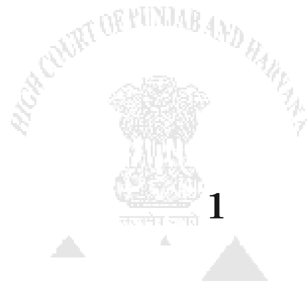

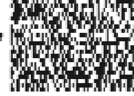

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1005-2024
Date of Decision:23.05.2024

LOVEPREET KUMAR AND ORS .... Petitioners

Versus

STATE OF PUNJAB AND ORS …... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Deepak Malik, Petitioner in person.

Mr. Anurag Goyal, Amicus Curiae.

Ms. Anu Chatrath, Addl. AG, Punjab.

****

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of Clause 10 (b), Clause 12.4 and Clause 15 of advertisement No.4 dated 04.08.2021 (Annexure P-4) wherein respondent has prescribed that there would be no waiting list and after completion of process, vacancy shall be carried forward for next selection. The petitioners are further seeking direction to respondents to fill up vacancies arising on account of selection of 144 candidates as Sub-Inspectors as well Head Constables.

2. During the course of arguments, learned State counsel produced copy of Standing Order No.3 of 2021 issued by Director General of Punjab which is taken on record. Registry is directed to tag the same at an appropriate place.

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 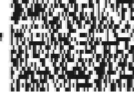

3. The brief facts which led to present litigation are that the respondent issued four advertisements inviting applications for the posts of Sub-Inspector, Head Constable and Constable. The detail of advertisements is summarized as below:

Sr. No.	Advertisement Number	Date	Post	Vacancies	Qualification
1	1 of 2021	06.07.2021	Sub-Inspector	565	Graduation
2	2 of 2021	16.07.2021	Constables in District Police and PAP	2343	10+2
3	3 of 2021	26.07.2021	Constables in Intelligence Cadre	794	10+2
4	4 of 2021	04.08.2021	Head Constables	787	Graduation

4. Every candidate subject to possessing minimum qualification was eligible to apply for more than one posts e.g. a graduate was at liberty to apply for the posts of Sub-Inspector, Head Constable as well as Constable whereas a 10+2 pass was allowed to apply for the post of Constable in District Police Cadre as well as Intelligence Cadre. All the advertisements were issued almost at the same point of time and selection process continued parallel to each other, thus, there were all possibilities that many candidates would be selected for more than one posts e.g. a candidate who has applied for the post of Sub-Inspector as well as others, may be selected for the post of Sub-Inspector and/or Head Constable as well as Constable.

5. As per advertisement, the selection process comprised of two stages. The first stage comprised of computer based test and second stage comprised of (i) document scrutiny (ii) physical measurement test (iii) physical screening test. Physical measurement test and physical screening test were qualifying in nature. There was no interview. The final selection

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 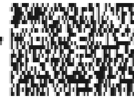

was subject to medical examination and character/antecedent verification.

6. The respondent as per advertisement conducted written test for all the aforesaid posts. The respondent declared result of advertisement No.1 of 2021 i.e. post of Sub-Inspector on 14.05.2023 and No.4 of 2021 i.e. Head Constables on 09.08.2023. As expected, 144 candidates figured in the selection list of Sub-Inspectors as well as Head Constables. The respondent after completing second stage process called selected candidates for medical examination. As 144 candidates were common for the post of Sub-Inspector and Head Constable, they did not appear for medical examination *qua* the post of Head Constable. Apart from aforesaid 144 candidates, many more candidates did not come forward for medical and other mandatory verifications. Resultantly, more than 300 posts of Head Constable remained vacant. It goes without saying that post of Sub-Inspector is superior to the post of Head Constable.

7. The petitioners filed multiple representations requesting the respondents to consider them because they have secured position little beyond serial No.787 i.e. maximum vacancies for the post of Head Constable. The respondent did not invite them because respondent was of the firm opinion that there is no waiting list and as per Clause 10(b) and 15 of advertisement, in case a vacancy remains vacant, on account of any reason, the same shall be carried forward to the next recruitment. The vacancy could arise on account of disqualification of selected candidates in medical examination or character and antecedent verification or verification of education or lack of reservation certificates or due to non-joining of selected candidates or on account of any other reason. The

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 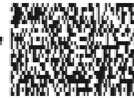

respondent formed an opinion that 'on account of any other reason' is absolute and sacrosanct. The Recruitment Board has no authority to consider vacant seats and vacancies are bound to be carried forward for next selection process. Clauses 10 (b), 12.4 and 15 of the advertisement which are bone of controversy are reproduced as below:

> ***10. MERIT LIST***
>
> *(b). There shall be no waiting list.*
>
> ***12.4. JOINING AND PERIOD OF PROBATION.***
> *The candidates selected, in the above mentioned manner, shall be given an offer of appointment by the competent authority indicating the time frame for joining. The selected candidates, after joining, shall be on probation, in accordance with the rules and instructions, as applicable. In case a vacancy remains unfilled, on account of any reason, the same shall be carried forward to the next recruitment.*
> ***15. UNFILLED VACANCIES***
> *In case a vacancy remains unfilled on account of disqualification of selected candidates in medical examination/character and antecedents verification/verification of education/reservation certificate or due to non-joining of selected candidate(s) or on account of any other reason, after the above mentioned process such vacancies shall be carry forward for next selection."*

8. Mr. Anurag Goyal, Advocate submits that Court cannot ask State to amend advertisement. It is prerogative of State to create waiting list. In case, State decides not to prepare waiting list, the Court cannot ask to prepare a waiting list. In the absence of waiting list, the State is supposed to prepare list of candidates equal to vacancies advertised. In the case in hand, 787 vacancies for the post of Head Constable were advertised, thus, State was supposed to prepare list of 787 candidates.

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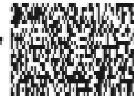

9. Learned State counsel submits that it is a settled proposition of law that no candidate after participating in selection process can assail terms and conditions of advertisement. The petitioners participated in the selection process without any demur, thus, at this belated stage, on being declared unsuccessful cannot assail any clause of the advertisement. It was a conscious decision of State Government not to prepare waiting list, thus, list of 787 candidates was declared. No candidate having secured position beyond 787 could be considered in any situation. The State was bound to prepare a list of 787 candidates. They may or may not join but any subsequent rank holder cannot be considered.

In support of her contention, she relies upon judgments of Supreme Court in '***Vallampati Sathish Babu Vs. The State of Andhra Pradesh & Ors., (2022) 13 SCC 193***, ***The State of Karnataka and others Vs. Smt. Bharathi S., 2023 SCC OnLine SC 665***, ***Subha B. Nair and others Vs. State of Kerala and others, (2008) 7 SCC 210.*** She also relies upon judgment of this Court in ***Haryana School Teachers Selection Board Vs. Arun Singh and others, LPA-2435-2017.***

10. I have heard the arguments of both sides and with the able assistance of learned counsels scrutinized the record.

11. From the obtained facts, pleadings and arguments of both sides, the following questions arise for adjudication:

i) Whether validity of any clause of the advertisement after declaration of result can be challenged?

ii) Whether High Court can test validity of any clause of the advertisement?

(iii) Whether Clauses 10 (b), 12.4 and 15 of advertisement

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 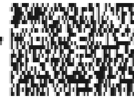

No.4 of 2021 are ultra vires the Constitution of India?

(iv) Whether petitioners can be considered in the absence of waiting list?

Maintainability of the Writ

12. The respondents vehemently plead that the petitioners after participating in the selection process cannot be permitted to challenge one or another clause of the advertisement. By participating in the process, they acquiesced to terms and conditions of the advertisement. As per principle of estoppel, they are prevented from assailing one or another clause of the advertisement.

12.1 A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others 2023 SCC OnLine SC 344*** has held that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

12.2 In ***Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309***, after referring to a catena of judgments on the principle of waiver and estoppel, Supreme Court did not entertain the challenge to the advertisement for the reason that the same would not be maintainable after participating in the selection process. The relevant extracts of the judgment read as:

> "*24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment*

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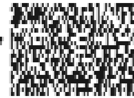

was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

12.3 The petitioners indubitably participated in the selection process which was initiated in terms of advertisement. As laid down by Supreme Court in above noted judgments, no one after participating in the selection process can be heard to challenge advertisement, however, no candidate can be stopped from challenging validity of the rules or instructions made there-under on the ground that rules/instructions are arbitrary and violative of Article 14 of the Constitution of India.

12.4 The Supreme Court in ***Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another (2021) 10 SCC 116*** has adverted with challenge to terms and conditions of advertisement or appointment letter by a candidate after his selection. The court has opined that employer is always in a dominating position, thus, in case of public employment, terms and conditions are subject to judicial scrutiny. The relevant extracts of the said judgment read as:

"42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions

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of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved."

12.5 A Two Judge Bench of Supreme Court in ***Munindra Kumar and others v. Rajiv Govil and others, (1991) 3 SCC 368*** has held that candidates who have remained unsuccessful in the selection process cannot be estopped from challenging the Rules which are arbitrary and violative of Article 14 of Constitution of India. The relevant extracts of the judgment read as:

"10. …………………. It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations."

12.6 From the perusal of above-quoted judgments, it is quite evident that a candidate cannot be estopped from assailing clause(s) of advertisement which are arbitrary and violative of Article 14 of the Constitution of India. The petitioners in the present case are assailing different clauses of the advertisement, thus, they cannot be precluded to

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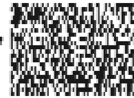

assail impugned advertisement on the sole ground that they have laid challenge after participating in the selection process. The cause of action has arisen on account of appearance of name of 144 candidates in the merit list of Sub-Inspectors as well as Head Constables. Thus, the petitioners have right to approach this Court after declaration of result. There was no reason for them to approach this Court prior to declaration of result.

Scope of Judicial Review

13. The respondent has further pleaded that scope of interference in policy/administrative decision is limited, thus, this Court should refrain from examining validity of different clauses of the advertisement. A Constitutional Bench in ***S. Pratap Singh v. State of Punjab, 1963 SCC OnLine SC 10 : (1964) 4 SCR 733 : AIR 1964 SC 72*** dealt with scope of interference in administrative decisions. The minority dismissed the petition, however, majority of Judges formed opinion otherwise. The issue before the Constitution Bench was relating to disciplinary proceedings against a Doctor of Punjab Government who alleged *mala fide* against Chief Minister and his family members. The Court scrutinized his allegations and found substance therein. With respect to scope of interference of Court in administrative decision the Court has held:

> *9. Pausing here, we might summarise the position by stating that the Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own view as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government.*

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 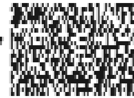

The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of mala fides, or asserts the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.

13.1 High Court is creature of Constitution and it, in terms of Article 226 of Constitution of India, has got extra-ordinary jurisdiction. There are various Articles wherein it has been either envisaged that decision of the authority or institution shall be final or jurisdiction of courts is barred. Supreme Court while dealing with such Articles has enunciated that judicial review is part of basic structure of Constitution of India and jurisdiction of High Court under Article 226 and Supreme Court under Article 32 cannot be curtailed.

13.2 While considering the scope of judicial review during the operation of an order passed by the President under Article 359(1) suspending the fundamental right guaranteed under Article 21 of the Constitution, a Constitution Bench in ***Makhan Singh v. State of Punjab (1964) 4 SCR 797*** has held that the said order did not preclude the High

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 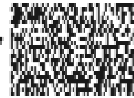

Court from entertaining a petition under Article 226 of the Constitution where a detenu had been detained in violation of the mandatory provisions of the detention law or where the detention has been ordered *mala fide*.

As per Article 217(3), decision of President on the question of age of a judge of High Court is final. While dealing with the decision of the President under Article 217 (3), Supreme Court in ***Union of India Vs Jyoti Prakash Mitter (1971) 1 SCC 396*** held that the President acting under Article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. Notwithstanding the declared finality of the order of the President, the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the Rules of natural justice were not observed or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence.

A Constitution Bench in ***Kihoto Hollohan Vs. Zachillhu & others 1992 Supp (2) SCC 651*** has held that the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, *mala fide*, non-compliance with Rules of Natural Justice and perversity are concerned. The Speaker/Chairman while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

13.3 From the above-cited judgments, it is evident that no

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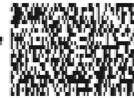

executive or quasi-judicial decision is absolutely immune from judicial review. There are self-imposed limitations/restrictions. High court in exercise of its power of judicial review conferred by Article 226 of Constitution can certainly examine legality of impugned clauses of the advertisement. It cannot turn a blind eye. In the peculiar facts and circumstances of the present case, this court finds it appropriate to examine validity of the impugned clauses.

Validity of different clauses of advertisement

14. The petitioners are assailing validity of three clauses namely 10(b), 12.4 and 15 of advertisement No.4 of 2021. All the aforesaid clauses are intertwined. All the clauses collectively provide that there would be no waiting list and no candidate beyond selection list would be invited for the post. The vacancy may arise on account of any reason. The vacancy would be carried forward. The instructions, circulars, policies, rules etc. are delegated piece of legislation.

Judicial precedent *qua* validity of delegated legislation:

14.1 In ***State of Tamil Nadu and another v. P. Krishnamurthy and others, 2006 (4) SCC 517***, while dealing with Validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959, Supreme Court in Para 12 expounded grounds to challenge subordinate legislation as below:

> "*Whether the Rule is valid in entirety?*
> *15. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a sub-ordinate legislation can be challenged under any of the following grounds:-*
> *a) Lacks of legislative competence to make the sub-*

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 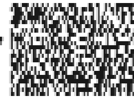

ordinate legislation.

b) Violation of Fundamental Rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

16. The Court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or nonconformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity."

14.2 In ***Cellular Operators Association of India and others v. Telecom Regulatory Authority of India and others, (2016) 7 SCC 703***, Supreme Court while declaring Regulation framed under Telecom Regulatory Authority of India Act, 1997 as ultra vires the Act held that the impugned Regulation is manifestly arbitrary and unreasonable.

14.3 A Constitution Bench in ***Shayara Bano v. Union of India, (2017) 9 SCC 1***, dealt with subordinate legislation besides plenary legislation. The Court has held that delegated legislation may be declared

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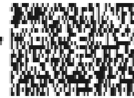

invalid on the ground of arbitrariness or unreasonableness. The Court has held:

> *101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."*

15. In **S.G. Jaisinghani Vs UOI (1967) 2 SCR 703** Hon'ble Supreme Court held that absence of arbitrary power is the first essential of the rule of law upon which whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within clearly defined limits. Discretion must be guided by rule of law. It must not be arbitrary, vague and fanciful.

15.1 In ***E.P. Royappa E.P. Royappa v. State of T.N. (1974) 4 SCC 3,*** the Apex Court had occasion to deal with question whether

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 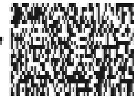

transfer of the petitioner from the post of Chief Secretary to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and *mala fide*. It was held that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. The Supreme Court observed in para 85 as under:

> ***85.*** *The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and*

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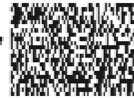

> *doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."*

15.2. In ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248***, a Constitution Bench elaborated and expounded the relationship between different Articles guaranteeing fundamental rights and enunciated every action of the State is violative of Article 14 which is arbitrary. The procedure established by law must be just, fair and right. Justice Bhagwati speaking for the Bench has held:

> *"7.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness*

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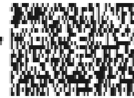

> *pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."*

[Emphasis Supplied]

16. From the above referred judgments, it is evident that absence of arbitrariness is essential for the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of law. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion must be governed by Rule. It must not be arbitrary, vague, and fanciful.

17. A five Judge Constitution Bench *in* ***Sivanandan C.T. and others Vs. High Court of Kerala and others 2023 SCC OnLine SC 994*** adverted to validity of appointment of District and Sessions Judges. High Court of Kerala in 2015 invited applications for appointment as District and Sessions Judges in the Kerala State Higher Judicial Services by direct recruitment from the Bar. The notification stipulated that the selection

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 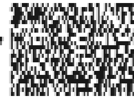

would be on the basis of a competitive examination consisting of a written examination and a viva-voce. The total marks assigned for the written examination were 300 comprising of two papers, each carrying 150 marks. Paragraph 5 of the notification stipulated that "*the merit list of successful candidates will be prepared on the basis of the total marks obtained in the written examination and viva voce*." After the viva-voce was conducted, the Administrative Committee of the High Court passed a resolution by which it decided to apply the same minimum cut-off marks which were prescribed for the written examination as qualifying criteria in the viva-voce. In coming to this conclusion, the Administrative Committee was of the view that since appointments were being made to the Higher Judicial Service, it was necessary to select candidates with a requisite personality and knowledge which could be ensured by prescribing a cut-off for the viva-voce in terms similar to the cut-off which was prescribed for the written examination. The Full Court of the High Court of Kerala approved the resolution of the Administrative Committee. The final merit list of the successful candidates was also published on the same day. The decision of the Full Court to apply minimum cut-off marks for the viva voce and the resultant promulgation of the list of successful candidates came to be challenged before Apex Court under Article 32 of the Constitution. On account of application of cut off marks in the viva-voce, many candidates were ousted though they secured higher marks than many of the candidates who were selected on the consideration of the aggregate of marks in the written examination and the viva-voce. Hon'ble Court adverted with principle of legitimate expectation and observed that decision of public authorities must

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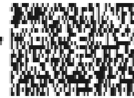

withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and violative of Article 14. The relevant extracts of the judgment read as:

> ***41.*** *Another significant development in the jurisprudence pertaining to the doctrine of legitimate expectation is the emphasis on predictability and consistency in decision-making as a facet of non-arbitrariness. In Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381, it was held that the doctrine of legitimate expectation applies to a regular, consistent, predictable, and certain conduct. Similarly, in Noida Entrepreneurs Assn. v. Noida, (2011) 6 SCC 508, this Court observed that an executive decision without any basis in a principle or a rule is unpredictable. It was held that such a decision-making process contradicts the principle of legitimate expectation and is antithetical to the rule of law.*
>
> ***42.****In a recent decision in State of Bihar v. Shyama Nandan Mishra, (2022) 17 SCC 420, this Court was called upon to determine the validity of the decision of the State Government to treat lecturers on a par with secondary school teachers of nationalised schools. A two-Judge Bench of this Court held that the decision of the State Government was ultra vires the Bihar Non-Government Secondary Schools (Taking Over of Control and Management) Act, 1981. Moreover, the Court tested the validity of the Government's decision on the anvil of the doctrine of substantive legitimate expectation. The Court held that the Government's decision led to the denial of substantive legitimate expectations of the lecturers because : (i) the Government by artificially grouping the lecturers with teachers of nationalised schools belied the expectation of the lecturers to obtain promotion and attain higher positions in the department depending upon inter se seniority; and (ii) the Government's decision was contrary to the previous*

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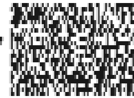

representation, lacked any compelling public interest, and was therefore unfair and amounted to an abuse of power.

43.*In State of Bihar v. Shyama Nandan Mishra, (2022) 17 SCC 420, the Court also highlighted that regularity, predictability, certainty, and fairness are important facets of governance : (SCC para 37)*

> *"37. Taking a cue from above, where the substantive legitimate expectation is not ultra vires the power of the authority and the court is in a position to protect it, the State cannot be allowed to change course and belie the legitimate expectation of the respondents.As is well known, regularity, predictability, certainty and fairness are necessary concomitants of Government's action and the Bihar Government in our opinion, failed to keep to their commitment by the impugned decision, which we find was rightly interdicted by the High Court."*

(emphasis supplied)

44.*In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision-making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is, therefore, arbitrary and antithetical to the rule of law. [S.G. Jaisinghani v. Union of India, 1967 SCC OnLine SC 6] The rule of law promotes fairness by stabilising the expectations of citizens from public authorities. This was also considered in a recent decision of this Court in SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643, wherein it was observed that regularity and predictability are hallmarks of good regulation and governance. This Court held that certainty and consistency are important facets of fairness in action and non-*

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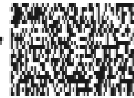

arbitrariness : (Sunil Krishna Khaitan case, SCC pp. 678-79, para 59)

> *"59. …Any good regulatory system must promote and adhere to principle of certainty and consistency, providing assurance to the individual as to the consequence of transactions forming part of his daily affairs(Union of India v. Raghubir Singh*, (1989) 2 SCC 754)*.… This does not mean that the regulator/authorities cannot deviate from the past practice, albeit any such deviation or change must be predicated on greater public interest or harm. This is the mandate of Article 14 of the Constitution of India which requires fairness in action by the State, and non-arbitrariness in essence and substance. Therefore, to examine the question of inconsistency, the analysis is to ascertain the need and functional value of the change, as consistency is a matter of operational effectiveness."*

45. *The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. <u>The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.</u>*

46.*From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of*

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substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognised in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499;Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625;Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1;Union of Indiav.P.K. Choudhary, (2016) 4 SCC 236 : (2016) 1 SCC (L&S) 640;State of Jharkhand v. Brahmputra Metallics Ltd., (2023) 10 SCC 634.] It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish : (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14.

[Emphasis Supplied]

18. In the case in hand, the respondent has taken a conscious decision not to prepare waiting list. This fact was duly mentioned in the Standing Order as well as impugned clauses of the advertisement.

In ***Vivek Kaisth v. State of H.P.*****, (2024) 2 SCC 269,** the Supreme Court had occasion to consider purpose, scope and operation of waiting list. The Court noticed its earlier judgment wherein direction to

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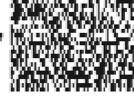

create waiting list was issued. The object of waiting list was discussed and it was held that vacancies not advertised cannot be filled up from waiting list. The relevant extracts of judgment read as:

> *"30. In **Malik Mazhar (2)[Malik Mazhar Sultan v. U.P. Public Service Commission, (2009) 17 SCC 24]**, this Court had directed that a waiting list of candidates should also be prepared. Evidently in the present selection process there was no "waiting list". There ought to have been one. However, the absence of a waiting list has not caused any difficulty as all the eight candidates who were selected gave their joining and were consequently appointed. The purpose of a waiting list is that when selected candidates are unable to join the post for any reason whatsoever, the post should not remain vacant and this shortfall of candidates can be met from the candidates who are in the waiting list. The candidates who are in the waiting list have also qualified the examination in every respect, but they are just lower down in the merit and for this reason they could not make it to the final select list of candidates. But they are just short of it and that is why they are in the waiting list. The purpose of a "waiting list" is only to fill the shortfall of "clear and anticipated vacancies".*
>
> *31 to 34 xxx xxx xxx xxx*
>
> *35. To sum up the position of law as it stands, once clear and anticipated vacancies have been advertised, appointments can only be made on these vacancies. Vacancies which could not be anticipated before the date of advertisement, or the vacancies which did not exist at the time of advertisement, are the vacancies for the future i.e. next selection process in **Malik Mazhar [Malik Mazhar Sultan (3) v. U.P. Public Service Commission, (2008) 17 SCC 703: (2010) 1 SCC (L&S) 942]** mandates yearly selection/appointment on the post of Civil Judge (Junior Division). There is a timeline fixed, and "vacancies" have to be declared on January 15th*

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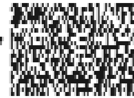

*of each year. The process has to be completed by October of the same year. Once this is followed, as it ought to be, the object sought to be achieved (under the guidelines given in **Malik Mazhar [Malik Mazhar Sultan (3) v. U.P. Public Service Commission, (2008) 17 SCC 703: (2010) 1 SCC (L&S) 942])**, of timely filling of judicial vacancies is achieved."*

19. The respondent has heavily relied upon judgment of Supreme Court in ***Vallampati Sathish Babu (supra).*** Supreme Court had occasion to consider claim of a candidate who was at Sr. No. 34 in a selection process where 33 posts were advertised. One candidate did not come forward so appellant claimed post. There was no waiting list as per rules and guidelines. The Supreme Court held that candidate cannot claim post because there is no waiting list as per rules and guidelines of the Government. The court has held:

15. On a fair reading of Rule 16 of the 2012 Rules read with the Guidelines referred to hereinabove, once the final selection list is prepared, there shall be no waiting list and posts, if any, are unfilled for any reason whatsoever, shall be carried forward for future recruitment as per sub-rule (5) of Rule 16 of the 2012 Rules.

16. In the present case, the final selection list of 33 candidates was prepared. Thereafter all the selected candidates were called for counselling, but one of the candidates did not report for counselling. The aforesaid event took place after the final selection list was prepared and published. As there was no requirement of preparation of a waiting list, the appellant claiming to be the next in the merit cannot claim any appointment as his name neither figured in the list of the selected candidates nor in any waiting list as there was no provision at all for preparation

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 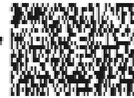

of the waiting list. Sub-rule (5) of Rule 16 is very clear. Therefore, the post remained unfilled due to one of the candidates in the final list did not appear for counselling and/or accepted the employment. Hence, that post has to be carried forward for the next recruitment.

19.1 In ***Bihar SEB v. Suresh Prasad, (2004) 2 SCC 681*** Supreme Court has observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join.

19.2 A Three Judge Bench of Supreme Court in ***Dinesh Kumar Kashyap and others v. South East Central Railway and others, 2019 (12) SCC 798*** adverted to scope of judicial review in selection matters. In this case, Court had occasion to decide right of candidates who were in the wait list. The Respondent-Railway called 20% extra candidates for interview who were in the waiting list. It was held that Court cannot substitute decision of the Railways and direct to appoint candidates in the waiting list. Mere inclusion of name of a candidate in the selection list does not give him right of appointment. The relevant extracts of the judgment read as:

"34. Still further, in exercise of power of judicial review, this Court is not to substitute the decision of the Railways and to direct candidates in the waiting list to be appointed. In a three-Judge Bench judgment reported as Kali Dass Batish case [Union

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 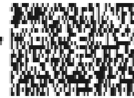

of India v. Kali Dass Batish, (2006) 1 SCC 779 : 2006 SCC (L&S) 225] , it has been held that mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right. It has been also held that however wide the power of judicial review under Article 226 or 32 of the Constitution, there is self-recognised limit to exercise such power."

20. From the above-cited judgments, it is evident that it is absolute discretion of the State to prepare waiting list. Court cannot ask to prepare waiting list. In the absence of waiting list, court cannot ask the State to fill up vacancy in case any selected candidate does not join. It is a settled proposition of law that it is absolute discretion of employer to specify terms and conditions of selection process. The Courts are not supposed to specify eligibility criteria/qualification or substitute opinion of authorities by its opinion. Court may interfere if it finds that there is manifest arbitrariness or violation of fundamental rights guaranteed by constitution or statutory provisions governing the appointment. Thus, the scope of interference by Courts including Constitutional Courts is very limited.

21. It is axiomatic that Courts cannot ask State to create/abolish post or formulate/structure/re-structure a cadre. It is within domain of the executive which as per its financial resources, work load, need of manpower, availability of sources etc. decides. Similarly, courts cannot substitute opinion of selection committee or ask the State to make selection in a particular manner or of particular candidate or keep the posts vacant or fill the posts, however, decision of executive can be tested on the touchstone of fundamental rights as well as statutory provisions.

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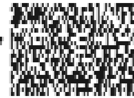

Constitutional courts having been assigned role of sentinel on the qui vive cannot turn a blind eye or deflect from their responsibility.

22. From the above cited judgments, the following principles are culled out:

(i) The State has right to refrain from preparing waiting list while completing selection process.

(ii) Court cannot ask State to prepare waiting list.

(iii) No candidate after participating in the selection process can challenge the process itself, however, he has right to challenge terms and conditions on the ground of violation of fundamental rights guaranteed by the Constitution of India.

(iv) The State is free to determine selection process, however, it should be just, right and fair otherwise, it would be violative of Article 21 of the Constitution of India.

(v) Court can test validity of any administrative or policy decision on the touchstone of fundamental rights and statutory provisions.

(vi) Legitimate expectation is a part of rule of law.

23. The terms and conditions enshrined in the advertisement are verbatim replica of Standing Order No.3 of 2021 issued by Director General of Punjab in terms of Sections 4(d) and 45 (g) of Punjab Police Act, 2007. The relevant clauses of Standing Order and impugned clauses of advertisement are reproduced below in juxtaposition:

Clause of Standing Order	Clause of advertisement
8(c). There shall be no waiting list.	10(b). There shall be no waiting list.
15. Joining and period of probation.	**12.4. Joining and period of probation.**

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 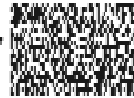

15.1. The candidates selected, in the above mentioned manner, shall be given an offer of appointment by the competent authority indicating the time frame for joining. 15.2. The selected candidates, after joining, shall be on probation, in accordance with the rules and instructions, as applicable.	The candidates selected, in the above mentioned manner, shall be given an offer of appointment by the competent authority indicating the time frame for joining. The selected candidates, after joining, shall be on probation, in accordance with the rules and instructions, as applicable. **In case a vacancy remains unfilled, on account of any reason, the same shall be carried forward to the next recruitment**.
16. Unfilled vacancies In case a vacancy remains unfilled on account of disqualification of selected candidates in medical examination/character and antecedents verification/verification of education/reservation certificate or due to non-joining of selected candidate(s) or on account of any other reason, after the above mentioned process such vacancies shall be carry forward for next selection.	**15. Unfilled vacancies** In case a vacancy remains unfilled on account of disqualification of selected candidates in medical examination/character and antecedents verification/verification of education/reservation certificate or due to non-joining of selected candidate(s) or on account of any other reason, after the above mentioned process such vacancies shall be carry forward for next selection.

From the conjoint reading of Standing Order and advertisement, it is evident that in Clause 12.4 of the advertisement, the expression "**In case a vacancy remains unfilled, on account of any reason, the same shall be carried forward to the next recruitment**" has been inserted beyond the Standing Order. The said expression being contrary to Standing Order needs to be ignored.

24. As per Standing Order as well advertisement, the selection process would pass through following steps:

(i) Computer based test.

(ii) Document Scrutiny, Physical Measurement Test

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 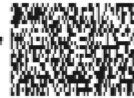

(PMT) and Physical screening test (PST). Both PMT and PST shall be qualifying in nature.

(iii) Declaration of final result. The selection at this stage is provisional.

(iv) Medical Examination.

(v) Verification of character and antecedents.

(vi) Verification of certificates.

(vii) Issue of appointment letter and joining of candidates.

25. Clause 10(b) provides that there would be no waiting list. Clause 15 provides that in case a vacancy remains unfilled on account of disqualification of selected candidates in medical examination/character and antecedents verification/verification of education/reservation certificate or due to non-joining of selected candidate(s) or on account of any other reason, <u>after the above mentioned process such vacancies shall be carry forward for next selection</u>.

The State has right not to prepare waiting list as it is specifically provided in the Standing Order as well as advertisement. In view of law laid down by Supreme Court in afore-cited judgments, the State has right not to prepare waiting list and this Court cannot ask respondent to prepare waiting list, thus, there is no substance in the argument of petitioners that non-preparation of waiting list is bad in the eye of law. There is no infirmity in the action of respondent warranting interference of this Court, thus, impugned clause 10(b) is valid.

26. From the perusal of above discussed steps of selection and Clause 15 of advertisement, it is evident that a vacancy would be carried

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 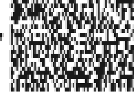

forward if it remains unfilled on account of disqualification of selected candidates in medical examination or character/antecedents/education certificates verification. The said clause further provides that if vacancy remains unfilled on account of “any other reason” it shall be carried forward for next recruitment. The respondent has vehemently pleaded that vacancy shall be carried forward if remains unfilled “on account of any reason”.

In the case in hand, the steps up to declaration of result were carried out with respect to all the candidates including *qua* 144 whose name appeared in the selection list of Sub-Inspector as well as Head Constable. The selection at this stage was provisional and subject to medical examination, character & antecedent verification, verification of educational qualification certificates from the concerned Board/University and verification of certificates claiming reservation. The name of 144 candidates figured in the selection list of Sub-Inspectors as well as Head Constables. 144 candidates were expected to join more coveted post of Sub-Inspector. There was no question for them to come forward for medical examination and other processes. The Clause 15 provides that a vacancy which remains vacant on account of reasons mentioned therein or any other reason after the processes mentioned in the advertisement shall be carried forward. On account of selection for the post of Sub-Inspector, there was no reason for aforesaid 144 candidates to complete the selection process *qua* Head Constable. The process in view of Standing Order and advertisement completes on issuance of appointment letter and appointment letter is issued after completion of all the afore-stated steps.

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 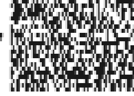

The contention of respondent that vacancy would be carried forward, if it remains vacant on account of any reason cannot be countenanced in the situation arising on account of selection of same set of candidates for two different posts. The respondent at the same point of time initiated selection process for the post of Sub-Inspectors, Head Constables and Constables. The process *qua* post of Sub-Inspector and Head Constable continued parallel to each other. Candidates were eligible to apply for the post of Sub-Inspector as well as Head Constable. The selection process continued parallel and every candidate was free to apply for both the posts. A fortiori, many candidates figured in the selection list of Sub-Inspector as well as Head Constable. It is a peculiar case which cannot be compared with those cases where all the candidates compete for one and same post. The respondent has cited many judgments including judgment of Supreme Court in ***Vallampati Sathish Babu*** (supra), in support of its contention that no candidate beyond the maximum advertised number of seats i.e. 787 can be considered. The selection list of 787 candidates included 144 candidates who had already been selected for the post of Sub-Inspector. Those candidates could not form part of selection list of Head Constable had there been substantial gap in the selection process of both posts. The situation has arisen on account of parallel selection process of both the posts. In the judgments cited by respondent, there was only one class/cadre of post. The Courts formed an opinion that Court cannot ask State to invite candidates who had secured position beyond the declared selection list despite the fact that one or two selected candidates have not joined. It is further apt to notice here that in the present case total advertised posts for Head

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 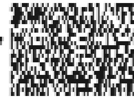

Constable were 787. The respondent prepared a selection list of top 787 candidates which included 144 who were also forming part of selection list of Sub-Inspectors. 144 candidates means more than 18% of total seats advertised. The selection of any post in the Police Department involves a lengthy process because it involves written test, higher standards of physical and medical fitness as well as character verification. There is always good amount of cost of selection process. The selection of Head Constables is not an annual feature like exams conducted by UPSC which is evident from the fact that advertisement in question was issued in 2021 and process has completed in 2024. There are all possibilities that eligible candidates may become overage before the re-advertisement of aforesaid posts. Thus, denial of opportunity to eligible candidates not only invites additional cost of selection process but also violates right of legitimate expectation of eligible candidates. Supreme Court in ***Sivanandan C.T. (Supra)*** has held that consistency and predictability are part of rule of law. Regularity, predictability, certainty and fairness are important facets of governance. A decision of a public authority without any basis in principle or rule is unpredictable and is therefore, arbitrary and antithetical to the rule of law. Decision of respondent, in the present case cannot be called as based upon rule of law. It was in violation of legitimate expectation of candidates.

27. As per advertisement and Standing Order, there are two stages of selection i.e. written test followed by scrutiny of documents and PMT/PST. Thereafter, a merit list is prepared. The selection at this stage is provisional and subject to clearance of medical examination, character & antecedent verification and verification of educational qualification

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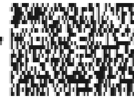

certificates. After completion of aforesaid processes, appointment letter is issued. As per Clause 15, if vacancy remains unfilled on account of disqualification of selected candidates in medical examination, character verification, verification of educational certificates, vacancy shall be carried forward. The respondents are pressing on the expression "on account of any other reason", however, ignoring the fact that said expression is followed by "after the above mentioned process". **Firstly**, expression "any other reason" ought to be read alongwith preceding expressions i.e. disqualification in medical examination, character verification, educational certificates verification. As per doctrine of *ejusdum generis*, the expression "any other reason" should be read in the light and conjunction with preceding expressions. All those expressions are taking care of situation arising after the declaration of merit list. **Secondly**, the expression "after the above mentioned process" should be taken care of. The above mentioned process "includes" stage 1, stage 2 and mandatory verifications. The natural corollary of different expressions used in Clause 15 is that vacancy shall be deemed to be treated unfilled if after completion of all the processes, vacancy remains vacant. In the case in hand, the merit list included 144 candidates who for the purpose of post of Head Constable had ceased to exist. Those candidates did not create vacancy on account of their unwillingness to join or disqualification whereas vacancies arose prior to mandatory verification/examination. The arising of vacancies, on account of this peculiar situation, cannot be equated with vacancies arising on account of disqualification post declaration of merit list.

From the reading of Clause 15, it appears that there is

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 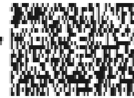

purpose behind carrying forward vacant seats. A merit list is prepared of those candidates who clear written test and thereafter come forward for scrutiny of documents. Prior to preparation of merit list, PMT and PST are conducted. In the normal course, there are remote possibilities that a candidate who has cleared written test, passed through scrutiny of documents as well as PMT/PST would not join the post, however, stray candidates are disqualified on account of medical examination or antecedent/character verification. As there are remote possibilities of disqualification of candidates post merit list, it has been provided that seats getting vacant on account of disqualification arising post declaration of merit list would be carried forward. The situation arising in the case in hand is not in consonance with intent and purport of Clause 15.

Supreme Court in ***Munja Praveen v. State of Telangana*****, (2017) 14 SCC 797,** had occasion to consider a similar situation. In this case candidates applied in different Corporations and came to be selected in more than one. They could join one corporation entailing non-filling of vacancy in others. State did not fill up vacant seats on the ground that there is no merit list as per Rules. The court considering the situation and making purposive interpretation of instructions held that vacancy should be filled up from next available candidates. The court has held**:**

> *8. Since the judgment of the High Court is based on GOMs No. 81 dated 22-2-1997, we may deal with the said GOMs in detail. In the said GOMs, the practice of having a long waiting list has been deprecated. We have carefully gone through the GOMs concerned. This GOMs has been issued in certain peculiar circumstances. It appears that a common test was held for a number of services comprised in Group-I, which includes Deputy Collector, Deputy Superintendent of*

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 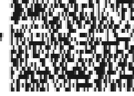

Police, Commercial Tax Officer, Regional Transport Officers, District Panchayat Officers, District Registrar, etc. Obviously, people higher up in merit chose to occupy the more coveted posts of Deputy Collector, Deputy Superintendent of Police, etc. A waiting list was also prepared. The waiting list started after the last selected candidate i.e. if the post of District Registrar was the least coveted post, the waiting list would start after this post. If some candidates higher up in the merit list did not join one of the higher posts then the person next in the waiting list would be offered appointment. This led to an anomalous situation where a person having very high marks would get the post of Deputy Superintendent of Police but a person much below him in the merit list but at Sl. No. 1 or 2 of the waiting list would be appointed to the post of Deputy Collector because some person had not joined the post of Deputy Collector and there was a vacancy in the said service. Those selected candidates who had joined on the less coveted services, say Assistant Account Officer, District Registrar, etc. claimed that before offering the posts to those on the waiting list, they should be permitted to change their service. This led to a large number of cases being filed and it is in this context that the GOMs was issued. Reliance has been placed by the appellants on Paras 8 and 9 of the GOMs, relevant portion of which reads as follows:

> *"8. … According to these rules, in a recruitment year, against number of notified vacancies, selection shall be made only to the equal number of posts notified and there shall be no waiting list. In other words, in a recruitment year, after selection of the candidates and after issue of appointment orders, if the candidate fails to join duty within the stipulated period that vacancy shall be notified again in the next recruitment year, this alienates the system of preparing waiting list for fallout vacancies.…*

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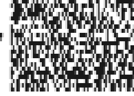

9. Therefore, the Government, after careful examination has agreed with the proposal of the Andhra Pradesh Public Service Commission and accordingly directs that henceforth the list of the candidates approved/selected by the Andhra Pradesh Public Service Commission shall be equal in the number of vacancies only including those for reserved communities categories notified by the unit officers. The fallout vacancies if any due to relinquishment and non-joining, etc. of selected candidates shall be notified on the next recruitment."

9. According to us, the High Court has totally misconstrued the above GOMs. The portion of the GOMs quoted above clearly lays down that there shall be no waiting list and the selection shall be made equal to the number of posts notified. The purpose was that the vacancies arising due to people leaving the posts must be filled up by subsequent selection and not on the basis of a waiting list. It was clarified that after selection of the candidates and after issue of appointment orders, if the candidate fails to join within the stipulated period, that vacancy should be notified again. This portion of the GOMs admits of only one interpretation that after appointment order is issued and the person appointed does not join, then the vacancy cannot be filled up on the basis of the waiting list or by operating the merit list downwards. This is also clear from Clause 9 of the GOMs, which also clarifies that fallout vacancies due to relinquishment or non-joining of the selected candidates may be notified in the next recruitment. This obviously means that the clause will apply after issue of letter of appointment. There can be no relinquishment and non-joining unless an appointment letter is issued.

xxx xxx xxx xxx

11. We see nothing wrong in this letter. In fact, this is in consonance with the GOMs dated 22-2-1997. The State and

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 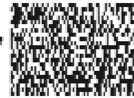

the Corporations have supported the case of the appellants. Their stand is that a large number of posts are lying vacant and if fresh selections have to be made, the filling up of the posts shall be delayed. We may also note that the original writ petitioners are obviously below the appellants in the merit list. They cannot be selected in this selection even if the merit list is operated downwards. They cannot be permitted to urge that persons, who are more meritorious than them should not be selected and fresh selection should be made. When the entire GOMs of 1997 is read as a whole, it is amply clear that it will have application only after appointment orders are issued and the posts not filled up after issue of appointment letters shall be notified in the next recruitment.

12. Even otherwise also, we are of the view that this is the only logical way to interpret the GOMs. The GOMs obviously has been issued, keeping in mind a single selection process. Here, we are dealing with a multiple selection process for different Corporations. The more brilliant candidates were selected in more than one of the Corporations. They obviously cannot join in more than one Corporation. Therefore, if the top four candidates have been selected in all four Corporations, they could only join one of the Corporations and twelve posts would remain vacant, if the interpretation given by the High Court is accepted. This would lead to a position where large number of vacancies would not be filled up.

13. On a conjoint reading of Clauses 8 and 9 of the GOMs dated 22-2-1997, we are clearly of the view that this was not the purpose of the GOMs. According to us, the GOMs would come into operation only after appointment letters were issued and, therefore, if a person, who is at number one position, goes to one of the Corporations and is given the appointment letter, he may not go to other three Corporations for verification of the certificate. That does not

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 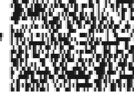

mean that the first post in all the Corporations should now lie vacant.

14. We may also add that the High Court did not note an earlier Division Bench judgment of the Andhra Pradesh High Court in ***State of A.P. v. Bhagam Dorasanamma [State of A.P. v. Bhagam Dorasanamma, 2013 SCC OnLine AP 875],*** *wherein the High Court had correctly interpreted the GOMs in the following manner:*

> *"19. The process of recruitment starts from the date of notifying the vacancies and attains finality with the act of issuing appointment order, offering the post to the selected candidate. In the absence of reaching the said finality of issuing appointment order in respect of subject vacancy, the question of either relinquishment or non-filling of the same does not arise. The interpretation sought to be given by the authorities for denying appointment to the applicant/1st respondent herein is contrary to the very spirit and object of service jurisprudence and we find total lack of justification on the part of the petitioner authorities and such action undoubtedly tantamounts to transgression of Part III of the Constitution of India in the event of testing the same on the touchstone of Article 16 of the Constitution of India."*

15. Normally, the aforesaid judgment should have been followed, but no reference has been made to the same in the impugned judgments ***[Munja Praveen v. State of Telangana, 2016 SCC OnLine Hyd 329]·[Jadi Muralidhar v.State of Telangana, 2016 SCC OnLine Hyd 422].***

28. In the wake of above discussion and findings, the questions raised hereinabove are answered as below:

(i) A clause of an advertisement can be challenged after

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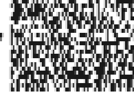

declaration of result provided its validity is challenged.

(ii) High Court has power to test validity of any Clause of an advertisement on the touchstone of fundamental rights and statutory provisions.

(iii) Clause 10 (b) as well as 15 of the advertisement are valid, however, Clause 15 needs to be read in the manner as discussed hereinabove.

(iv) The petitioners even in the absence of waiting list, in the peculiar situation need to be considered for the post of Head Constables.

27. The present petition deserves to be allowed and accordingly allowed. The respondents are directed to consider 144 candidates for the post of Head Constable who are holding rank beyond 787. It is made clear that petitioners merely on account of filing of present petition would not get preference. The respondent would consider 144 eligible candidates next to 787 candidates. The needful shall be done within 3 months from today. If any candidate out of aforesaid 144 candidates does not join, no next candidate would be eligible to be considered.

(JAGMOHAN BANSAL)
JUDGE

23.05.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*

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