
(2021) 07 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 238, 239, 240, 241, 267 Of 2019

Suhail Ahmad Malik & Ors

APPELLANT

Vs

State Of J&K & Others

RESPONDENT

Date of Decision : 30-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 309, 310, 311
Jammu And Kashmir Special Recruitment Rules, 2015 — Rule 3, 5
Jammu And Kashmir Police Rules, 1960 — Rule 172, 172(2)
Police Act, 1861 — Section 8, 12, 43
Mysore Fire Force Act, 1964 — Section 39

Citation : (2021) 07 J&K CK 0033

Hon'ble Judges : Pankaj Mithal,CJ;Sanjay Dhar, J

Bench : Division Bench

Advocate : Z. A. Shah, A. Hanan, M. Y. Bhat, Faizan Majid Bhat, B. A. Dar

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) These intra-court appeals are directed against the judgment dated 9th of August, 2019, passed by the Writ Court in a batch of writ petitions with

SWP No.3019/2018 being the lead case, whereby, while upholding the selection and appointment of Sub Inspectors in J&K Police made pursuant to

advertisement notice dated 30th of December, 2016, the writ petitions filed by the appellants (hereinafter referred to as the writ petitioners) have been

dismissed.

2) Before coming to the grounds of challenge, it is necessary to give a brief background of the facts leading to filing of these intra-court appeals.

3) Director General of Police, Jammu and Kashmir, in terms of advertisement notice No.Pers-A/400/2016/75303-403 dated 30.12.2016, invited

applications for the posts of Sub Inspectors in Executive/Armed wings of the Jammu and Kashmir Police. It was provided in the advertisement notice

that the conditions of employment as prescribed under J&K Special Recruitment Rules, 2015 [â??Rules of 2015â? for short hereinafter) , notified

vide SRO 202 dated 30.06.2015, shall be applicable.

4) Pursuant to the aforesaid advertisement notice the writ petitioners responded to the same and they were subjected to physical test, physical

endurance test and physical standard test. Upon qualifying the aforesaid tests, the writ petitioners appeared in the written examination (objective type)

, where-after some of the writ petitioners were shortlisted for interview. The final selection list was issued by the official respondents vide PHQ order

No.6626 of 2018 dated 15th of December, 2019. The writ petitioners did not find their name in the aforesaid selection list and, as such, they filed a

batch of writ petitions challenging the selection list as well as the consequent appointment orders issued in favour of the private respondents.

5) The writ petitioners challenged the impugned select list and appointment orders, primarily, on the grounds that the procedure and conditions

prescribed in the advertisement notice, particularly those relating to use of biometric devices to eliminate duplication and impersonation and use of

CCTV technology to videograph various stages of recruitment and also to track the activities at various recruitment centres, were not adhered to at a

number of recruitment centres; that as per the advertisement notice, the selection of the candidates was to be undertaken in accordance with the

Rules of 2015, but the official respondents went on to undertake the selection process in violation of the aforesaid rules, inasmuch as the selection was

made by the Selection Committee constituted by the Home Department and not by the Service Selection Board; that majority of the selected

candidates belong to Jammu Division and only a few candidates from Kashmir Division found their name in the select list and this raises suspicion

about the fairness of the process.

6) The learned Writ Court did not find substance in any of the contentions raised by the writ petitioners in their writ petitions and the same were

dismissed primarily on the ground that the writ petitioners having participated in the selection process but failing to make the grade for their selection,

cannot be allowed to turn around and raise a grievance against the procedure

adopted by the official respondents. Thus, the writ petitions were held to be not maintainable on the ground of estoppel.

7) Aggrieved by the common judgment of the Writ Court, the instant intra-court appeals came to be filed by the writ petitioners challenging the

impugned judgment passed by the Writ Court, mainly, on the following grounds:

(I) That the principle of estoppel by conduct or acquiescence has no application in a case where the Government has committed glaring illegalities in

the procedure relating to selection of candidates;

(II) That in the instant case, selection of candidates was required to be undertaken in terms of the Rules of 2015, as was clear from the advertisement

notice but instead of doing so, the selection of the candidates was undertaken by a Selection Committee appointed by the Home Department and not

by the Service Selection Board constituted in terms of Rule 5 of the Rules of 2015, thereby making it a case of glaring illegality in procedure of

selection;

(III) That the provisions relating to appointment of non-gazetted rank police officials as contained in the Jammu and Kashmir Police Rules, 1960, stand

impliedly repealed by the Rules of 2015, as such, it was not open to the official respondents to undertake selection of the candidates except in

accordance with the Rules of 2015;

(IV) That the Selection Committee, even as per the J&K Police Rules, had to be constituted by Director General of Police but in the instant case, the

same has been constituted by the Government which is against the mandate of legal position;

(V) That there has been non-adherence to the conditions of advertisement notice, particularly those relating to recording of biometric attendance of

candidates and videography of recruitment centres through CCTV cameras, which smacks of mala fides on the part of official respondents in making

the selection.

8) We have heard learned Senior counsels, Mr. Z. A. Shah and Mr. M. Y. Bhat, appearing for writ petitioners and Mr. B. A. Dar, Sr. AAG, for

official respondents. It is pertinent to note here that the selected candidates i.e., private respondents despite service did not choose to appear in these

appeals.

9) Mr. Z. A. Shah, Senior advocate, has, with his usual eloquence, vehemently argued that in the instant case the official respondents were required to follow the procedure prescribed under the Rules of 2015 but instead of doing so, the selection process was undertaken by the official respondents by constituting Selection Committee in terms of the Jammu and Kashmir Police Rules. According to the learned Senior counsel, the provisions of the Police Rules relating to recruitment at the level of Sub Inspector stand impliedly repealed by SRO 202 notified by the Government under Section 124 of the Constitution of the State. Taking his argument further, learned Senior counsel has submitted that the Writ Court without giving a finding as to which set of rules would be applicable to the instant selection has proceeded to non-suit the writ petitioners on the ground of estoppel by conduct.

Submission of the learned Senior counsel is that if the very procedure under which the selection has been made is without jurisdiction, it would amount to a glaring illegality and, as such, in view of the ratio laid down by the Supreme Court in *Raj Kumar and others vs. Shakti Raj and others* (1997) 9 SCC 527 and *Dr. (Major) Meeta Sahai vs State of Bihar* 2020 BLJ 276, estoppel by conduct against the writ petitioners would not come into play.

10) In order to test the merits of this argument, we need to first determine as to which set of rules would be applicable to the instant selection.

11) Chapter VII of the Jammu and Kashmir Police Rules, 1960 provides for appointment and enrolment and Rule 172 of the said Rules enumerates the authorities empowered to make appointment. Sub-rule (2) of Rule 172 is relevant to the context and the same is reproduced as under:

“(2) All appointments to non-gazetted rank above that of the constables shall be made by the appointing authority on consideration of recommendations of a selection board. Such boards shall be constituted in accordance with the orders of the Inspector General.”

12) From the afore-quoted provision it is clear that all appointments to non-gazetted rank above that of Constables is to be made on the basis of recommendations of a Selection Board to be constituted by the orders of Inspector General of Police (replaced by Director General of Police) .

13) The Rules of 2015 also provide for method of selection etc. of non-gazetted posts borne on the establishment of any department or service of the Government. Rules 3 and 5 of the said Rules are relevant to the context and the same are reproduced as under:

3. Application of the rules. "These rules shall apply to all non-gazetted posts borne on the establishment of any department or

service of the Government and such gazetted post, as may be notified by the Government from time to time

5. Appointment under these rules. "(1) Notwithstanding anything to the contrary contained in any rule or order for the time being in

force relating to the method of recruitment and conditions of service for recruitment in any service, or to any post, under the

Government

(i) the appointments to all non-gazetted posts borne on the establishment of any Department or Service of the Government shall be made by.

the Government on temporary basis on the basis of the selection made by the Selection Committee, consisting of

(a) Chairman or a member of the Services Selection Board to be nominated by the Chairman.....Convenor;

(b) District Head of the indenting office/ Department.....Member;

(c) One officer of, or above, the rank of Deputy Secretary to the Government from the concerned DepartmentMember; and

(ii) the appointments to the gazetted posts, notified under rule 3 of these rules shall be made by the Committee, consisting of

(a) a member of the Public Selection Commission to be nominated by the Chairman.....Convenor ;

(b) subject matter experts to be co-opted by the Chairman Public Service CommissionMember :

Provided that nothing hereinabove shall apply to the posts which have been referred to the Public Service Commission or the Services

Selection Board on the date of issuance of these rules.

(2) The Selection Committees referred to in sub-rule (1) shall make the selections as per the provisions of the Jammu and Kashmir

Reservation Act, 2004 and rules framed thereunder.

14) Thus, there are two sets of rules which were in force at the relevant time governing the selection and appointment to non-gazetted posts borne on

the establishment of Police Department. The question arises as to whether selection was to be made in terms of Rule 172 of the Jammu and Kashmir

Police Rules or in terms of the Rules of 2015.

15) Mr. Z. A. Shah, Senior Advocate, has contended that the Rules of 2015 are later in point of time and these rules provide special procedure for appointment to non-gazetted posts including special conditions relating to nature of appointment, fixation of pay and other conditions of service and these rules have impliedly overruled the Jammu and Kashmir Police Rules, 1960, so far as the same relate to the appointment of non-gazetted ranks of Police Department, even though there is no specific provision of repeal contained in the Rules of 2015. In this regard, he has placed heavy reliance upon the judgment of the Supreme Court in the case of S. Prakash and another vs. K. M. Kurian and others (1999) 5 SCC 624. He has also submitted that in the advertisement notice itself it has been clarified that the conditions of employment as prescribed under Rules of 2015 shall apply, meaning thereby that there was no doubt in the mind of official respondents that the provisions contained in the Rules of 2015 would apply to the instant selection but despite this, they resorted to the procedure contemplated under Rule 172 of the Jammu and Kashmir Rules, 1960, which is absolutely illegal, thereby rendering the impugned selection void ab initio.

16) So far as the Jammu and Kashmir Police Rules are concerned, the same have been framed by the Government in exercise of its powers under

Section 8 and 12 of the Police Act. It will be apt to notice the provisions contained in Section 12 of the Police Act, which reads as under:

12. Power of Inspector General to make rules. "The Inspector General of Police may, from time to time, subject to the approval of

the Government, frame such orders and rules as it shall deem expedient relative to the organization, classification and distribution of the

Police force, the places at which the members of the force shall reside, and the particular services to be performed by them ; their

inspection, the description of arms, accoutrements and other necessities to be furnished to them ; the collecting and communicating by them

of intelligence and information ; and all such other orders and rules relative to the Police Force as the Inspector General shall, from time to

time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties."

17) The aforesaid provisions of Section 12, thus, authorize Inspector General of Police to make rules with the approval of the Government. Section 43

of the Police Act gives power to the Government to amend, add or cancel the rules made under the Act. In exercise of these powers, the Government has promulgated the Jammu and Kashmir Police Rules, 1960, which, inter alia, lays down the procedure for discipline and conduct of members of the Police Force, appointment and enrolment of members of the Police Force, leave, pay and allowances, travelling allowance, punishments, promotion, rewards, training etc. of the members of Police Force. Thus, the provisions contained in the Police Act and the rules framed there-under ought to be treated as a complete Code by itself. It is a special statute concerning the Police Force covering the appointment and service conditions of the Police Force. Thus, there is no doubt in our mind that the provisions contained in the Police Act and the rules framed there-under are a special statute.

18) So far as the provisions contained in the Rules of 2015 are concerned, these Rules are general in nature, inasmuch as Rule 3 of the said Rules makes it clear that these Rules would apply to all non-gazetted posts borne on the establishment of any department or service of the Government.

Admittedly, there is no provision in the said Rules pertaining to repeal of any previous rules, either general or special.

19) While testing the contention regarding implied repeal of the Police Rules by the Rules of 2015, it has to be borne in mind that there is a presumption against a repeal by implication. The Legislature or a rule making authority while enacting a law or making a rule has complete knowledge of the existing laws on the same subject matter and when a repealing provision is not provided for, it has to be inferred that there is no intention of repeal of the existing laws. We are supported in our aforesaid view by the judgment of the Supreme Court in *Municipal Council Palai vs T.J. Joseph and Others*, AIR 1963 SC 1561.

20) As already noted, the Jammu and Kashmir Police Rules is a special law. The same cannot be readily held to be repealed by a later general law i.e., the Rules of 2015. It would be apt to quote here the following extracts set out in Maxwell's Interpretation of Statutes:

“A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, 'where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects

specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated

from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have

only general cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided

for by the special Act.â??

21) The Jammu and Kashmir Police Rules, particularly Rule 172 of the said Rules, occupies the field of selection and appointment of non-gazetted

ranks of Police Department and there can be no dispute to the fact that these Rules are statutory in nature. The question arises whether these Rules

can be held to be impliedly overshadowed by general rules contained in the Rules of 2015 which have been framed by the Governor in exercise of his

powers under Article 309 of the Constitution of India.

22) In order to understand the legal position on the aforesaid issue, Article 309 of the Constitution of India is required to be noticed. It reads as under:

â??309. Recruitment and conditions of service of persons serving the Union or a State.â??Subject to the provisions of this Constitution,

Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and

posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the

affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with

the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and

posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall

have effect subject to the provisions of any such Act.â??

23) Proviso to the aforesaid Article gives power to the Governor to make service rules but these rules are only transitory in nature, inasmuch as the

power to frame these rules can be exercised by the Governor until provision in that behalf is made by or under an Act of the appropriate Legislature

and these rules shall have the effect subject to the provisions of any such Act.

Thus, the Rules of 2015, which have been framed by the Governor in exercise of his power under Article 309 of the Constitution of India, will occupy the field which is not covered by any statute or rules framed under any statute.

24) Here it would be apt to refer to the ratio laid down by the Supreme Court in the case of A. B. Krishna and others vs. State of Karnataka and

others, (1998) 3 SCC 495. In the said case, the question before the Court was whether. Karnataka Civil Services (General Recruitment) Rules, 1971(

as amended in the year 1977) , made by the Governor under Article 309 of the Constitution of India, shall. be. deemed. to. have. superseded. Mysore.

Fire. Force. (Cadre Recruitment) Rules, 1971, made under Section 39 of the Mysore Fire Force Act. The Supreme Court, after noticing the

provisions contained in Article 309 of the Constitution of India, held that on the principle of ""occupied field"", the Rules under Article 309 cannot

supersede the Rules made by the legislature. Paras 7 to 9 of the said judgment are relevant to the context and the same are reproduced as under:

â??7. The rule-making function under the Proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other

provisions of the Constitution, it is obvious that whether it is an Act made by the Parliament or the State Legislature which lays down the

conditions of service or it is the Rule made by the President or the Governor under the Proviso to that Article, they have to be in conformity

with the other provisions of the Constitution specially Article 14, 16, 310 and 311.

8.The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature.

It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the

conditions of Fire Service. Since Fire Service had been specially established under an Act of the Legislature and the Government, in

pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services

(General Recruitment) Rules, 1977 would not affect the special provisions validly made for Fire Services. As a matter of fact, under the

scheme of Article 309 of the Constitution, once. A Legislature intervenes to enact a law regulating the conditions of service, the power of

Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "Doctrine of Occupied

Field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions

or to make a Rule under Article 309 in respect of that matter.

9. It is no doubt true that the Rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the

Government (to be precise, Governor, under Article 309 and Govt. under Section 39), but the two jurisdictions are different. As has been

seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is

occupied. In that situation, Rules can be made under the Law so made by the legislature and not under Article 309. It has also to be noticed

that Rules made in exercise of the rule making power given under an Act constitute Delegated or Subordinate legislation, but the Rules

under Article 309 cannot be treated to fall in that category and, therefore, on the principle of "occupied field", the Rules under Article 309

cannot supersede the Rules made by the legislature.â??

25) The Supreme Court again in *Chandra Prakash Tiwari and others v. Shakuntala Shukla and others*, (2002) 6 SCC 127, while dealing with a case

relating to promotion from Sub Inspector to Inspector in State of U. P, while relying upon the ratio laid down in *A. B. Krishna v. State of Karnataka*

(supra), concluded that unless there is a specific repeal of the existing law, question of an implied repeal would not arise. The observations of the

Court in paras 36 and 37 of the judgment are relevant to the context and the same are reproduced as under:

Â??36. On a conspectus of the whole issue, it is thus difficult to comprehend that the General Rule framed under Article 309 should or

would also govern the existing special rules concerning the police rules. Admittedly, the guidelines as contained in the Government Order

dated 5.11.1965 have been under and in terms of the provisions of the Police Act. There is special conferment of power for framing of Rules

dealt with more fully hereinbefore, which would prevail over any other Rule. Since no other rule stands formulated and the Government

Order of 1965 being taken as the existing rule pertaining to the subject matter

presently under consideration with recent guide-lines as noted above, its applicability cannot be doubted. Unless the General Rule specifically repeal the effectiveness of the special rules, question of the latter rule becoming ineffective or inoperative would not arise. In order to be effective, an express mention is required rather an imaginary repeal. It is now a well settled principle of law for which no relation is further required that law Courts rather loath repeal by implication. The General Rule framed under Article 309 has been for all State Government officials on and since 1994. List II (State List) of the 7th Schedule specially refers to the powers of the State Legislature to frame Rules specially for the Police. In this context Item 2 thereof would be significant which reads as follows:

List II-State List

2 Police (including railway and village police) subject to the provisions of entry 2A of List I.

37. Police force admittedly has a special significance in the administration of the State and the intent of the framers of our Constitution to

empower the State Government to make rules therefor has its due significance rather than being governed under a general omnibus rule

framed under the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law,

question of an implied repeal would not arise. In any event, the General Rules are only prospective in nature and as such could not have

affected the selection process which commenced in the year 1993 and it is on this score the parties advanced quite a lengthy submission but

in our view question of further consideration thereof would not arise by reason of the commencement of the selection process in 1993â??

26) Applying the aforesaid ratio to the instant case, it is to be noticed that the rules made by the Government under Section 12 of the Police Act

prescribe the method of selection/appointment including the constitution of Selection Committee under Rule 172 of the said Rules. These Rules have

not been amended, altered or modified, at least until the instant selection had taken place. Therefore, the Rules of 2015 could not have been made

applicable to the field that was already occupied by the Police Rules. The intention of the Government to exclude the Police Department from the

purview of the Rules of 2015, so far as the same pertains to the selection process, is manifested from the fact that it was only on 1st July, 2021, that notification S.O. 214 came to be issued by the Government of Jammu and Kashmir thereby amending Rule 172 of the J&K Police Rules, paving the way for selection of non-gazetted ranks. of. police. officials. by. the. Jammu. and. Kashmir. Services Selection Board. This means that until the issuance of S.O. 214 of 1st July, 2021, the selection and appointment of non-gazetted ranks of police officials was to be made in accordance with the un-amended Rule 172, which provided for constitution of Selection Committee by Director General of Police, on whose recommendations the appointments were to be made.

27) It has been vehemently contended by the writ petitioners that the advertisement notice dated 30th December, 2016, specifically provided that conditions of employment as prescribed under the Rules of 2015 would apply to the selections. The writ petitioners have also placed reliance upon Circular No.09-GAD of 2016 dated 29.01.2016, which clarifies that service conditions of all Government employees including the Police Department would be governed by SRO 202 of 2015. On this basis, it has been contended that the selection was to be made only in accordance with the Rules of 2015 and not in accordance with the J&K Police Rules.

28) It is true that in the advertisement notice it is provided that the conditions of employment as prescribed under the Rules of 2015 would apply but the conditions of employment in the context of instant case will have reference to only those rules notified under SRO 202 which relate to nature of appointment, fixation of pay, increments, dearness allowance and other allowances and other conditions of service etc. and not to the process of selection. Even Circular No.09-GAD of 2016 dated 29.01.2016, makes it amply clear that in order to harmonize the service conditions of all Government employees with respect to SRO 202 of 2015, the said SRO has been made applicable to all the posts for which selection is made by J&K Service Selection Board, Departmental Recruitment Boards etc. relating to selection in Government departments. So, it is only with regard to service conditions that SRO 202 of 2015 has been made applicable in all kinds of selections in Government departments. The fact that the said Circular bears reference to Departmental Recruitment Boards makes it clear that the Rules of

2015 did not obliterate or extinguish the possibility of selections being made by Departmental Recruitment Boards constituted under special rules of a particular department. Thus, it can be safely stated that the Departmental Recruitment Board of the Police Department constituted in terms of Rule 172 of the J&K Police Rules was never intended to be replaced by Services Selection Board constituted in terms of the Rules of 2015.

29) The writ petitioners have placed heavy reliance upon the ratio laid down by the Supreme Court in *S. Prakash and another vs. K. M. Kurian and others* (1999) 5 SCC 624, to contend that the Police Rules, so far as the same pertain to recruitment of non-gazetted ranks, stand impliedly repealed by the General Rules of 2015. The Supreme Court in the said case, after noticing the inconsistency in the special rules pertaining to the ratio or percentage fixed for different methods of recruitment as contained in Kerala State Subordinate Services (Amendment) Rules, 1992, and Kerala Agricultural Income Tax and Sales Tax Rules, observed that if the intention of the rule-making authority is to sweep away all the special rules and to establish a uniform pattern for computation of the ratio or percentage of direct recruits and by transfer, in such case, the special rules will give way.

30) The ratio laid down by the Supreme Court in the aforesaid case has been rendered in the facts and circumstances of the said case and may not be applicable to the facts of the instant case, inasmuch as in the case before the Supreme Court, there was a specific mention of special rules in Rule 5 of the General Rules which was subject matter of discussion before the Court. Rule 5 of the General Rules provided for method of recruitment prescribed under special rules and the said Rule 5 was made specifically applicable to the special rules. In order to make it more clear, it would be apt to refer to the provisions contained in Rule 5 of the General Rules which were subject matter of discussion before the Supreme Court. The same reads as under:

â??5. Method of recruitment: - Where the normal method of recruitment to any service, class or category is neither solely by transfer but is both by direct recruitment and by transfer: -

(a) the proportion or order in which the Special Rules concerned may require vacancies to be filled by persons recruited direct and by those recruited by transfer shall be applicable only to substantive vacancies in

the permanent cadre;

(b) a person shall be recruited direct only against a substantive vacancy in such permanent cadre, and only if the vacancy is one which

should be filled by a direct recruit under the Special Rules referred to in clause (a) and;

(c) recruitment to all other vacancies shall be made by transfer.

Note: (1) All permanent vacancies and temporary vacancies except those of short duration shall be treated as substantive vacancies.

(2) Leave vacancies and vacancies of less than 6 months duration shall be treated as vacancies of short duration.

(3) Whenever a ratio or percentage is fixed for different methods of recruitment/appointment to a post the number of vacancies to be filled

up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the

recruitment/transfer is made and not to the vacancies existing at that time.â??

31) In para 14 of the aforesaid judgment, the Supreme Court has made it clear that the aforesaid General Rule applies to all Special Rules whenever a

ratio or percentage is prescribed in the rules. Paras 14 and 17 of the judgment are relevant to the context and the same are reproduced as under:

â??14. From the aforesaid discussion, it is clear that if the intention of the rule making authority was to establish a rule of universal

application to all the services in the State of Kerala for which special rules are made, then special rules will give way to the general rules

enacted for that purpose. This has to be found out from the language used in the rules which may be express or by implication. If the

language is clear and unqualified, subsequent general rule would prevail despite repugnancy. If the intention of the rule-making authority

is to sweep away all the special rules and to establish a uniform pattern for computation of the ratio or percentage of direct recruits and by

transfer, in such case, the special rules will give way. On the basis of the aforesaid settled principles, let us interpret rule 5 as well as Note

(3) and the method of recruitment prescribed under the special rules. Rule 5 quoted above provides method of recruitment to any service,

class or category where the method of recruitment is neither solely by direct recruitment nor by transfer but is both by direct recruitment

and by transfer. It is made specifically applicable to the special rules. Clause (a) provides that the proportion or order will be applicable

only to substantive vacancies in permanent cadre; clause (b) provides that direct recruitment shall be only against substantive vacancy in

permanent cadre; and recruitment to all other vacancies shall be made by transfer. Note (1) and (2) provide that all permanent vacancies

and temporary vacancies except those of short duration shall be treated as substantive vacancies. Note (3) specifically provides that

whenever a ratio or percentage is fixed (in special Rules) for different methods of recruitment to a post, the number of vacancies to be filled

up by candidates from each method is to be decided by applying a fixed ratio or percentage to the cadre strength of the post to which the

recruitment is made and not to the vacancies existing at that time. Therefore, the entire Rule 5 deals with the special rules which provide for

filling up of the vacancies to any service, class or category by direct recruitment and by transfer. The language of Note (3) is crystal clear

and is for removal of any ambiguity by using positive and negative terms. It applies to all special rules whenever a ratio or percentage is

prescribed in the Rules. It also empathetically states that it has to be computed on the cadre strength of the post to which the recruitment is

to be made and not on the basis of the vacancies existing at that time.

17. In our view, the aforesaid submission is without any substance. As discussed above, Rule 5 of the General Rule is enacted to govern

special rules with regard to the method of recruitment in cases when appointments are by direct recruitment and by transfer in any

substantive vacancies in permanent cadre. The language used in Rule 5 is clear and unqualified. The intention of the legislature of adding

Note 3 is also clear and is added to fill in existing lacuna in the method of recruitment provided in special rules. As stated above, for

appointment to category 3, i.e. to the post of Agricultural Income Tax Officers and others, method of appointments only provides that 20%

of successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining vacancies are to be filled

or reserved to be filled by transfer. On what basis the substantive vacancies are to be determined was not provided and therefore that

lacuna is filled up by the aforesaid Note (3) in Rule 5. In any case, even if there is repugnancy or inconsistency, the law is settled to the

effect that general rule later in time prevails over earlier special rule if it clearly and directly supersedes the special rule. It is also well

settled that special rule can be altered, abrogated or repealed by general rule by an express provision. In the present case, the language of

Note (3) specifically makes it applicable to general rule stating whenever the ratio or percentage is fixed for different methods of

recruitment, the method prescribed therein would apply. So, the word whenever would cover special rule prescribing ratio or percentage of

appointment between direct recruit and by transfer and the Rule making authority has specifically provided that ratio or percentage for the

vacancies is to be computed on the basis not to the vacancies existing at that time, but on the basis of the cadre strength. Hence, there is no

question of repugnancy between Rule 5, Note (3) and the method of appointment provided in Special Rules.â??

(Emphasis supplied)

32) From the afore-quoted observations of the Supreme Court it is clear that it was a case where General Rules specifically provided for their

application to Special Rules so far as method of recruitment is concerned and it was in those circumstances that the Supreme Court held that rules

relating to method of recruitment contained in Kerala Agricultural Income Tax and Sales Tax Rules would stand impliedly repealed by Kerala State

Subordinate Services (Amendment) Rules, 1992.

33) In the instant case, there is no provision in the Rules of 2015 to even remotely suggest that the method of recruitment would even apply to those

cases where any Statutory Rules provides for special method of recruitment. In fact, the clarification of 2016 and amendment to Police Rules effected

on 1st of July, 2021, suggest to the contrary. Therefore, the ratio laid down by the Supreme Court in S. Prakash and another vs. K. M. Kurian and

others (supra) does not apply to the facts of the instant case.

34) For the foregoing discussion, we are of the considered opinion that the official respondents have not committed any illegality or irregularity in

undertaking the impugned selection process in accordance with the J&K Police Rules. Thus, it cannot be said that there has been any gross or glaring

illegality in the process of selection.

35) So far as the contention of the writ petitioners that at certain centres biometric attendance was not resorted to and in certain other centres, the recruitment process was not covered by CCTV cameras, is concerned, the official respondents have clearly explained in their counter affidavit(s) that it was only in one of the centres that CCTV cameras could not be installed and even in that centre, the whole process was properly videographed. It has also been explained that due to heavy rush of candidates at certain centres, it was not possible to resort to marking of attendance through biometric appliances. However, the official respondents have stated on affidavit that it was ensured that identity of the candidates is properly verified before allowing them to sit in the examination. In any case, no material was placed on record by the writ petitioners before the Writ Court to even remotely suggest that on account of non-adherence of conditions relating to biometric attendance of candidates or CCTV surveillance, any case of cheating or impersonation or unfair means has taken place. No specific instances in this regard have been brought to the notice of the Court. Only general allegations in this regard have been made which cannot persuade the Court to conclude that there has been any unfairness or mala fides in the conduct of the examination/selection process. The learned Writ Court has rightly rejected the contention of the writ petitioners in this regard.

36) Lastly, it has been contended that as per Rule 172 of the J&K Police Rules, the Selection Committee is to be constituted by the Director General of Police but in the instant case, the same has been constituted by the Government. According to the learned counsel for the writ petitioners, this has resulted into a glaring irregularity thereby vitiating the whole process of selection.

37) This ground has not been urged by the writ petitioners before the Writ Court, therefore, the same cannot be considered by this Court in appeal.

Even otherwise, the Selection Committee in this case, as per the writ petitioners, was constituted by the Government which is the actual source of power. The said power stands delegated by the Government to Director General of Police in terms of Rule 172 of the J&K Police Rules. Merely by delegation of power, the delegator is not divested of exercising his power. Delegation is defined in Black's Law Dictionary as an act of entrusting another with authority or empowering another to act as an agent or

representative. As per P. Ramanathan Iyer's *The Law Lexicon*,

delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the persons who grants the delegation

but it also means conferring of an authority to do things which otherwise that person would have to do himself.

38) The Supreme Court in the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v Asstt. Commissioner Of Sales Tax and others, (1974) 4 SCC 98,

while discussing the concept of 'delegation' has observed in para 37 of the judgment as under:

37. In this context it is necessary to have a clear idea of the concept of delegation. Delegation is not the complete handing over or

transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body

of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete

power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much

confusion of thought had unfortunately resulted from assuming that, (1) [1972] 2 S.C.R. 141, delegation involves, or may involve the

complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary

authority to another, but such authority is purely derivative. The, ultimate power always remains in the delegator and is never renounced.

39) From the foregoing discussion, it is clear that even after the delegation of power, the ultimate power always remains with the delegator and is

never renounced. In the instant case, the Selection Committee, as contended by learned counsel for the writ petitioners, has been constituted by the

Government in terms of Government Order No.289-Home of 2016 dated 28.05.2016. It bears reference to the letter of Director General of Police.

The Government being the source of power, which it has delegated to Director General of Police under Rule 172, was well within its power and

jurisdiction to constitute a Selection Committee and, as such, no fault can be found with the procedure adopted by the Government in this regard.

40) For the foregoing discussion, we are of the considered opinion that there has been no gross or glaring illegality or irregularity in the process of

selection of Sub Inspectors which is subject matter of these appeals. Having said so, it was not open to the writ petitioners to challenge the selection

process after having participated in the same simply because had failed to make the grade. The learned Writ Court has rightly observed that estoppel

by conduct would apply with full force to the case of the writ petitioners and they are barred from challenging the selection process in the facts and

circumstances of the case.

41) For what has been discussed hereinabove, we do not find any merit in these intra court appeals and the same are, accordingly, dismissed.

42) Parties to bear their own costs.