

In the High Court of Punjab and Haryana at Chandigarh

- 1. CWP No. 331 of 2023 (O&M)**
Reserved on : 19.9.2023
Date of Decision: 29.9.2023

Moonak Garg and othersPetitioners

Versus

Punjab and Haryana High Court and othersRespondents
- 2. CWP No. 1078 of 2023 (O&M)**

Rajneesh BalaPetitioner

Versus

Haryana Public Service Commission and anotherRespondents
- 3. CWP No. 28484 of 2022 (O&M)**

Maitri KakkarPetitioner

Versus

State of Haryana and othersRespondents
- 4. CWP No. 28498 of 2022 (O&M)**

Soumil GoyalPetitioner

Versus

Haryana Public Service Commission and anotherRespondents
- 5. CWP No. 30320 of 2022 (O&M)**

Pragati Sharma and othersPetitioners

Versus

Punjab and Haryana High Court and anotherRespondents
- 6. CWP No. 11942 of 2023 (O&M)**

AnilPetitioner

Versus

Punjab and Haryana High Court and othersRespondents

7. CWP No. 19304 of 2023 (O&M)

Jahanvi SharmaPetitioner

Versus

State of Haryana and othersRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. R.S.Bains, Senior Advocate assisted by
Mr. M.S.Chauhan, Advocate
for the petitioners (in CWP-331-2023).

Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Robin Singh Bhullar, Advocate
for the petitioner (in CWP-28498-2022).

Mr. Pardhuman Garg, Advocate
for the petitioners (in CWP-30320-2022).

Mr. Sapan Dhir, Advocate with
Mr. Amit Sharma, Advocate
for the petitioner (in CWP-28484-2022).

Mr. Ankit Grewal, Advocate
for the petitioner (in CWP-11942-2023).

Mr. Krishan Singh, Advocate
for the petitioner (in CWP-1078-2023).

Mr. Akshay Jindal, Advocate
for the petitioner (in CWP-19304-2023).

Dr. A.P.Singhji, Advocate,
Ms. Geeta Chauhan, Advocate, Mr. V.P.Singh, Advocate,
Ms. Richa Singh, Advocate, Ms. Pratima Rani, Advocate and
Ms. Ravnit Kaur, Advocate
for the petitioners (in CM Nos.14384-CWP &
14386-CWP-2023 in CWP-30320-2022).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Rajeev Anand, Advocate
for the respondent No. 1
(in CWP-30320-202, CWP-331-2023, CWP-11942-2023),
for respondent No. 2 (in CWP-1078-2023)

Ms. Harpriya Khaneka, Advocate
for the respondent-HPSC.

Mr. B.S.Khehar, Advocate
for respondent No. 2 (in CWP-28498-2022) and

for respondent No. 4 (in CWP-19304-2023).

Ms. Sukriti Gupta, Advocate
for respondent No. 3 (in CWP-28484-2022).

Registrar (Recruitment), Punjab and Haryana High Court,
Chandigarh is present.

SURESHWAR THAKUR, J.

1. Since all the petitioners participated in a common recruitment process, as became initiated by the Punjab and Haryana High Court, Chandigarh/Haryana Public Service Commission, therefore, all the writ petitions are amenable for a common verdict becoming made thereons.

2. The said recruitment process, became initiated through an advertisement, which became published on 13.1.2021. Through, the above made advertisement, online applications became invited from eligible candidates, thus for filling up of 256 posts (239 actual posts + 17 anticipated posts) of Civil Judge (Junior Division), in the Haryana Civil Services (Judicial Branch).

3. The reservations, as were made in respect of various categories are carried in a table made therein, and, table whereof becomes extracted hereinafter.

<i>General/ UR</i>	<i>SC</i>	<i>BC-A</i>	<i>BC-B</i>	<i>EWS</i>	<i>Total actual vacancies</i>	<i>ESM</i>	<i>ESP</i>	<i>Persons with disability</i>
156	40	21	11	11	239	Gen - 07 SC - 03 BC-A - 01 BC-B - 02 Total - 13	Gen - 03 SC - 02 BC-A - 01 BC-B - 01 Total - 07	Blindness of Low Vision (VH) - 03 Hearing impairment (HH) - 03 Locomotor disability or cerebral palsy (OH) - 02 Autism, Intellectual disability or Multiple Disabilities (MD) - 02 Total - 10

The bifurcation of the 17 anticipated/unforeseen vacancies is given as under:-

<i>General/UR</i>	<i>SC</i>	<i>BC-A</i>	<i>EWS</i>	<i>Total anticipated vacancies</i>	<i>ESM (Gen)</i>
10	04	01	02	17	01

4. The said notification prescribed the necessity of the aspirants concerned, to before becoming enabled to participate in the main examinations, thus become successfully screened for participation therein, rather through their qualifying the prior theretos held preliminary examination(s).

5. It is not contested in any of the writ petitions (supra), that any of the aspirants concerned, except petitioner Soumil Goyal in CWP-28498-2022, and, petitioner Maitri Kakkar in CWP-28484-2022, did rather qualify, the main examinations after their becoming successfully screened in the preliminary examination(s).

6. A perusal of clause 13 of the published advertisement (supra), which becomes extracted hereinafter in a tabular form, does reveal, that 900 maximum marks became prescribed for the various syllabi, becoming entailed to the scribed or written by the examinees concerned. The allocation of marks vis-a-vis the viva-voce were 200.

<i>Paper-I-Civil Law-I</i>	<i>Code of Civil Procedure, Punjab Courts Act, Indian Contract Act, Indian partnership Act, Sale of Goods Act, Specific Relief Act, and Indian Evidence Act, Haryana Urban (Control of Rent and Eviction) Act, 1973</i>	<i>200 Marks</i>
<i>Paper-II-Civil Law-II</i>	<i>Hindu Law, Mohammadan Law and Customary Law, Law of Registration and Limitation</i>	<i>200 Marks</i>
<i>Paper-III Criminal Law</i>	<i>Indian Penal Code, Criminal Procedure Code and Indian Evidence Act.</i>	<i>200 Marks</i>
<i>Paper-IV</i>	<i>The English Paper will be of 200 marks</i>	

<i>English</i>	<i>and consist of the following:- 1. English Essay (1000-1100 words) 2. Precis 3. Words and Phrases (Make sentences of the given words and phrases) 4. Comprehension 5. Corrections</i>	<i>100 Marks 25 Marks 25 Marks 25 Marks 25 Marks</i>
<i>Paper-V- Language</i>	<i>Hindi in (Devnagri Script)</i>	<i>100 Marks</i>
<i>Papter-VI- Viva-Voce</i>	<i>To judge the personal qualities of the candidates. The viva-voce shall relate to the matters of general interest and is intended to test the candidates' alertness, intelligence and general outlook. It shall be conducted in English</i>	<i>200 Marks</i>

7. The eligibility of the candidates to become invited for participating in the viva-voce, becomes spelt in clause 15, of the advertisement (supra), clause whereof becomes extracted hereinafter. The requisite eligibility criteria for the aspirants, being invited to face the viva-voce test, before the selection committee becomes embodied in their obtaining an aggregate of at least 50% marks in all the written papers. However, in respect of the candidates belonging to the Scheduled Caste/Scheduled Tribes, Backward Classes, Physically Handicapped and Ex-serviceman (but not dependent of ESM and EWS) categories, the requisite qualifying marks for the aspirants concerned, thus falling within the above categories, became comprised in each obtaining an aggregate of 45% marks in the written examination(s).

“15. No candidate shall be called for the viva-voce test unless he/she obtains at least fifty percent qualifying marks in the aggregate of all the written papers. However, for the candidate belonging to the Scheduled Caste/Scheduled Tribes, Backward Classes, Physically Handicapped and Ex-serviceman (but not dependent of ESM and EWS) Categories, the qualifying marks for this purpose shall be forty five percent.

Provided that the number of candidates to be called for viva-voce in order of the marks obtained in the written examination

shall not exceed three times the number of vacancies advertised. However, if the last candidate to be called for interview is bracketed with the candidates exceeding three times by obtaining equal marks, than all of the bracketed candidates shall be called for interview, inspite of the fact that the number of candidates to be called for interview exceeds three times. The appearance in viva-voce test is mandatory. Provided further that only those candidates shall be eligible to be recruited as Civil Judges Judicial Magistrates who secure 50% or more marks [read 45% for the SC/ST. BCs. PH and ESM category candidates (but not dependent of ESM)] in aggregate of the marks secured in the main written examination and the viva-voce.”

8. Therefore, reiteratedly speakings occur in the above clause, that the aspirants would become entitled to seek his/her participation in the viva-voce, thus upon his/her securing an aggregate of at least 50% marks in all the written papers. Nonetheless, reiteratedly in respect of the Scheduled Castes/Scheduled Tribes, Backward Classes, Physically Handicapped and Ex-Servicemen candidates (but not dependent of ESM), the qualifying marks for the purpose (supra), were prescribed to be in 45 percentum of the total quantum of 900 marks, as became allotted for the various syllabi, as were required to be undertaken by the examinees.

9. Though, this Court, for the reason, that all the writ petitions though arise from a common notification (supra), thus leading this Court to make a common verdict, upon all the writ petitions.

10. Nonetheless, since the contentions appertaining to challenge(s), as made to the allocation of marks by the validly constituted selection committee, to the aspirants concerned in the viva-voce, in which the aspirants participated, but are different from the challenge(s), as made to the marks allotted in the written examinations by the examinees concerned. Therefore, the pleadings in each of the writ petitions, thus are required to be separately cast, besides require answers becoming separately meted, to those petitioners' contentions, thus containing contra-distinct challenge(s), as

become erected thereons. Moreover, separate answers are also required to be made by this Court to the validity of the submissions, as become respectively addressed by the learned counsels for the petitioners, and, the learned counsel for the contesting respondent concerned.

11. It is in the above regard, that there is yet a requirement of segregation being made of all the writ petitions (supra). Therefore, the first bunch of the writ petitions, whereby the aspirants concerned, who participated in the viva-voce, and, who, however claim the making of a writ of certiorari qua the contesting respondent concerned, thus on the premise, that the said allotment(s), as, made qua them in the relevant viva-voce by the selection committee, rather being unreasonable, arbitrary, and, capricious assessment of their respective personalities, thus by the selection committee concerned, but are to be segregated from the other writ petitions.

12. The writ petitions, which relate to the above challenge, are respectively bearing No(s). ***CWP-30320-2022, CWP-11942-2023, CWP-331-2023*** and ***CWP-1078-2023***.

13. The lead writ petition amongst the above bunch of writ petitions, which require segregation from the other writ petitions, is ***CWP-331-2023***, titled ***Moonak Garg and others versus Punjab and Haryana High Court and others***. The learned counsel Mr. R.S.Bains, Senior Advocate in the writ petition (supra), who has concededly argued the petitions also on behalf of the counsels appearing in the other connected therewith writ petitions (supra), has inter alia made the hereinafter submissions, thus for this Court becoming constrained, to set aside the marks, as became allotted to the petitioners (supra), by the selection committee, rather in the viva-voce concerned, which each of them faced.

**First Submission of the learned senior counsel for the petitioners
in the petitions (supra)**

14. (i) That the candidates, who participated in the selection process despite obtaining a very higher range of marks in their written examination(s) yet theirs being, but in gross disproportion to such a high range of marks becoming secured by them in their written examination(s), rather becoming allotted abysmally less marks in their respective viva-voce. Therefore, the learned senior counsel has argued, that the above gross inter se disproportion but openly speaks about the vice of arbitrariness, and/or unreasonableness becoming indulged into, by the members of the selection committee. He has erected the above submission on a judgment made by the Hon'ble Apex Court, in case titled as ***Ashok Kumar Yadav and others versus State of Haryana and others***, reported in ***(1987) AIR (SC) 454***.

15. (ii) In para 27 of the judgment (supra), para whereof stands extracted hereinafter, there occurs an expostulation about the spread of marks in the viva-voce test, rather not being required to be enormously larger, than the marks, as became allotted in the written examination(s).

“We may now, in the background of this discussion, proceed to consider whether the allocation of as high a percentage of marks as 33.3 per cent in case of ex-service officers and 22.2 per cent in case of other candidates, for the viva voce test renders the selection process arbitrary. So far as ex-service officers are concerned, there can be no doubt that the percentage of marks allocated for the viva voce test in their case is unduly high and it does suffer from the vice of arbitrariness. It has been pointed out by the Division Bench in a fairly elaborate discussion that so far as the present selections in the category of ex-service officers are concerned, the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination. The minimum marks required to be obtained in the written examination for eligibility for the viva voce test are 180 and as against these minimum 180 marks, the highest marks obtained in the written examination in the category of ex-service officers

were 270, the spread of marks in the written examination thus being only 90 marks which works out to a ratio of 22.2 per cent. But when we turn to the marks obtained in the viva voce test, we find that in case of ex-service officers the lowest marks obtained were 20 while the highest marks secured were 171 and the spread of marks in the viva voce test was thus as wide as 151 in a total of 200 marks, which worked out to an inordinately high percentage of 76. The spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination, the viva voce test tended to become a determining factor in the selection process, because even if a candidate secured the highest marks in the written examination, he could be easily knocked out of the race by awarding him the lowest marks in the viva voce test and correspondingly, a candidate who obtained the lowest marks in the written examination could be raised to the top most position in the merit list by an inordinately high marking in the viva voce test. It is therefore obvious that the allocation of such a high percentage of marks as 33.3 per cent opens the door wide for arbitrariness, and in order to diminish, if not eliminate the risk of arbitrariness, this percentage need to be reduced. But while considering what percentage of marks may legitimately be allocated for the viva voce test without incurring the reproach of arbitrariness it must be remembered that ex-service officers would ordinarily be middle aged persons of mature personality and it would be hard on them at that age to go through a long written examination involving 8 subjects and hence it would not be unfair to require them to go through a shorter written examination in only 5 subjects and submit to a viva voce test carrying a higher percentage of marks than that might be prescribed in case of younger candidates. The personalities of these ex-service officers being fully mature and developed, it would not be difficult to arrive at a fair assessment of their merits on the basis of searching and incisive viva voce test and therefore in their case, the viva voce test may be accorded relatively greater weight. But in any event the marks allocate for the viva voce test cannot be as high as 33.3 per cent.”

16. (iii) The above is also tritely underlined in paragraph (supra) carried in the judgment (supra), as made by the Hon'ble Apex Court. Therefore it has to be tested whether in term(s) thereof, the contesting respondent concerned, thus had allotted enormously large marks to the viva voce test, vis-a-vis the marks allocable to the written examination(s), and,

had thereby belittled or demeaned the importance of the written examination concerned.

Reasons for rejecting the above submission

17. In the above regard, it is but noticeable, that the contesting respondent concerned, as spoken in the advertisement (supra), thus had allocated 900 marks to the written examination(s), whereas, 200 marks became reserved, thus for theirs becoming allocable to the aspirants who faced the viva-voce test. Therefore, it cannot but be obviously said, that there was any enormously large allocation of marks to the viva-voce, than to the ones, as became allotted to the written examination, nor thereby it can be said that breach has been caused by the contesting respondent concerned, to the mandate (supra), as made by the Hon'ble Apex Court in verdict (supra).

Second submission of the learned senior counsel for the petitioners

There is disproportion inter se the marks allotted to the selectees in the viva-voce with the ones, as became allotted to them in the written examination(s) thereby vitiating the selection process.

18. Though, the learned senior counsel for the petitioners in making the above argument, has depended upon a judgment made by the Hon'ble Apex Court in case titled as *Union of India and another versus N. Chandrashekhra and another* reported in *1998 (AIR) (SC) 795*, and, upon a verdict rendered in a case titled as *Jasvinder Singh and others versus State of Jammu and Kashmir and others* reported in *(2003) 2 ALLCJ 1035*. However, both the judgments (supra) relate only to the above settled proposition of law, by the Hon'ble Apex Court, in *Ashok Kumar Yadav's* case (supra). Resultantly, when this Court, has on an incisive scrutiny of the relevant extracted thereof paragraph (supra), made cullings therefrom, that the trite underlined principle therein, but is that, there being no enormously

disproportionate allocation of marks inter se the viva-voce test, thus with the ones, as became allotted to the written examination(s). Moreover, when this Court upon vis-a-vis the instant case, thus applying the above trite underlining, as carried in *Ashok Kumar Yadav*'s case (supra), has made a conclusion, that the contesting respondent concerned, rather has not breached the above trite legal principles underlined in *Ashok Kumar Yadav*'s case (supra). Therefore, the other judgments (supra), also do not advance the arguments made by the learned senior counsel for the petitioners, that thereby the selection process, insofar as it, relates to there being gross disproportion in the allocation of marks to the selectees in the viva-voce concerned, with the ones, as became assigned in the written examinations(s) concerned, which has now concluded, and, has also resulted in the selectees concerned undergoing training, thus is required to be quashed and set aside.

19. Though, the learned senior counsel for the petitioners, has placed reliance on a judgment made by this Court, in case titled as *Subash Chander Sharma and others versus State of Haryana and others* reported in (1984) 15 SLR 165, to contend that since, there was gross disproportion inter se the marks allotted to the candidates, in the qualifying examination by the examiner concerned, and, the ones, as became allotted to the candidates, in the viva-voce concerned by the selection committee, thereby when this Court, in verdict (supra), rather has nullified the selection process, as became embarked upon in the verdict (supra). Therefore, he argues, that this Court may also likewise proceed to nullify the awardings of the marks to the petitioners, in the viva-voce, as there is a gross disproportion inter se the marks secured by the aspirants concerned, in the written examination(s), than the ones which became allotted to them in the

viva-voce, which they faced before the selection committee concerned.

Reasons for rejecting the above argument

20. However, for the reasons to be assigned hereinafter, the above made argument also has no efficacy at all.

21. The reason for drawing the above conclusion becomes comprised in the factum, that even if assumingly in *Subash Chander Sharma's* case (supra), there was less or an ill spread of marks inter se the marks allotted to the written examination(s), vis-a-vis the ones, as became allotted to the viva-voce, inasmuch as, the marks allotted in the written examination were 700, and, the marks allotted in the case (supra) were 200, and, may be if assumingly, that thereby there was breach to the mandate recorded by the Apex Court in *Ashok Kumar Yadav's* case (supra). However, the prime reason other than the above, which prevailed upon this Court, in *Subash Chander Sharma's* case (supra) to nullify the selection process, thus became premised on the plank, that there was gross arbitrariness, and, capriciousness on the part of the selection committee, to under-allot or under-assess the candidates, who participated in the viva-voce concerned. The pivotal premise which coaxed this Court in the judgment (supra) to, thus nullify the selection process, is carried in paragraph 61 of the judgment (supra), paragraph whereof becomes extracted hereinafter.

“61. To finally conclude it becomes somewhat necessary to reiterate :-

(i) In view of the virtually unrebutted pleadings with regard to the very constitution of the Public Service Commission; the forth right intrinsic evidence of its inner working by one of its senior members itself; the admitted participation of the two members of the Commission in the selection of the three of their close relations; the interviewing of an inordinately large multiple of candidates (1,300) entirely disproportionate of the

number of vacancies available; the resultant unfairness in the selection qua the writ petitioners, both individually and collectively; the objective analysis of the result of the 16 candidates selected for the top H C. S (Executive) in particular and of the 151 top candidates of the combined result in general; it has to be necessarily held that the writ petitioners have more than amply discharged the burden of establishing the very reasonable likelihood of bias thus vitiating the whole gamut of the selections herein;

ii) that the impugned selections herein satisfy the test of "an obvious oblique motive" laid out in Lila Dhar's case (supra) which not only warrants but compels judicial interference;

(iii) that with regard to the selections from Ex-servicemen candidates, the ratio of 33/ per cent of viva voce test to the total marks, as was prescribed by Regulations 1 and 5 of Appendix-I to the 1930 Rules, is plainly arbitrary and thus totally violative of Articles 14 and 16 of the Constitution of India and is hereby struck down; and

(iv) that even as regards the candidates of the general category, the ratio of 22.2 per cent of the viva voce test to the total marks prescribed by Regulations I and 5 of Appendix-1 of the 1930- Rules, is equally arbitrary and violative of Articles 14 and 16 of the Constitution and has consequently to be struck down."

22. A reading of the above extracted paragraph reveals, that the above made conclusion, became spurred from the factum qua unrebutted pleadings rather making forthright emergence(s) about (a) the senior members of the selection committee, thus selecting their relatives, (b) the interviewing of an inordinately large number of candidates (1300), and, as such, the said enormous numerical strength of the candidates, who were invited to face the viva-voce, thus being entirely disproportionate to the number of vacancies available, (c) the resultant unfairness in the selection qua the petitioners both individually, and, collectively, (d) the objective

analysis of the result of 16 candidates selected for the top HCS (Executive) in particular, and, of the 151 top candidates of the combined result in general, thus led this Court, in the judgment (supra), to make the conclusion, that thereby rather a secure evidentiary foundation became laid, thus to draw an invincible conclusion, that not only there was a very reasonable likelihood of bias, but only the said bias becoming potentialized. Consequently, it was declared therein, that the entire selection process, is invaded with the vices of ill bias(es) or of oblique motives, thus leading this Court to set aside the selection process, as became challenged in the judgment (supra). For the reasons to be assigned hereinafter, the facts of the judgment (supra), which resulted in the above made conclusion, being drawn by this Court, are completely contradistinct to the facts which are available before this Court.

23. Since for making the judgment (supra) applicable to the instant case, there is required to be a complete synchrony inter se the facts therein, and, the facts at hand. Therefore, unless the above synchrony, does evidently emerge, thereby the conclusion, as made in the judgment (supra) rather would not be binding upon this Court.

24. In the above regard, there is no material placed on record, at the instance of the petitioners, that any of the members of the selection committee, rather selected those candidates, who were closely related to them, nor any evidence has emerged before this Court, thus displaying that the contesting respondent concerned, invited only those candidates for facing the viva-voce, despite theirs not obtaining the minimum qualifying marks in the written examination, nor any cogent material has been placed on record, whereons, the learned senior counsel for the petitioners, thus can well contend, that there was any reasonable likelihood of bias working in the

minds of the selection committee, and/or that the said bias became also potentialized.

25. Since all the above parameters or fact, as existing in the verdict (supra) were also required to be making, thus there imminent surgings, also before this Court, for thereby the conclusion (supra), as, made in *Subash Chander Sharma's* case (supra), being made applicable with aplomb to this case. However, when as above stated, there is completest adherence to the norms made in the advertisement (supra), inasmuch as, the contesting respondent concerned, only inviting those candidates, who were thus eligible for participation in the viva-voce. Consequently, since the numerical strength of the candidates, who were invited to participate in the viva-voce, but was in proportion to the eligibility criteria, as became prescribed, thus for their participation in the viva-voce concerned. Moreover, when it is also noticeable, that after a profound, and, insightful application of mind, by the contesting respondent concerned, that thereby the eligibility criteria for apposite participations in the viva-voce concerned, thus became prescribed. Therefore, it is but obvious that the said application of mind, led to invitation(s) being made to the successful candidates concerned, rather for theirs facing the viva-voce. Moreover, the said prescription, thus became well founded upon there being proportion inter se the vacancies advertised, and, the candidates, who were to be declared fit to face the viva-voce. Resultantly also there was no gross disproportion inter se the number of vacancies available, and, the aspirants, who in terms of the advertisement (supra), thus became invited to face the viva-voce before the selection committee. In consequence, the expostulation of law, as made in *Subash Chander Sharma's* case (supra) relating to there being a gross disproportion inter se the vacancies advertised, and, the candidates who were invited to

face the viva-voce concerned, and, the further conclusion, that thereby the selection process in the said case became vitiated, rather is on anvil of the pointed distinguishing theretos facts (supra), as, available in the case at hand, thus would not make it squarely applicable to the facts at hand. The natural sequel thereof, is that, thus on the plank of the above judgment, this Court is not coaxed to declare that the selection process is vitiated.

26. Consequently, reiteratedly on the premise of the above purported breach, it cannot be argued before this Court, that there was, as such, any reasonable likelihood of bias inhering in the mind(s) of the members of the selection committee, nor also it can be argued, that thereby there was any oblique/motive, thus working in the mind(s) of the members of the selection committee concerned, especially when, as stated (supra) for the above conclusion, rather emanating from this Court, it was but necessary to both plead, and, to also prove, that any of the members of the selection committee, thus were related to those candidates, who ultimately made their place in the selection list. However, for want of pleadings (supra), and, also for the consequent wants of adduction of proof in respect thereof, thus makes the above argument to be unsustainable. In nutshell, the said argument becomes foundered, and, is rejected as such.

27. Predominantly, the ire point which has been most vigorously espoused before this Court, and, as appertains to there being under-rating or under-assessing of the personalities of the candidates, who faced the viva-voce concerned, before the selection committee, but irrespective of what has been stated hereinabove, does also completely lose its tenacity. The reason for forming the above conclusion stems from the factum, that in the judgments made by the Hon'ble Apex Court in case titled as *Madan Lal and others versus State of Jammu and Kashmir*, reported in *1995(3) SCC 486*,

which has been followed in subsequent judgments of the Hon'ble Apex Court respectively made in *Amlan Jyoti Borroah versus State of Assam* reported in (2009) 3 SCC 227, *Dr. Ashwani Kumar Dalal versus Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others* 2010(4) SCT 753, *Mukesh Thakur and others versus State of Himachal Pradesh and others* 2021(1) SimLC 230 and *Taniya Malik versus The Registrar of the High Court of Delhi*, 2018(2) SCT 196, thus consistent views are expressed, about the writ Court becoming barred from in the exercise of its writ jurisdiction, to re-assess, thus as a super assessor or as a super evaluator, the assessments in the viva-voce, as made by the selection committee concerned. The relevant paragraph of the judgment of the Hon'ble Apex Court in *Madan Lal and other's* case (supra) is extracted hereinafter.

“10. Therefore, 'the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert

committee.”

28. Moreover, when it has also been expounded therein, but with forthrightness, and, candor, that the above squarely falls within the domain of the selection committee concerned.

29. A similar view has been taken by the Hon'ble Apex Court in a case titled, as, ***Manish Kumar Shahi versus State of Bihar***, reported in ***2010(12) SCC 576***, whereby the Hon'ble Apex Court after placing reliance on Madan Lal's case (supra) rather dismissed the said case.

30. Therefore, any argument founded on makings of any purported under assessment of the personalities or under ratings of the suitabilities of the candidates, who faced the viva-voce, before the selection committee concerned, but without any material (supra), rather supporting that there was any likelihood of bias working in the minds of the members of the selection committee, or that the said bias becoming also potentialized, rather is an ideally made or an imaginative argument, and, to which no reverence can become meted by this Court. In sequel, this Court refrains from in the exercise of its writ jurisdiction, thus making reviews of the assessments or ratings, as made of the candidates, who faced the viva-voce, thus before the selection committee concerned.

31. Even otherwise, the above argument is covered within the expostulation of law, as made by the Hon'ble Apex Court in ***Madan Lal's*** case (supra), wherein, it has been expostulated with utmost candor, that the selection committee alone is the repository of making assessments of the candidates, who faced the viva-voce, thus before it, and, that the said assessment, as made by the members of the selection committee of the personality traits of the candidates, who faced the viva-voce before it, rather cannot be reviewed in the exercise of its review jurisdiction by this Court, as

thereby this Court would be untenably working as a super evaluator or as a super assessor, which function is, by the judgment (supra), thus debarred to be made by a writ Court.

32. During the course of hearing, this Court elicited the assistance of the Registrar (Recruitment) of this Court, and, asked him whether the members of the selection committee were aware of the results obtained by the candidates concerned in their respective written examination(s). However, he has forthrightly submitted before this Court, that the selection committee was not awakened about the results obtained by the candidates concerned, rather in their written examination(s). Moreover, when it has also been intimated by the Registrar (Recruitment) of this Court, that the intimation, as became purveyed to the selection committee concerned, was pointedly vis-a-vis only their respective roll numbers. Consequently also, no argument can be raised before this Court, that thus the selection committee functioned with a pre-disposed mind, thus to select candidate(s) of their choice or to eliminate any other candidate not of their liking, rather through the selection committee arbitrarily under assessing the candidates, in their respective viva-voce, despite theirs fetching a high score in the written examination.

Third argument of the learned senior counsel for the petitioners

33. The learned senior counsel for the petitioners has also vehemently argued, that since in the notification, which became issued by the Government of Haryana on 14.12.2020, and, with relevant para 13 thereof, as mentioned in the paper book, para whereof stands extracted hereinafter, a prescription occurs qua the composition of the selection committee.

“(2) The Selection Committee referred to in sub-rule (1) shall

comprise of the following members, namely:-

- i. three Judges of the High Court of Punjab and Haryana nominated by the Chief Justice, of whom the senior-most shall be the Chairman;*
- ii. the Advocate General, Haryana;*
- iii. the Chief Secretary to Government, Haryana; and*
- iv. the Chairman of the Haryana Public Service Commission”*

34. Therefore, he argues, that the contesting respondent concerned, rather deviating from the expostulations (supra), as made in the notification (supra), inasmuch as, it proceeding to add three more Hon’ble Judges of this High Court, as members of the selection committee. In sequel, he argues, that the said alteration in the composition of the selection committee, has rather concomitantly resulted in an unfair, fathoming of the suitability or of the personality traits of the present petitioners.

Reasons for rejecting the above submission

35. The above made argument is highly imaginative, unrested upon any firm pleadings, nor any cogent material has been placed on record to support the said argument. Therefore, the said argument, thus warrants its being rejected, and, is rejected as such.

36. Be that as it may, the relevant notification contemplates that three Hon’ble Judges of this High Court to be nominated by the Hon’ble Chief Justice, of whom the senior most shall be the Chairman of the selection committee, thus was comprised in the strength of the selection committee. Nonetheless, when three more Hon’ble Judges of this High Court were also added along with the stipulated, three Hon’ble Judges of this High Court, thus in the selection committee, which viva-voced the candidates concerned, rather is also a validly adopted mode, as on a perusal of the record, it is evident, that the said addition but was made after approval

thereto becoming assigned by the Hon'ble Chief Justice of this Court.

37. Furthermore, it is promotive, thus for ensuring the purveying of valuable inputs by three more Hon'ble Judges of this High Court, who but are experts in their own respective fields, and, thereby would assuredly supplement the expertise enjoyed by the three Hon'ble Judges, of the selection committee, who are declared in the relevant notification, to be the members of the selection committee. Resultantly, if the addition of three Hon'ble Judges of this High Court, as members of the selection committee, hence is promotive, besides is for ensuring a more incisive scrutiny, and, fathomings of suitabilities of the aspirants, who participated in the viva-voce concerned. Therefore, but obviously, the above cannot be said to be shorn of any element of transparency, nor also it can be argued, that thereby there has been any breach vis-a-vis the principle of non-arbitrariness or reasonableness, as enshrined in Articles 14 and 16 of the Constitution of India.

38. Needless to say that the aspirants, who faced the viva-voce, have become selected in the judicial services. Therefore, since all the members of the selection committee are but obviously high constitutional dignitaries/the senior most bureaucrat in the State of Haryana, besides naturally, when they were also enjoying the optimum expertise, thus for ensuring the making of the most fairest selection(s), thus of the most suitable candidates. Therefore, when they were but specialists in the field of law, resultantly there was no requirement of associating any other expert in the field of law, nor thereby the learned senior counsel for the petitioners rather can argue, that any other specialized personality in the field of law, thus was required to be added, to the composition of the selection committee, nor thereby he can also argue, that the purported altered composition of the

selection committee, thus has resulted in an unfair, and, tainted selection being made by the members of the selection committee.

Fourth argument of the learned senior counsel for the petitioners

39. The learned senior counsel for the petitioners has also argued, that since the members of the selection committee made consensual or ad idem ratings of the candidates, who participated in the viva-voce, thereby the said ratings do per se smack of unreasonableness, and, arbitrariness. Therefore, he argues that the said ad idem ratings, as made by the members of the selection committee of those candidates, who participated in the viva-voce, is required to be undone.

Reasons for rejecting the above argument

40. However, the above argument loses its sheen not only in the light of this Court, making the above conclusion, but also becomes weakened of its vigour, thus on the premise that there is no material brought on record suggestive, that any of the members of the selection committee were acting on the mentorings or tutorings of any other member thereof. If so, the above raised argument, if is bereft of the above requisite pleading, and, also is bereft of any firm evidentiary strata, thus to succor the said unraised plea, thereby the said argument becomes completely capsized, and, is also liable to be rejected.

The candidates, who participated in the selection process rather through their participation(s) therein, thus become estopped from challenging the selection process.

41. Predominantly, the Hon'ble Apex Court in case titled as ***Dhananjay Malik and others versus State of Uttaranchal and others*** reported in ***2008(4) SCC 171***, has therein made expostulations, which appertain to there being an estoppel against any challenge being made to the selection process, rather by a candidate, who has made his participation in

the selection process. Consequently, when the challengers to the selection process but evidently participated in the said selection process, therefore the expostulations, carried in paragraphs 8 and 9 of the judgment (supra), paras whereof stand extracted hereinafter, do but forthrightly, thus create an estoppel, against the challengers to the selection process, rather to make any efficacious challenge to the said selection process, as became initiated, and, now has been also concluded, leading to the selectees undertaking induction training at the Chandigarh Judicial Academy.

“8. In Madan Lal vs. State of J & K, 1995 (2) SCT 880: (1995)3 SCC 486, this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

9. In a recent judgment in the case of Marripati Nagaraja vs. The Government of Andhra Pradesh, 2008(1) SCT 26 : 2007(6) RAJ 411 : (2007) 11 SCR 506 at p.516 SCR this Court has succinctly held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.”

42. Moreover, the said expostulations become also reiterated in a judgment of the Hon'ble Apex Court made in a case titled as *Amlan Jyoti Borroah versus State of Assam* reported in (2009) 3 SCC 227.

43. Since, reiteratedly the candidates in the writ petitions (supra), evidently participated in the selection process, therefore, in terms of the expostulations (supra), as made by the Hon'ble Apex Court, thus thereby their respective challenges become completely forestalled, thus through the bar of estoppel, acquiescence, and, waivers, as become(s) stemmed from their participations in the selection process.

Fifth argument of the learned senior counsel for the petitioners

44. Though, the learned senior counsel for the petitioners has argued, that since the candidates, who were invited to face the viva-voce thus became invited but category wise, thereby the said category wise invitation(s), as became made to the candidates concerned, rather makes the selection process to be ridden with the vice of arbitrariness.

Reasons for rejecting the above argument

45. However, the above argument also does not appear to be carrying any legal tenacity, as unless the said invitation(s), as became extended to the successful candidates, thus to face the viva-voce concerned, rather became suggested, by any cogent material to but become spurred, from any active proclivities, to thus ensure that some of the aspirants in the category concerned, rather become selected, and, with a bias against some others in the said category, thus becoming eliminated, thereby alone the above category wise invitation(s) extended to the qualifying candidates to face the viva-voce concerned, thus would hold immense creditworthiness. Since no material (supra) has been adduced at the instant of the petitioners, therefore the invitation(s) extended to the successful candidates by the

contesting respondent concerned, to face the viva-voce concerned, is the sequel, only for maintaining the very same chronology in which the results became released, of all the candidates qua the written examination(s). Since the results of the successful candidates were released category-wise, therefore, the invitation(s) made, on a category wise basis to such successful candidates in the written examination(s), thus to face the viva-voce concerned, but obviously does not suffer from any ill-act on the part of the contesting respondent concerned, nor thereby it can be construed, that thereby any bias was reared by the selection committee concerned.

46. Even otherwise, there is no pointed material placed on record by the petitioners rather magnificatory that any of the candidates, who became invited category wise to face the viva-voce, were selected in a partisan manner, and/or qua there being a bias against the candidates of a particular category, and/or qua those who became eliminated, thus through an unfair assessment of their personalities' traits, being made by the members of the selection committee.

Submission of the learned counsel for the petitioner
(in CWP-1078-2023)

47. The learned counsel for the petitioner submits, that the petitioner participated in the relevant recruitment process, as a scheduled caste category, and, had also succeeded in the main/written examination(s), whereafter she was not awarded in the viva-voce concerned, thus marks proportionate to the ones which she secured in the written examination(s). Therefore, the petitioner but challenges the under ratings, and, under-assessments of her personality traits by the members of the selection committee.

Reason for rejecting the above argument

48. However, since the above argument, for reasons (supra) rather has been dispelled by this Court, therefore, the argument (supra), which is parameteria to the above dispelled argument, thus also is required to be rejected.

49. The further claimed raised by the petitioner, in the petition (supra), apart from the claims, which are dealt with (supra), is premised on the ground, since there are large number of vacancies, yet to be filled, either in the open or in the reserved category, thereby she be selected as a candidate against the advertised post(s). The above argument would succeed only if the totallings obtained by the writ petitioner (supra) in the written examination, and, in the viva-voce, thus made them to be 45%.

50. However, a perusal of the records, as placed before this Court by the Registrar (Recruitment) rather clearly speaks, that she has obtained marks rather much below, the said prescribed qualifying aggregate marks both in the written examination(s), and, in the vova-voice. In consequence, even if there are vacancies to be filled up either in the general category or in the scheduled caste category, to which the petitioner belongs, yet in the wake of the above, she is not entitled for a mandamus being made upon the contesting respondent concerned, to ensure hers securing a place in the list of selected candidates.

51. Consequently, this Court finds no merit in the petitions (supra), and, is constrained to dismiss them. Accordingly, ***CWP-30320-2022, CWP-11942-2023, CWP-331-2023*** and ***CWP-1078-2023*** are hereby dismissed.

52. The other writ petitions which are to be segregated from the writ petitions (supra), are respectively ***CWP-28484-2022, CWP-28498-2022,*** and ***CWP-19304-2023.***

53. Though, the challenge made in the said writ petitions, is to the non awarding or to less awarding of marks by the examiner concerned, but to the relevant questions, which the learned counsels for the petitioners argue, that they were rather correctly answered by them. Nonetheless, yet since the said challenges are different from each other, therefore, each of the above writ petitions rather carrying separate challenge(s) qua non awardings, and, qua less awardings of marks, despite theirs respectively purportedly making correct answers to the relevant questions, rather are required to be dealt with separately.

CWP-28484-2022

54. The learned counsel for the petitioner, has during the course of the arguments, confined his prayer to the non-remission of the fullest complement marks, to question No. 2(i) of the English language examination, question whereof, becomes extracted hereinafter, and, also the answer meted thereto becomes extracted hereinafter.

“Q-2. Make sentences using the following words:-

(i) invincible

x x x x x”

“Answer:-

Meaning : Determined not to change

Sentence : He showcased invincible courage in times of distress.”

55. The learned counsel for the petitioner has foregone all the other contentions, as raised in the petition (supra). The learned counsel submits, that in case, the petitioner was assigned the fullest complement of marks, to the purportedly correct answer, which as such became meted by the aspirant, to the above question. Resultantly, the aspirant concerned, would secure the relevant figure of qualifying marks, for hers thereafter becoming invited to

face the viva voce test. Though, as stated (supra), this Court would refrain to in the exercise of its review jurisdiction vested in it, under Article 226 of the Constitution of India, thus function as a super evaluator.

56. However, the said restriction or curtailment imposed, upon the writ jurisdiction of this Court, is with a very limited exception. The said exception is grooved in the trite factum, that if the examiner concerned, has not assigned any marks to a purportedly correctly meted answer, to the relevant question, thereby the writ Court can proceed to make a reference for re-evaluation(s) of the answer, as claimed to be correctly meted by the aspirant concerned, to the relevant question.

57. Moreover, for the above exception to the canon (supra), thus becoming ably canvassed, it was but required, that scripts and texts authored by renowned subject matter scholars, did also make user of the said word in almost the closest synonymy with its user, as made by the aspirant concerned. In the above regard, a ready reference to the texts, occurring at pages 104 and 105 of the paper book, unfold that the petitioner has prima facie used, the above word with an almost close synonymy, and/or akin vis-a-vis to its user, as has been made by him/her. Since the above exception prima facie appears to have been proven, resultantly, thereby though this Court deems it fit to impart the fullest justice to the petitioner in the petition (supra), yet it would refrain to dislodge the evaluation, as made by the expert concerned, to the purportedly correct answer meted by him/her to the question (supra). Nonetheless, since this Court has found, that exception(supra), thus to the general rule, whereby this Court is required to refrain from functioning, as a super evaluator or as a super assessor, vis-a-vis, the answers meted by the aspirants to the relevant question, rather is prima facie working towards the petitioner. In consequence, to reconcile the

inter se difference visited by the examiner concerned, qua the user of word 'invincible', by the candidate, with its user, as made in terms thereof, by subject matter scholars in texts (supra). Resultantly, this Court deems it fit, and, appropriate to thus make a reference to an expert concerned.

58. Consequently, the Head of the English Department, Panjab University, Chandigarh, is appointed as an Expert, who thus be purveyed by the Registrar (Recruitment), both the question, and, the answer meted to the user as made of the word 'invincible', by the candidate concerned. The Registrar (Recruitment) is also directed to purvey to the said expert, the scripts (supra) wherein alike the user, as made of the word (supra) by the petitioner, the subject matter scholar rather has also made its user in the said script(s). The expert concerned, is directed to make his opinion, and, place the same before the Registrar (Recruitment) for thereafter its after being placed before the Hon'ble Chief Justice. In case, the expert concerned, opines in favour of the petitioner, thereupon a mandamus is made upon the respondent concerned, to ensure that the petitioner is invited to participate in the viva-voce. The reason being that it is intimated to this Court that yet there exists 83 vacancies in the general category, to which the petitioner belongs.

59. With the afore observation, *CWP-28484-2022* stands disposed of.

CWP No. 28498 of 2022

60. The learned senior counsel for the petitioner argues, that the petitioner though had made a correct answer to question Nos. 3 (a)(vi) of Hindi language examination, question whereof occurs at page 136 of the paper book, and, the answer made to the said question occurs at page 108 of the paper book. However, since the said answer is to the plain eye, but

completely deficit qua thereby it being said to be the appositely made purification of the relevant impure question. Resultantly, the said answer occurring at page No. 108 of the paper book to the relevant question (supra), does appear to have been correctly rated by the examiner concerned. Even otherwise, it is not within the domain of this Court to unless material surge-forth, that there are texts supporting or scripts made by the renowned subject authors, rather supporting the correctness of the answers meted by the aspirant to the question, which, however, has not been rated at all, thereby the ratings, as assigned by the examiner concerned, are uninterfereable by this Court, thus in exercise of its writ jurisdiction, as this Court is not required to be rather ill-functioning as a super evaluator vis-a-vis the evaluation(s), as done by the evaluator(s) concerned.

61. Though, the learned counsel for the petitioner has also challenged the non awarding of the fullest complements of marks by the examiner concerned, to question Nos. 2(ii), 2(iii), 2(v), 2(vii), 2(viii) and 5(viii) of English language examination, on the ground that purportedly correct answers became meted to the above questions. Again, the said made argument, if accepted, would result in this Court untenably usurping the function of an evaluator besides would untenably result in this Court functioning as a super evaluator. Therefore, the non awarding by the evaluator, thus of the fullest complement of marks to the aspirant concerned, does appear to become well gauged, thus on the various factors, which are to be borne in mind by the evaluator, who normally is also the examiner concerned. The said multiplicity of considerations in making the apposite evaluations, thus are within the exclusivity of domain of the expert concerned. Therefore, in the said exclusivity of domain of the expert concerned, to make awardings of marks vis-a-vis, the answers made to the

relevant questions, especially when they are not multiple choice questions, to which keys are attached, rather when the evaluations of answers, as meted to the relevant questions, do require various factors to be borne in mind, rather for fairly rating them, either fully or lesser than the fullest complement of marks being awarded thereto. Resultantly, this Court refrains from interfering with the evaluations, as were done of the answers meted to the relevant questions.

62. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, *CWP-28498-2022*, is hereby dismissed.

CWP No. 19304 of 2023

63. The learned counsel for the petitioner submits, that the examiner concerned, while rating answers to question Nos. 2(c) and 2(d), has done over writings, thereby the said over writings are manifestative of the examiner, being prejudiced against or is not making a deep application of mind, especially when the said over writings are personificatory, that there has been reduction thereby of the marks, which without the purported over writings, thus would make the aspirant(s) to become eligible to become invited to face the viva-voce concerned.

64. However, the above argument is overcome by the factum, that the said is made dependent upon the photocopies of the answers. This Court has seen the original of the ratings, as made vis-a-vis the answers meted to the relevant questions, and, has deciphered therefrom, that it has been incorrectly argued by the learned counsel for the petitioner, that 8 marks were allotted to the aspirant concerned in respect of the answers concerned, rather 4 marks are gaugeable therefrom, to become earlier allotted to the said answers by the examiner concerned, and, the said 4 marks becoming

enhanced to 5 marks. The said corresponds to the total allotted by the examiner, in the tallings done by him of the marks, as became allotted by him to the aspirant concerned, to all the answers, as became meted by the aspirant concerned, to the relevant questions.

65. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, *CWP-19304-2023*, is hereby dismissed.

Final Order

66. In consequence, *CWP-30320-2022*, *CWP-28498-2022*, *CWP-11942-2023*, *CWP-331-2023*, *CWP-19304-2023*, and, *CWP-1078-2023* are dismissed, whereas, *CWP-28484-2022* in terms (supra) stands disposed of.

67. The opinion of the expert concerned, be submitted before the contesting respondent concerned, but within a period of four weeks from today, and, thereafter in terms (supra), further action be drawn by the said respondent.

68. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 29th, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No