

268 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(1) CWP-6819-2023 (O&M)  
2024:PHHC:058548-DB  
Reserved on : 04.04.2024.  
Date of Decision: 30.04.2024.

Parvinder Singh & Ors. ...Petitioners

Vs.

State of Punjab & Ors. ...Respondents

(2) CWP-16091-2023 (O&M)

Daljit Kaur ...Petitioner

Vs.

State of Punjab & Ors. ...Respondents

(3) CWP-18897-2023 (O&M)

Sukhpreet Singh & Ors. ...Petitioners

Vs.

State of Punjab & Ors. ...Respondents

(4) CWP-26974-2023 (O&M)

Manjeet Singh & Anr. ...Petitioners

Vs.

State of Punjab & Ors. ...Respondents

(5) CWP-17495-2023 (O&M)

Gurdhian Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present Mr. Vikas Chatrath, Advocate, Mr. Abhishek Singh, Advocate  
and Ms. Tanya Sehgal, Advocate for the petitioner (s)  
(in CWP Nos. 6819, 17495 and 18897 of 2023)

Ms. Alka Chatrath, Advocate and  
Mr. Nikhil Singh, Advocate for the petitioner (s)  
(in CWP No. 16091 of 2023)

Ms. Himani Kapila, Advocate for the petitioner (s)  
in CWP-26974-2024.

Mr. R.S.Pandher, Sr. DAG, Punjab.

Mr. Amit Jhanji, Senior Advocate with  
Mr. Abhishek Premi, Advocate and  
Mr. H.S.Saini, Advocate for respondent Nos. 5 to 10.

Mr. Jatinderpal Singh and Mr. Ankush Thakral, Advocates  
for respondent No.11.

Ms. Kriteka Sheokand, Advocate for the applicant  
(in CM-5460-CWP-2024).

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**SANJEEV PRAKASH SHARMA, J.(Oral)**

1. All these writ petitions raised a common question of law and were, therefore, taken up and heard jointly.
2. The petitioners in all the writ petitions are the applicants for recruitment to the post of Elementary Trained Teacher (hereinafter referred to as 'the ETT'), for which, an advertisement was issued on 12.10.2022. The last date for submission of application form was 10.11.2022 and as per initial advertisement, the educational qualification required for the post of ETT was that a candidate should have passed graduation with minimum 50% marks (for general category) and 45% marks (for reserved categories) and two years Elementary Teacher Training Course or two years diploma in Elementary Education from a recognized university/institution and should have passed PSTET-1. The candidate was also required to have passed 10+2 with

minimum 50% marks (for general category) and 45% marks (for reserved categories).

3. The Government of Punjab, notified the Punjab Civil Services (General and Common Conditions of Service) First Amendment Rules 2022, on 28.10.2022 (hereinafter referred to as 'the Rules of 2022'), whereby requirement of qualifying test of Punjabi equivalent to Matriculation standard with at least 50% marks was made mandatory for appointment to any post of Group-C.

4. Immediately thereafter, a revised letter was issued on 01.12.2022 to the advertisement dated 12.10.2022, incorporating the amendment in pursuance of notification 28.10.2022 and it was provided that modification in the mode of selection for the posts advertised on 12.10.2022, would be as per the following criteria:-

“1. For the recruitment of these posts, the examination for Punjabi subject (Paper-A) will be conducted, in which there will be 100 questions. This paper will be of qualifying nature. The candidates who obtain minimum 50% marks in the test will be declared eligible for the post.

2. Second Paper (Paper-B) will be conducted from subjects of Punjabi, English, Hindi, Math, General Science and Social Science. In this paper, there will be 100 objective questions and of 200 marks. The paper will be of 1000 minutes duration.

The merit of the candidates will be determined on the basis of marks obtained in Paper-B.

The other conditions and detail of the advertisement will remain the same.

The syllabus determined for these posts is available on the website of the department.”

5. Feeling aggrieved, the petitioners challenged the notification dated 28.10.2022 on various grounds and also challenged the revised letter dated 01.12.2022. On 16.12.2022, the respondents issued a public notice whereby date for taking written examination of qualifying test of Punjabi was notified. The petitioners submitted representation for granting relaxation to persons belonging to reserved category in the qualifying examination of Punjabi. Whereafter, the petitioners filed the present writ petitions after participating in the written test which was held on 05.03.2023. After reply was filed by the respondents, the case was taken up, wherein learned State Counsel submitted that till the next date of hearing, the State shall not continue with the selection process. Thereafter, this Court adjourned the matter from time to time to await the pronouncement of the judgment in Tej Parkash Pathak and others vs. Rajasthan High Court and others (2013) 4 SCC 540, as the issue involved in the said case was referred to the Constitution Bench on 18.07.2023.

6. Again the matter came up before this Court on 20.02.2024 and while the State intended to withdraw its undertaking dated 12.10.2023, leading to passing of order, but the Court did not allow the State to withdraw the undertaking and restrained the respondents from continuing the selection process.

7. Learned counsel for the petitioners have challenged the amendment made to Rule 17, incorporating the condition of passing qualifying test in Punjabi language as mandatory for appointment to any post of Group-C with 50% minimum marks for all. It is submitted that the amendment cannot sustain as there is no relaxation granted to the reserved category candidates for the purpose of qualifying exam, and therefore, the action runs foul to the provisions of Articles 15(4) and 16(4) of the Constitution of India. In support of their arguments, learned counsel relied on the judgments of Ram Bhagat Singh vs. State of Haryana and others, 1997 (11) SCC 417, Ajay Kumar Verma vs. State of Haryana and others 2009 (4) SCT 784, Harikiran Singh vs. State of Punjab and others 2013 (3) SCT 473, Shabir Khan and another vs. State of Punjab and others, decided on 29.02.2012.

8. It has been further submitted that there is neither any rational nor intelligible differentia to be achieved by introducing the qualifying test for Group 'C' and 'D' posts, especially when the decision making process is to be taken in the higher hierarchy who have been excluded from the same. It is submitted that while Group 'A' and 'B' posts have been left out from passing the mandatory Punjab qualifying test and the same has been limited to only Group 'C' posts. Thus, the candidates who have passed PSTET and the subsequent papers on the basis of which merit is prepared, have been asked to qualify the test of Punjabi, which is wholly a superfluous, as in Matriculation and PSTET knowledge of Punjabi is a prerequisite qualification. Learned counsel for the petitioners have relied on the judgments passed in the case of

Deepak Sibal vs. Punjab University 1989 AIR (SC) 903, Ganga Ram Moolchandani vs. State of Rajasthan 2001 (1) SCT 820, Dev Gupta vs. PEC University of Technology, 2023 (1) Scale 642.

9. Learned counsel submitted that merely because the petitioners have participated in the selection process, they cannot be ousted from challenging the rule and the amendment made in the advertisement, as there is no estoppel against law and it is only after appearing in the examination that the process can be challenged. Learned counsel relies on the judgments in Dr. (Major) Meeta Sahai vs. State of Bihar, 2020 (1) SCT 469 SC, Daljit Kaur vs. State of Punjab and others 2022 (1) SCT 4.

10. Learned counsel have further challenged the selection and appointment process on the ground that the rules of the game have been sought to be changed in between, after the advertisement was issued. It is submitted that the requirement of passing Punjabi qualifying test could not have been added to the advertisement as the amendment was introduced on 28.10.2022 with effect from the date of publication, and therefore, the posts which have been advertised on 12.10.2022, could not have been governed by the said amendment. Learned counsel submit that the revised letter dated 01.12.2022, is a corrigendum, which runs contrary to the Rules of 2022, notified on 28.10.2022, as the amendment came into force from the date of its publication while the corrigendum applies the same retrospectively to the posts which were advertised earlier on 12.10.2022. Learned counsel relies on the judgments in State of Andhra Pradesh vs. A.P. State Wakf Board 2022 (2) ALT 69.

11. Learned counsel have also challenged the condition of passing of the examination in the subject of Punjabi on the ground that the Punjabi qualifying test has not been conducted for the language of Punjabi and the syllabus which was prescribed for the exam of Punjabi Paper-A runs contrary to the amendment. The rules required to pass Punjabi language qualifying test with minimum 50% marks, whereas the syllabus for Punjabi Paper-A for EET post would show that the question paper incorporated 'knowledge of Punjabi culture, history and general awareness relating to Punjab, Punjabi and Punjabiath', which essentially means that only those candidates who are from Punjab having Punjabi culture and Punjabiath would be able to participate in the selection process. Learned counsel submit that the syllabus and Paper-A for EET are supplanting the Rules of 2022, which could not have been done. Learned counsel reply on the judgment in Sant Ram Sharma vs. State of Rajasthan 1968 (1) SCR 111 (SC). It is submitted that there is a difference between Punjabi and Punjabi language and the examination conducted *de hors* the rules. It is further submitted that the submissions made by the petitioners had not been specifically denied, and therefore, they will be deemed to have been admitted by the respondents as per the principles of interpretation of the statute. The first principle to interpret by constructing literally in terms of the grammatical sense was required to be followed giving expression which is natural, ordinary and plain.

12. Learned counsel in CWP-16091-2023, has pointed out that the respondents had framed Punjab Elementary Teaching Cadre Group-C Service Rules, 2018 and Punjab State Elementary Education (Teaching Cadre Border

Areas) Group-C Service Rules 2018 and as per Rule 6(1), all appointments were to be made as per the manner specified in Appendix-B. She has submitted that for ETT, the requirement is of having passed Bachelor Degree from recognized university/institution with at least 55% marks for general category and 50% for SC, ST and BC physically handicapped category. She submits that there is relaxation provided for the reserved category persons and by not providing the said reservation in the qualifying test of Punjabi, discrimination has been done with the reserved category persons by bringing unequal to equal.

13. Per contra, learned counsel appearing for the State and respondents have supported the amendment and submitted that the criteria for conducting Punjabi language qualifying test is a prerequisite qualification for participation and appointment of Group-C posts and the same cannot be said in any manner to be against the law since all the candidates have been equally benefitted by the prerequisite qualification and all of them have to pass with minimum 50% marks. Therefore, it cannot be said that the same causes any discrimination to the reserved category candidates as benefit to the reserved category persons has already been provided in the educational qualification and also with regard to number of posts reserved for them. It is further submitted that the post of Group 'A' and 'B' are advertised, and appointments are made in terms of the Combined Competitive Examinations Rules, 2009. It is submitted that knowledge of Punjabi and subject of Punjabi is one of the essential subjects for examination for selection to Group 'A' and 'B' posts, and therefore, there was no requirement for issuing another

amendment for incorporating Group 'A' and 'B' posts as prequalification for selection, whereas the Group 'C' and 'D' candidates do not participate in the Combined Competitive Examination. It is further submitted that for the purpose of teaching at the level of elementary, knowledge of Punjabi is essential, and therefore, action cannot be said to be ultra vires.

14. Respondents submitted that the Department of Personnel vide letter dated 11.09.2023, has informed that the Council of Ministers in its meeting held on 21.10.2022, had approved the memorandum presented by the Personnel Department, Punjab, for making amendment in the Punjab Civil Service (General and Common Conditions of Service) Rules, 1994. The amendment was carried out in the Rule 17 of the Civil Services (General and Common Conditions of Service) Rules, 1995, vide notification dated 28.10.2022, according to the approval of the Cabinet/Council of Ministers. In the memorandum presented in the Cabinet, it is stated that it has been the aim of the Punjab Government to promote the Punjabi language in the State of Punjab and knowledge of Punjabi language is very important for the smooth functioning of the government departments. Therefore, from time to time, efforts have been made by the Punjab Government to make Punjabi language compulsory in the educational institutions and offices of the State of Punjab. In order to fulfill this purpose, apart from other matters, instructions have been issued vide letter N.3107-Language-68/21805 dated 03.06.1968, from the Language Department of the Punjab Government, for all jobs and recruitments under the Punjab Government, Matriculation or its equivalent educational qualification must have passed in Punjabi language. It has been

clarified in memorandum that as per Rule 176 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, for the recruitments under Punjab Government, in Group-A, B and C posts, the knowledge of Punjabi upto matriculation level is mandatory. For smooth functioning of the work of the Punjab Government, the knowledge of Punjabi language is very much important and instructions are already issued regarding passing of Punjabi language upto matriculation or its equivalent educational qualification for recruitment for posts under Punjab Government. Under these provisions, as per the prescribed qualifications for appointments through direct recruitment in the State of Punjab, the residents of Punjab State and other States also become eligible by passing the additional subject of Punjabi at matriculation level with minimum qualifying marks.

15. As such candidates who do not have sufficient knowledge of Punjabi language in depth, due to which, they face difficulty in doing office work in Punjabi language. In office work, especially in clerical and other Group-C and Group-D levels posts with direct contact with the general public, all correspondence, exchange of information and other work is done in Punjabi language, hence, good knowledge of Punjabi language is very important at these levels of posts. In view of the said situation in the State of Punjab along with the competitive examination to be conducted for the recruitment of Group-C posts, the tenth level qualifying paper of Punjabi language has also been prescribed and only those candidates will be considered eligible for the job who are proficient in Punjabi and will secure at least 50% marks in this qualifying Punjabi language paper. This Punjabi

language qualifying test is also applicable to Group-D posts. They rely on the judgments passed in All India Masters' and Assistant Station Masters' Association Delhi vs. General Manager, Central Railway (Larger Bench) 1960 AIR (SC) 384, Jarnail Singh vs. State of Punjab 2014 (2) SCT 701, Anupal Singh vs. State of UP 2020 (2) SCC 173, State of Uttar Pradesh vs. Karunesh Kumar and others 2023 AIR (SC) 52, Tajvir Singh Sodhi vs. The State of J & K 2023 AIR (SC) 2014.

16. Learned counsel for the interveners and respondents who have participated and cleared the Punjabi qualifying test, have supported the State's action and submitted that the decision for including Punjabi as a prerequisite qualification, is wholly uncalled for. The petitioners cannot claim parity with Group 'A' and 'B' posts as requirement for appointment on Group 'A' and 'B' is totally different from that of Group 'C' and 'D'. It is further submitted that since the amendment was made at initial stage itself in the advertisement, the petitioners thereafter fully participated in the selection process and took a chance for clearing the examination, cannot now turn around and challenge the revised letter and amendment and the petitioners are estopped from challenging the same. It is further submitted that the policy decision is purely under the domain of the government and it is not for this Court to substitute its opinion to that of the State Government. In support of their submissions, learned counsel rely on Ashok Kumar and another vs. State of Bihar and others (2017) 4 SCC 357, Chandra Prakash Tiwari and others vs. Shakuntala Shukla and others (2002) 6 SCC 127, K.A. Nagamani Vs. Indian Airlines and others (2009) 5 SCC 515, Madan Lal and others vs.

State of J & K and others (1995) 3 SCC 486, Madras Institute of Development Studies and another vs. K. Sivasubramaniyan and others (2016) 1 SCC 454, Om Prakash Shukla vs. Akhilesh Kumar Suukla and others 1986 (suppl) SC 285, Union of India vs. Pushpa Rani and others (2008) 9 SCC 242, Dr. Parhul Dham vs. State of Punjab and others 2011 (15) SCT 130.

17. Learned counsel further submitted that the principle relating to the change of rule of the game, would have no application to the present case because revised letter was issued by the State Government and it is thereafter that the entire selection process was conducted. They rely on the judgment passed in Tej Parkash Pathak and others vs. Rajasthan High Court and others (2013) 4 SCC 540 and submit that till a decision is taken by the Larger Bench, the said judgment will hold its field.

18. We have considered the submissions and perused the case laws cited along with written submissions.

19. While counsel for the respondents have strenuously objected to the maintainability of the writ petitions filed on behalf of the candidates who had participated in the selection process invoking principles of approbate and reprobate, we find that the result of the selection process has not been declared so far and immediately after having participated in the Punjabi test without waiting for the result, the petitioners have approached this Court.

20. In Krishna Rai vs. Banaras Hindu University 2022 (3) SCT 244 SC, the Hon'ble Supreme Court has held as under:-

“22. However, the Division Bench fell in error in applying the principle of estoppel that the appellants having appeared in the

interview and being unsuccessful proceeded to challenge the same and on that ground alone, allowed the appeals, set aside the judgment of the learned Single Judge. The Division Bench having approved the reasoning of the learned Single Judge, ought not to have interfered in the judgment of the learned Single Judge on a technical plea. The Division Bench ought to have considered that the appellants were ClassIV employees working from 1977 onwards and expecting from them to have raised serious objection or protest at the stage of interview and understanding the principles of changing the Rules of the game, was too farfetched, unreasonable and unwarranted.”

21. Thus, we find that the principle of estoppel would not apply as against the petitioners and we accordingly hold in favour of the petitioners in so far as maintainability of the writ petitions is concerned.

22. The first and foremost challenge made by the petitioners is on the basis of change of rules of the game when the game has already started. We are unable to accept the contentions of the petitioners. The power of issuing advertisement and power of making amendment in the advertisement is available with the employer. In the present case, the respondents issued a revised letter on 01.12.2022, incorporating the condition introduced in the Rules of 2022, notified on 28.10.202, which required all the aspirants to pass Punjabi qualifying test with minimum 50% marks for all Group-C posts.

23. The contention of learned counsel for the petitioners that the corrigendum could not have been issued after the last date of submission of

application forms resulting in depriving candidates from participation or changing the rule of selection, is found to be without any basis.

24. We find that while the word “corrigendum” would import meaning of an error corrected, factually in the present case the respondents have only issued a revised letter notifying to all the candidates who had applied under the advertisement about incorporation of the amended Rule 17 providing for the candidates to appear for additional examination of Punjabi language as a pre-requisite for selection and participation in the main selection. Thus, it does not affect the candidates who are to participate in the selection process. It is also noticed that participation in the pre-requisite qualification and acquiring 50% marks in the Punjabi language only makes them qualified to participate in the selection process. There is no change in the selection process as the marks of Punjabi language are not included in the main selection nor it changes the inter-se merit of the candidates. It also does not deprive any candidate from participation. Hence, it cannot be said to be an introduction of an additional qualification for the purpose of selection but is a condition laid down for participation.

25. In several selection processes on account of huge number of applicants, the selecting body may resort to a screening test. If such decision is taken to conduct the screening test from amongst the participating candidates, the same is not and cannot be treated to be change in the rule while the selection process is going on. The candidates cannot be allowed to contend that they should not be made subject to a screening test (judgment of screening test to be quoted). Similarly, the authorities have introduced a pre-

requisite qualification for passing Punjabi language test. Since all the candidates are expected to have passed Punjabi language in the matriculate examination, testing them on the said language in a selection process cannot be said to be changing the rule. More so, as the marks obtained in the Punjabi language are not the part of preparation of merit list for the main selection. It is also noticed that examination for conducting selection had not taken place prior to the issuance of revised letter. We are, therefore, satisfied that there is no change in the rules of the game after the selection process has started.

26. In view of the judgments passed by Hon'ble the Supreme Court, as cited above with regard to the issue, we find that in all the cases the change in the rule was affecting the selection process and, therefore, the Courts have intervened. We are satisfied on facts that the said principle has no application to the facts of the present case. In view thereof, the contention of learned counsel for the petitioners is found to be without any basis and is rejected.

27. The challenge to the amended Rule 17 of Rules 2022, is on the ground that the same has no nexus for the purposes sought to be achieved. The following criteria has been laid down by Hon'ble the Supreme Court in the case of Naresh Chand Aggarwal vs. The Institute of Chartered Accountant of India and others 2024 SCC OnLine 114, to examine the vire of the rule:-

32. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarize the following legal principles that may be relevant in

adjudicating cases where subordinate legislation are challenged on the ground of being 'ultra vires' the parent Act:

(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act;

(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.

(c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

(d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like ‘to carry out the provisions’ or ‘to carry out the purposes.’ Another sub-section specifies areas for delegation, often using language like ‘without prejudice to the generality of the foregoing power.’ In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the ‘generality versus enumeration’ principle. (e) The “generality versus enumeration” principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It 24 must be further examined if the impugned rule can be upheld by reference to the scope of the general power.

(f) The delegated power to legislate by making rules ‘for carrying out the purposes of the Act’ is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”

28. In view of the above, if we test the rule on anvil of Article 14 of the Constitution of India, we find that requirement of passing of Punjabi Language in the State of Punjab for Group ‘C’ posts, cannot be said to be unconstitutional. The language of Punjabi has been included in the list of languages in 8<sup>th</sup> Schedule of the Constitution of India. Since, the same is a language of the State of Punjab, in a federal form of government, the State of Punjab would be entitled to require its employees to have knowledge of Punjabi language for the purpose of day to day activities and functioning in the government offices and if for the said purpose, a pre-qualifying test with 50% marks across the board is laid down, the same cannot be said to be in

any manner, to go contrary to the Constitution. The respondents have not denied any person to participate in the selection process. However, they can lay down requirement of passing a particular subject or language of the State. This Court is satisfied that such a requirement as added vide amendment (supra), has a nexus to the purpose sought to be achieved. The rule, therefore, is not found to be ultra vires and does not warrant any interference.

29. The judgments cited at bar (supra) by learned counsel for the petitioners would have no application to the present case. In Ganga Ram Moolchandani, Deepak Sibal and Dev Gupta's cases (supra), candidates were being deprived from participation by laying down a qualification which only suited to the persons based on domicile of the State, whereas the present requirement of passing Punjabi test is with reference to the language of the State which is in day to day functioning of the government. Merely because a person has passed 10<sup>th</sup> class with Punjabi language, it cannot be said that the language of Punjabi could not be tested for the purpose of appointment and selection.

30. The submissions of learned counsel for the petitioners on the ground of discrimination towards reserved category persons are concerned, we find that the benefit of reservation in terms of Article 16(4) of the Constitution of India is on the post and relaxation in terms of Article 15(4) of the Constitution of India can be provided but the same is an enabling provision and no right is created in favour of a reserved category person. Merely because the State has relaxed the educational percentage at the educational qualification level, it is not essential for them to provide a similar

relaxation for the prequalifying examination. If such a relaxation is not provided, this Court would not add a condition which is not framed by the rule makers. In *M. Nagraj and others vs. Union of India and others* 2006 (8) SCC 212, the Constitution Bench had held the provisions of Articles 15(4) and 16(4) of the Constitution to be enabling provisions and it is upon the discretion to be exercised based on collection of data that reservation and benefits of relaxation in reservation could be provided. Since the test is essentially a knowledge based test and not for the purpose of appointment, we do not find any act of discrimination nor can it be said that unequals have been treated equally as all the persons who are employed in the State Government are required to possess the knowledge of language of the State. The challenge to the rule on the aforesaid basis, therefore, fails.

31. Learned counsel for respondents No.5 to 11 also took this Court to the provisions of the Punjab Official Language (Amendment) Act, 2008, whereby the following amendment was brought into force to the Punjab Official Language Act, 1967:-

“3-A (1) In all civil courts and criminal courts, subordinate to the High Court of Punjab and Haryana, all revenue courts and rent tribunals or any other court or tribunal, constituted by the State Government, work in such courts and tribunals shall be done in Punjabi.

Explanation: For the purpose of this section, the words ‘civil court’ and ‘criminal court’ shall have the same meaning as

respectively, assigned to them in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.

(2) The concerned Administrative Departments of the State Government, shall make arrangements to provide necessary infrastructure and training to the concerned staff, in order to ensure the use of Punjabi in all courts and tribunals, referred to in sub-section (1), within a period of six months from the date of commencement of the Punjab Official Language (Amendment) Act, 2008.

3-B. In all offices of the State Government, public sector undertakings, boards and local bodies and offices of the schools, colleges and universities of the State Government, all official correspondence shall be made in Punjabi.”

32. Additionally, a State Level Empowered Committee was also formed by inserting Section 8-B and 8-C at the State Level and District Level to review and ensure implementation of the Act. In view thereof, the amendment is found to be in accordance with the provisions of the Constitution.

33. We thus, find that there is neither any lack of legislative competence nor there is any violation of fundamental rights guaranteed under Part-3 of the Constitution or of any constitutional provision while framing the rule. However, we find that the respondents have conducted the examination of Punjabi language in a whole different manner. Learned counsel for the

petitioners have taken us to the syllabus and exam of the Punjabi (Paper-A) of the ETT, which reads as under:-

“Punjabi:

Gurmat Poet, Guru Nanak Dev Ji, Guru Amar Das Ji, Guru Arjan Dev Ji, Sufi Poet, Sheikh Farid, Shah Hussain, Bulleh Shah, Kisskaar, Peelu, Waris, Hashem Shah, Bir Kaav, Guru Gobind Singh, Shah Muhammad, Modern Punjabi Poetry, Bhai Veer Singh, Dhani Ram Chatrik, Prof. Puran Singh, Prof. Mohan Singh, Amrita Pritam, Surjeet Patar, Vaartak (Prose), Principal Teja Singh, S. Gurbaksh Singh, Giani Gurdit Singh, Dr. Narendra Singh Kapoor, Dr. Harpal Singh Pannu.

STORY SECTION:

Sujan Singh, Waryam Sandhu, Kulwant Singh Virk, Ajit Kaur, Santokh Singh Dhir, Mohan Bhandari.

GRAMMAR:

Language and dialect, Script and Gurmukhi script, Sound perception, word recognition, sense perception, sense perception, sentence recognition, idioms, phrases, punctuation marks, abbreviation.

34. The syllabus for Paper-A as declared and placed on record as Annexure P/18, in writ petition No.17495-2023, reflects that the examination of Punjabi language has been incorporated by the respondents in a manner to mean understanding all the Punjabi culture, religion, history of Punjab, whereas the Paper of Punjabi language could have been limited to the subject language, grammar and script aspects alone. Thus, the Paper-1 of Punjabi

conducted for recruitment of ETT goes contrary to the provisions of the amendment made in Rule 17 of the Rules, 2022 and also is in violation of the Punjabi Official Language (Amendment) Act, 2008.

35. In view of the above, this Court finds support in the submissions of learned counsel for the petitioners that the respondents have conducted the examination supplanting the Rules of 2022. In Sant Ram Sharma's case (supra), the Hon'ble Supreme Court held as under:-

“We pass on to consider the next contention of Mr. N.C. Chatterjee that if the executive Government is held to have power to make appointments and lay down conditions of service without making rules in that behalf under the proviso to Art. 309, there will be a violation of Arts. 14 and 16 because the appointments would be arbitrary and capricious. In our view, there is no substance in this contention of the petitioner. If the State of Rajasthan had considered the case of the petitioner along with the other eligible candidates before appointments to the selection posts there would be no breach of the provisions of Arts. 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts was actually made. It was said by Mr. C. B. Agarwala on behalf of the respondents that an objective evaluation of the merit of the officers is made each year and promotion is made on scrutiny of the record- sheets dealing with

the competence, efficiency and experience of the officers concerned. In the present case, there is no specific allegation by the petitioner in the writ petition that his case was not considered along with respondents 3 & 4 at the time of promotion to the posts of Deputy Inspector General of Police in 1955 or to the rank of Inspector General of Police or Additional Inspector General of Police in 1966. There was, however, a vague suggestion made by the petitioner in paragraph 68 of his rejoinder- petition dated July 17, 1967 that "the State Government could not have possibly considered my case, as they considered and even in this counter-affidavit consider Shri Hanuman Sharma and Sri Sultan Singh senior to me by the new type of seniority they have invented for their benefit". Even though there is no specific allegation by the petitioner that there was no consideration of his case, respondent No. 1 has definitely asserted in paragraphs 23, 25, 40 and 44 of the counter-affidavit that at the time of promotion of respondents 3 & 4 to the selection posts of Deputy Inspector General of Police and of Inspector General of Police the case of the petitioner was considered. We are therefore of the opinion that the petitioner is unable to substantiate his argument that there was no consideration of his case at the time of promotion of respondents 3 & 4 to the selection posts. We must therefore proceed on the footing that respondent No. 1 had considered the case of the

petitioner and taken into account the record, experience and merit of the petitioner at the time of the promotion of respondents 3 & 4 to the selection grade posts. It is therefore not possible to accept the argument of Mr. N. C. Chatterjee that there was any violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution in the present case. Mr. N. C. Chatterjee argued that the introduction of the idea of merit into the procedure of promotion brings in an element of personal evaluation, and that personal evaluation open is the door to the abuses of nepotism and favouritism, and so, there was a violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution. We are unable to accept this argument as well-founded. The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones; an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a

great strain on the efficient handling of public business. The problem therefore is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able men? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy. In this connection Leonard D. White has stated as follows:-

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole Organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the Promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment.

Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to

eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular trade is best suited for promotion to a higher grade; the very opposite may be true". (Introduction to the Study of Public Administration, 4th Edn., pp. 380, 383).

As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken into consideration only when merit of the candidates is otherwise equal and we are unable to accept the argument of Mr. N. C. Chatterjee that this procedure violates, in any way, the guarantee under Arts. 14 and 16 of the Constitution. For the reasons expressed we hold that the petitioner has been unable to make out a case for the grant of a writ under Art. 32 of the Constitution. The petition accordingly fails and is dismissed. There will be no order as to costs in the Circumstances of this case."

36. While conducting a pre-qualifying test for Punjabi language, the respondents cannot be allowed to take an exam for the subject of Punjabi and Punjabiath as that would amount to localizing and excluding the persons who do not belong to Punjab from participating in the selection process. In Ganga Ram Moolchandani's case (supra), Hon'ble the Supreme Court while relying on the judgments passed in Waman Rao vs. Union of India (1981) 2 SCC 362, Atam Prakash vs. State of Haryana (1986) 2 SCC, Orissa Cement Ltd. vs. State of Orissa, 1991 Supp. (1) 430, Union of India vs. Mohd. Ramzan Khan (1991) 1 SCC 588 and Managing Director, ECIL vs. B. Karunakar (1993) 4 SCC 727, has held as under:-

“Last submission of Shri Rao is that in case the Rules are held to be ultra vires, the decision may be made prospective in operation as for a period of 32 years, when the Rules remained in force, innumerable appointments have been made thereunder which should not be disturbed to avoid lot of complications. It is now well settled that the courts can make the law laid down by it prospective in operation to prevent unsettlement of the settled positions and administrative chaos apart from meeting the ends of justice. In the well-known decision of this Court in I.C.Golak Nath & Ors. vs. State of Punjab & Anrs. , (1967) 2 SCR 762 the question had arisen as to whether the decision in that case should be prospective or retrospective in operation and the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the

legislatures of various States had made laws bringing about an agrarian revolution in the country which were made on the basis of correctness of the decisions in Sri Sankari Prasad Singh Deo vs. Union of India and State of Bihar, 1952 SCR 89 and Sajjan Singh vs. State of Rajasthan, (1965) 1 SCR 933 viz., that the Parliament had the powers to amend the Fundamental Rights and that Acts in regard to estates were outside the judicial scrutiny on the ground they infringed the said rights. To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. In that case it was laid down that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution and the same can be applied only by this Court in its discretion to be moulded in accordance with the justice of the cause or matter before it.”

37. The examination conducted by the respondents based on the syllabus as above, is found to be contrary to the provisions and, therefore, the same is liable to be struck down as the same is beyond competence of the Rule. The respondents have failed to consider the difference between Punjab and Punjabi language and to the said extent, the contentions raised by the petitioners have also not been answered by the respondents.

38. We accordingly uphold the amendment in Section 17 of the Rules 2022, carried out vide notification dated 28.10.2022 and also uphold

the revised letter dated 01.12.2022, whereby advertisement was amended but we set aside the syllabus Annexure P/18 of Paper-1 for Punjabi language as also the consequential exam of Punjabi language and direct the respondents to conduct a fresh Punjabi language examination based on knowledge of Punjabi alone. The said test may be conducted for all the candidates now within a period of three months and further selection process under the advertisement may be continued and concluded thereafter at the earliest within a period of six months. The interim order passed by the Court earlier shall accordingly stand vacated.

39. In view of the above, the writ petitions are disposed of in the aforesaid directions.

40. All pending misc. application(s) also stand disposed of.

**(SANJEEV PRAKASH SHARMA)**  
**JUDGE**

**(SUDEEPTI SHARMA)**  
**JUDGE**

30.04.2024

vs/rajesh

1. Whether speaking/reasoned? : Yes/No  
2. Whether reportable? : Yes/No