed the houses may not suffer incalculable harm was declined. The Estate Agent had charged huge money from the Society for getting the notifications issued under Sections 4(1) and 6(1) of the 1894 Act and sanction of lay out plan by the BDA. The Supreme Court found no justification to invoke the doctrine of prospective overruling and legitimate the illegal acts committed by the Estate Agent."

7. In the above conspectus of law, it was observed that nothing could be pointed out from the judgment of the Full Bench in Abhishek Rishi's case (supra) that it would have prospective application or effect. Further, the selection in question had not attained finality, as that was a subject matter of challenge before this Court even before the judgment in Abhishek Rishi's case (supra) was pronounced. That being so, the selections and consequent appointments were set aside.

Thus, these appeals.

8. Before we proceed further, we are reminded to point out, at this stage, that in compliance to the decision rendered by the learned Single Judge, the department had re-cast the merit list, after excluding the advantage of five extra marks to the candidates in the aforesaid category. A fresh merit list was drawn and those, who were selected, were issued appointment letters on 05.05.2014. Even their medical examination was conducted on 09.05.2014. That being so, a few of the candidates had moved applications, to be impleaded as party to the present lis. By a separate order, we have accepted their prayers and permitted them to assist us in the matter. Consequently, the department also proceeded to terminate the services of the appellants, who failed to make a cut in the revised merit list, by an order of even date i.e. 05.05.2014. But as the predecessor Bench had stayed the operation of the said order, the State Government cancelled the aforesaid orders of termination as well as appointments to await the decision in the present appeals. So its obvious, as to why the State has not chosen to prefer any appeal against the judgment being assailed in the matter in hand.

9. We have heard Mr. Gurminder Singh and Mr. R.L. Batta, learned senior counsel appearing for the appellants in these two appeals and Mr. Rajiv Atma Ram, learned senior counsel for newly added respondents. And perused the records.

10. Mr. Gurminder Singh, learned senior counsel for the appellants, explains that the policy of the Government to award five extra marks to the candidates in the aforesaid category was in existence since 2007, but since the said policy was in question before the Division Bench of this Court in Sudesh Rani's case (supra), benefit flowing therefrom was not made part of the criteria, which was finalized

on 12.03.2009. However, as soon as the decision in Sudesh Rani's case (supra) was pronounced on 20.04.2010 and the policy of the State was affirmed, a decision was accordingly taken with the approval of the Chief Minister to apply the policy vis-a-vis the selection in question as the same was yet to be finalized. He further submits that policy of the Government was in force since 2007, therefore, it was well within the domain of the Government to take cognizance thereof and apply it even to the selection in hand, even if it did not initially form part of the criteria. Reliance is placed upon a decision of Hon'ble the Supreme Court in Parmender Kumar and Others Vs. State of Haryana and Others, and our attention was specifically drawn to para 29 of the said judgment.

11. He further contends that, the appellants were awarded five extra marks pursuant to the policy of the State, and that was even affirmed by the Division Bench of this Court in Sudesh Rani's case (supra). Thus, they were selected and appointed strictly in terms of the law laid down in Sudesh Rani's case (supra) and the entire process was complete even before the decision of the Full Bench of this Court in Abhishek Rishi's case (supra), pronounced on 03.04.2013. Therefore, he submits that the decision by the Full Bench would only have a prospective application. To support his contention, he cites Kailash Chand Sharma Vs. State of Rajasthan and Others, and drew our attention to paragraphs 40 and 42 of the said judgment.

12. Finally, it is urged that the appellants, who are serving for the last about three years, are now sought to be removed without any fault on their part and to put them out of service, at this stage, would cause grave injustice. Thus, it is prayed that relief could always be moulded in the ends of justice. He cites Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, and Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., .

13. Mr. R.L. Batta, learned senior counsel appearing for the appellants in LPA No. 356 of 2014, adopts the arguments that have been advanced by Mr. Gurminder Singh, learned senior counsel for the appellants in the other appeal. He submits that albeit the appellants in the aforesaid appeal were selected to the post of Assistant Public Relations Officers and were serving as such since 2011. Since they are severally affected by the judgment being assailed in the present appeal, thus, they were before us.

14. Per contra, Mr. Rajiv Atma Ram, learned senior counsel appearing for the newly added respondents, argued that post decision of Full Bench in Abhishek Rishi's case (supra), awarding five extra marks to the candidates in the aforesaid category was indefensible. He contends that the principle of law enunciated by the Full Bench would apply to all pending cases and the matter in hand is one. He submits that, nothing could be pointed out from the decision in the said case that it would apply prospectively i.e. from the date of the judgment. Rather, he contends that law enunciated by the Full Bench in Abhishek Rishi's case (supra) was not a declaration of new law but a mere reiteration of law, that was long settled. Thus, he submits that there was hardly any occasion to consider whether

the decision in Abhishek Rishi's case (supra) would apply prospectively or have a prospective application. He cites State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, and Mahender Kumar and others v. State of Haryana and others, 2008 (2) SCT 536.

15. The argument that is being advanced by the learned senior counsel for the appellants lacks conviction and cannot be countenanced. It would be apposite to assert at this point in time, once again, that criteria for selection was finalized by the departmental selection Committee headed by the Chief Minister, Punjab on 12.03.2009. Ex facie, policy of the State to award five extra marks to the candidates in the aforesaid category, was never factored into and, therefore, did not form part of the criteria, as is being demonstrated hereinafter. Although the said criteria is also reproduced in the judgment being assailed, but for facility of reference and continuity, the same is being reproduced and it reads as thus:

"Here it is necessary to mention that the following criteria for direct recruitment process to the post of Information and Public Relation Officer and Assistant Public Relation Officer was prescribed by the Departmental Selection Committee in its meeting held on 12.3.2009 (pre-page-20) under the Chairmanship of the then Hon"ble Chief Minister, Punjab:

As per serial No. 5 aforesaid, 4 marks have been prescribed for "Additional Professional Qualifications/Achievements. For purpose of streamlining these marks, a committee was set up vide office order No. P.R. (A-6)-2010/2157-61 dated 31.3.2010. Additional Director (Administration) was made the Chairman of this Committee, ADPR, Sh. Upender Singh Lamba and Sh. Megha Singh, Joint Directors were also made the members of this Committee. The report submitted by this committee has been placed at page No. 249 and particulars of this report are as under:

Information and Public Relation Officer:-

Essential Qualifications:

Masters Degree in Public Relations and advertising or Mass Communication or Journalism from recognised University:-

Or

a degree of Masters of Arts in Punjabi or English from recognised University and Post Graduate Diploma of one year in Mass Communication or Journalism or Public Relations.

Additional Qualifications:-

Assistant Public Relation Officer:-

Essential Qualifications:

i) Graduation in any subject from recognised University.

ii) Diploma or Degree in Public Relations and advertising or Mass Communication or Journalism from recognised University.

Additional Qualifications:-

16. Further, process of selection stood initiated on 11.09.2009, as the advertisement inviting applications was published on the said date. Details of combined written test were set out therein but no provision for awarding five extra marks to the candidates in the aforesaid category was either made or contemplated. Written test was held on 04.07.2010. And as a result, rights and interest of the candidates stood crystallized considerably. Post that stage, the decision to award five extra marks to the appellants was taken on 03.10.2010. Resultantly, total marks were increased from 100 to 105 and benefit of five extra marks was indeed extended at the time of preparation of final select list in April, 2011. It is axiomatic that sanctity and purity of process of selection was seriously breached. Criterion for selection was altered when the process was at an advance stage, something which was wholly impermissible in law. Evidently, rules of the game were changed and resultantly, the results stood severally effected. What could be the ramifications of such an exercise, is writ large as few of the candidates, who have now been selected as per the revised merit list drawn by the department, are before us. Thus, the learned Single Judge rightly concluded that the selection on the basis of revised criteria was required to be set aside and the result had to be re-worked out after excluding the extra marks awarded on account of qualifying the Middle and Matriculation examinations from the schools in rural areas.

17. The decision of Hon''ble the Supreme Court in Parmender Kumar's case (supra) does not advance the case of the appellants a bit. Undoubtedly, what the Hon''ble Court observed was that:

"... If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses."

18. Of course, the authorities were well within its right to take cognizance of the policy of the Government and even applied it to the selection in hand, but the crucial question that evolves for consideration is, at what stage that could be permissible in law? Certainly not when the selection process stood initiated and even the written test was held. That is why, the Hon''ble Court further noticed:

"As has also been pointed out hereinbefore, this Court in Rajiv Kapoor case took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalized in the light of the criteria specified in the government orders already in force and the prospectus, "after ignoring the offending notification introducing a change at

a later stage"

(emphasis supplied)"

Further, that was a case where admissions were sought to be made to Post Graduate Medical courses. Clauses 5 and 6(iii) of the Prospectus provided that the eligibility for reservation would be determined according to Haryana Government letter dated 05.12.2008, which in turn provided that HCMS doctor should have three years regular service with successful completion of probation period but there was also a rider that latest Government instructions issued from time to time would be followed. Appellants, who were HCMS doctors fulfilled the three years condition and found a place in the merit-list. However, a day before the counselling, vide the fresh instructions dated 31.03.2011, the requirement of length of service was changed from three to five years. It was in that context, the Hon'ble Court had held that the Government orders in force before issuance of prospectus prevail but rules of game cannot be changed after the admission process had already begun.

19. The argument that, selection was carried out and stood finalized in terms of the decision by the Division Bench in Sudesh Rani's case (supra) before a judgment rendered by the Full Bench in the case of Abhishek Rishi, therefore, the decision by the Full Bench would have a prospective application, does not appeal us. Once the policy of the State awarding five extra marks was held to be ultra vires the Constitution or unconstitutional, that indeed was a declaration of law i.e. as to what was the law and what the law is. And anything which was not in sync with the said declaration is no law or not a good law. That is how it is being submitted that doctrine of prospective overruling be invoked and the law enunciated by the Full Bench be held to have prospective application. It would be apposite, at this stage, to refer to some crucial observations that were made by another Full Bench of this Court and were noticed even by the learned Single Judge. The same read as thus:

"...the issue had also been gone into by a Full Bench of this Court in Commissioner of Income Tax Vs. Aruna Luthra, , wherein it was opined that a declaration by the court is- This was the law, this is the law. This is how the provisions have to be construed. The court merely declares law. An earlier decision by the court is "simply no law".

20. Thus, the short question that arises here is, does it have a prospective application? The answer is No. The position of law is settled that there shall be no prospective overruling unless it is so indicated in a particular judgment. That is what, the learned Single Judge has recorded after a thorough analysis of the various decisions on the issue. Faced with this situation, learned senior counsel urged that even in the absence of any observation by the Full Bench in this regard, we could consider the issue whether the said decision can be construed to have a prospective application vis-a-vis the matter in hand. We are afraid that we cannot tread that path. The decision of the Full Bench does not state that the

interpretation as given will have prospective effect or the earlier Division Bench judgment in Sudesh Rani's case (supra) was overruled prospectively.

21. Decision of Hon"ble the Supreme Court in Kailash Chand Sharma's case (supra) does not enhance the cause of the appellants as the relief in the said case was moulded by Hon"ble the Supreme Court on consideration of special facts and circumstances of that case exercising power under Article 142 of the Constitution. What the Hon"ble Court observed in para 47 of the judgment reads as thus:

"47. Before parting, we must say that we have moulded the relief as above on a consideration of special facts and circumstances of this case acting within the framework of powers vested in this Court under Article 142 of the Constitution. Insofar as the relief has been granted or modified in the manner aforesaid, this judgment may not be treated as a binding precedent in any case that may arise in future."

22. We also consider it appropriate, just to notice as a fact that the Division Bench while issuing notice of motion in Abhishek Rishi's case (supra) had seriously doubted the correctness of the decision by the Division Bench in Sudesh Rani's case (supra) by passing a detailed order on 10.06.2011. So much so, the respondent-State was restrained to take any further step in furtherance of the advertisement (Annexure P-7). Subsequently, the Division Bench of this Court had referred the said case to a Larger Bench on 13.07.2012. This aspect assumes significance as the appellants were appointed in July, 2011.

23. Mr. Rajiv Atma Ram had canvassed before us that the law enunciated by the Full Bench was not a declaration of law on the issue but was only a reiteration of law already in force. The position, which of course is disputed by the learned senior counsel for the appellants.

24. On a consideration of Kailash Chand Sharma Vs. State of Rajasthan and Others, ; Deepak Kumar Surthar and another v. State of Rajasthan, 2000 (2) SCT 171 and particularly the decision of Hon"ble the Supreme Court in State of Maharashtra Vs. Raj Kumar, , we are prima facie of the view that the principle of law enunciated by the Full Bench of this Court was not a new law. But we do not propose to delve deep into this aspect and record any conclusive conclusions. Thus, we rest the matter here. Particularly, when we have already held that the decision by the Full Bench in Abhishek Rishi's case (supra) does not have any prospective application or cannot be applied prospectively.

25. This brings us to the last submission that has been advanced by the learned senior counsel for the appellants that, the appellants were serving for the last almost three years and to put them out of service at this stage, particularly, when no fault can be attributed to them would work hardship. As we have noticed, reliance was placed upon two decisions of Hon"ble the Supremo Court in Vikas Pratap Singh's case and Rajesh Kumar's case (supra).

26. It would be apposite to refer to the observations that were made and the conclusion arrived at by the Hon''ble Supreme Court in Vikas Pratap Singh's case (supra), which read as thus:

"25. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them.

26....This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts."

27. Likewise, what was observed by the Hon''ble Court in paragraph 21 of the judgment in Rajesh Kumar's case (supra), reads as thus:

"21. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result."

28. Ex facie, the appellants in the aforesaid two cases were the innocent appointees of an erroneous evaluation of answer scripts or preparation of erroneous key or the distorted result. Their appointments at best could be said to have stemmed from an "inadvertent bona fide mistake" vis-a-vis which none of the stakeholders had any clue till the error was unraveled. What permeates the selection in hand was a deliberate, conscious illegality. Those were not the cases where criteria for selection was altered after the process of selection stood initiated and even the written test had been held. This was a case where all the stakeholders knew that any alteration at that stage, was not permissible in law. In the matter in hand, the appellants were not only the beneficiaries of unconstitutional advantage that was afforded to them but also a serious illegality the selection in hand suffered from. They knew that they were extended an advantage that was never originally conceived for them. Awarding weightage of five extra marks at the stage of preparation of final select list in April, 2011, was indeed extending an undeserved, unfair and unwarranted advantage. But for that, they would never have been appointed.

29. No doubt, the appellants have been serving for the last about three years, but the question that stares us in the faces is, what about those who were kept out of service for three years because of them. And also for no fault of theirs. And being more meritorious. We are mindful of the fact that the situation could have been altogether different had the policy of the State formed part of the criteria that was originally finalized on 12.03.2009. As in that case even if awarding five extra marks was held to be unconstitutional by the Full Bench in Abhishek Rishi's case (supra), yet it could be maintained and considered that appellants being bona fide participants in the process of selection could not be made to suffer for no fault of theirs. And we could still consider moulding the

relief. Unfortunately, in the matter in hand besides the unconstitutional advantage of five extra marks that was afforded to the appellants and decision of Full Bench in Abhishek Rishi's case (supra), alteration of criterion for selection when the process was at an advance stage, completely vitiates the selection and resultant appointments. It is also discerned from the records that the orders dated 30.11.2013 (Annexure A-8) regarding successful completion of probation period of the appellants were issued subject to the decisions of this Court in C.W.P. No. 15646 of 2011 and C.W.P. No. 15645 of 2011. That being so, we are unable to persuade ourselves to mould the relief, as is being prayed for. In the wake of the position as set out above and the conclusions that have been arrived at by the learned Single Judge, there hardly exists any ground, least plausible in law, to interfere with the judgment being assailed in the present appeals. Same being bereft of merit are, accordingly dismissed. Parties are left with no other option to bear their own costs.