

Court No. - 36

Case :- WRIT - A No. - 23733 of 2018

Petitioner :- Atul Kumar Dwivedi And 108 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Deepak Kumar Jaiswal, Ajay Singh Yadav, Deepak Kumar Jaiswal, Prashant Mishra, Tarun Agrawal, Venu Gopal

Counsel for Respondent :- C.S.C., Hritudhwaj Pratap Sahi, M.M.Sahai, Samarath Singh, Sankalp Narain

ALONGWITH

WRIA-13010/2018	WRIA-14296/2018	WRIA-15764/2018
WRIA-16160/2018	WRIA-18032/2018	WRIA-19426/2018
WRIA-20684/2018	WRIA-21610/2018	WRIA-25140/2018
WRIA-26059/2018	WRIA-26793/2018	WRIA-395/2019
WRIA-862/2019	WRIA-1318/2019	WRIA-1498/2019
WRIA-3011/2019	WRIA-3877/2019	WRIA-3906/2019
WRIA-4001/2019	WRIA-4048/2019	WRIA-4051/2019
WRIA-4144/2019	WRIA-4255/2019	WRIA-4270/2019
WRIA-4325/2019	WRIA-4328/2019	WRIA-4330/2019
WRIA-4333/2019	WRIA-4402/2019	WRIA-4413/2019
WRIA-4451/2019	WRIA-4468/2019	WRIA-4498/2019
WRIA-4502/2019	WRIA-4517/2019	WRIA-4781/2019
WRIA-4783/2019	WRIA-4785/2019	WRIA-4787/2019
WRIA-4801/2019	WRIA-4834/2019	WRIA-4845/2019
WRIA-4850/2019	WRIA-4851/2019	WRIA-4863/2019
WRIA-4868/2019	WRIA-4892/2019	WRIA-4910/2019
WRIA-4912/2019	WRIA-4938/2019	WRIA-4981/2019
WRIA-4988/2019	WRIA-5041/2019	WRIA-5158/2019
WRIA-5243/2019	WRIA-5354/2019	WRIA-5427/2019
WRIA-5483/2019	WRIA-5493/2019	WRIA-5533/2019
WRIA-5538/2019	WRIA-5564/2019	WRIA-5567/2019
WRIA-5598/2019	WRIA-5608/2019	WRIA-5624/2019
WRIA-5685/2019	WRIA-5730/2019	WRIA-5753/2019
WRIA-5830/2019	WRIA-6036/2019	WRIA-6076/2019
WRIA-6236/2019	WRIA-6246/2019	WRIA-6250/2019
WRIA-6329/2019	WRIA-6500/2019	WRIA-7000/2019
WRIA-7092/2019	WRIA-7157/2019	WRIA-7215/2019
WRIA-7366/2019	WRIA-7458/2019	WRIA-7615/2019
WRIA-7740/2019	WRIA-7790/2019	WRIA-7815/2019

WRIA-7981/2019	WRIA-7988/2019	WRIA-8149/2019
WRIA-8152/2019	WRIA-8172/2019	WRIA-8184/2019
WRIA-8188/2019	WRIA-8293/2019	WRIA-8295/2019
WRIA-8297/2019	WRIA-8311/2019	WRIA-8318/2019
WRIA-8321/2019	WRIA-8322/2019	WRIA-8323/2019
WRIA-8326/2019	WRIA-8328/2019	WRIA-8330/2019
WRIA-8425/2019	WRIA-8574/2019	WRIA-8877/2019
WRIA-8892/2019	WRIA-9036/2019	WRIA-9926/2019
WRIA-10781/2019	WRIA-11431/2019	WRIA-11632/2019
WRIA-12191/2019	WRIA-12194/2019	WRIA-12302/2019
WRIA-12451/2019	WRIA-12514/2019	WRIA-12641/2019
WRIA-13247/2019	WRIA-13259/2019	

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Suneet Kumar,J.

1. Heard Sri Radha Kant Ojha Senior Advocate assisted by Sri Shivendu Ojha, Sri Ashok Khare Senior Advocate assisted by Sri Siddharth Khare, Sri Shashi Nandan Senior Advocate assisted by Sri Udayan Nandan, Sri Tarun Agrawal, Sri Satyendra Tripathi and Ms. Shreya Gupta, learned counsels for the petitioners at length. All other counsels appearing for the petitioners in the writ petitions tagged with this bunch have adopted the arguments extended by the above noted counsels.

2. Sri Manish Goyal learned Additional Advocate General assisted by Sri Vikram Bahadur Yadav learned Standing Counsel has been heard on behalf of the State-respondents and the U.P. Police Recruitment and Promotion Board¹. Sri Sankalp Narain learned Advocate has extended his arguments on behalf of the selected candidates, private-respondent Nos.4 to 23, in the leading writ petition.

¹ Selection Board

3. These writ petitions have been filed by the candidates who had obtained 50% marks in each section/subject in the online written examination held in multiple shifts between 12.12.2017 and 23.12.2017. The facts relevant to appreciate the controversy at hands are that a notification dated 17.06.2016 was issued by the third respondent namely the Additional Secretary (Recruitment), Uttar Pradesh Police Recruitment & Promotion Board, Lucknow (Selection Board) advertising 2707 posts of Sub Inspector (Civil Police), Platoon Commander P.A.C. and Fire Brigade Second Officer in the pay scale/pay band/9300-34800 and grade pay Rs. 4200. The recruitment was to be made on the basis of online written examination of one question paper (total 400 marks) comprising of four sections/subjects of 100 marks each, named as:-

Sl No.	Subjects	Maximum marks
1.	General Hindi	100 marks
2.	Basic Law/Constitution/General Knowledge	100 marks
3.	Numerical and Mental Ability Test	100 marks
4.	Mental Aptitude Test/I.Q. Test/Reasoning.	100 marks

4. Before conducting the written examination, in order to provide method and modalities of the selection process, a notification dated 28.06.2017 was issued by the Selection Board in continuation of the advertisement notification dated 17.06.2016. The aforesaid notification provides that online applications were invited for filling up total **2707** vacancies of Sub Inspector, Civil Police (Male and Female), Platoon Commander and Fire Service Second Officer whereunder total

6,30,926 applications had been received. Looking at the huge number of applicants, the Board had resolved to hold written examination in multiple shifts which would require preparation of different sets of examination papers. As there was possibility of variation in the difficulty level of the questions papers, it had decided that for preparation of merit list of successful candidates, the marks obtained by the candidate papers/subjects wise would be normalized by using “Standardized Equi-percentile Method” in the same line as adopted in M.A.H, M.B.A/M.M.S, C.E.T 2015 examination. The notification further states that the questions papers would be of 160 multiple choice questions carrying total 400 marks. Each section/subject comprised of 40 questions carrying maximum 100 marks; 2.50 marks allocated for each right answer. There was no negative marking for the wrong answer. It was further notified that the candidates who failed to obtain 50% marks in each subject would not be eligible for recruitment.

5. The recruitment to the posts in question is governed by the U.P. Sub Inspector and Inspector (Civil Police) Service (First Amendment) Rules' 2015², whereunder Rule 15 provides for detail procedure for direct recruitment to the post of Sub Inspector. The said rules have been framed in exercise of powers under clause (c) of sub-section (2) of Section 46 read with sub-section (3) of the said section and Section 2 of the Police Act' 1861 by the Governor to regulate the selection, promotion, training, appointment and other service conditions such as seniority and confirmation etc. of Sub Inspectors and Inspectors of Civil Police in U.P. Police Force notified on

2 Recruitment Rules

August 19, 2015 and had been amended with effect from the 3rd December, 2015, the date of publication of the First amendment Rules' 2015.

6. On the factual aspects of the selection, it is contended by the learned Advocates for the petitioners that total approx 11000 and odd candidates were called to participate in the “Physical Standard Test” and “Physical Efficiency Test” as per Rule 15 (c) and 15 (d) of the Recruitment Rules. They include all those candidates who had obtained 50% or more marks (Raw marks or actual marks) in the written examination and also those who had obtained 50% or more marks as per “normalized score”, (the marks calculated by the Selection Board by using “Standardized Equi-percentile Method”). All the petitioners herein stated to have cleared both the subsequent stages of recruitment of “Physical Standard Test” as per clause (c) of Rule' 15 and Physical Efficiency Test {(as per Rule 15 (d)} and had obtained 50% or more than the actual/raw marks in each subject of the question paper. It was further stated that they had been excluded from the final select list i.e. inter-se merit list of the candidates selected for appointment prepared under Rule 15 (e) of the Recruitment Rules, on the ground that they obtained less than 50% “normalized score” derived by using Standardized Equi-percentile Method.

7. As per the “Statistics” provided by both the counsels for the petitioners and the selection Board, out of total 11,741 candidates notified to participate in the subsequent stages of selection i.e. “scrutiny of document and Physical Standard Test” and “Physical Efficiency Test”, 5461 candidates were

those who had obtained 50% of actual/raw marks in the written examination and 5713 candidates were those who obtained 50% “normalized score”. Total 8877 candidates had qualified all the stages, which included 4334 candidates who obtained 50% or more actual/raw marks and 4543 candidates who obtained 50% or more normalized score. Out of 4543 candidates who had obtained 50% normalized score, 3457 candidates had been selected and sent for training. We are also informed that all selected candidates are under going training and as on date no-one has been appointed.

8. The notification declaring final result was displayed on 28.02.2019 on the website of the Board which comprised of 8 lists, detail of which is enumerated as under:-

“(i) List 1- List of 2181 selected candidates for the post of Sub Inspector (Civil Police), Platoon Commander PAC and Fireman Second Officer.

(ii) List 2- A joint merit list of 2181 selected candidates for Sub Inspector (Police), Platoon Commander PAC and Fireman Second Officer.

(iii) List 3- A joint merit list of 2181 selected candidates for Sub Inspector (Civil Police), Platoon Commander PAC and Fireman - Second Officer categories.

(iv) List 4- A list of 1943 candidates selected for Sub Inspector (Civil Police).

(v) List 5 - 162 candidate selected for Platoon Commander PAC.

(vi) List 6- List of 76 officers selected for Fireman second officer.

(vii) List 7- List of non selected candidates.

(viii) List 8 - List of candidates declared unsuccessful in the written examination.”

9. The petitioners herein have been included in the List 8 i.e. the list of candidates who had been declared unsuccessful in the written examination. At that stage, writ petitions were filed by the candidates who had been placed in the List 8 seeking for quashing of the said list as also the notification dated 28.06.2017 issued by the Selection Board notifying that the Selection Board shall adopt normalization procedure in preparation of the merit list. In some of the writ petitions in this bunch, the entire final select list dated 28.02.2019 is also subject matter of challenge.

10. The leading Writ Petition No.23733 of 2018 was, however, filed in the month of October 2018 before declaration of the final result wherein the grievances of the petitioners initially was that the Selection Board had wrongly applied the normalization process i.e. Standardized Equi-percentile Method by issuing call letters to all those candidates who had not obtained 50% or more (Raw/Actual score) in each four subjects and scored 50% (normalized marks derived by applying Standardized Equi-percentile Method) to appear in the “Physical Standard/Efficiency Test” held in the month of June and July 2018.

11. It appears that some of the petitioners before the Lucknow Bench had approached the Supreme Court in (**Manish Kumar Yadav Vs. State of U.P. & others**)³ challenging the order of the Division Bench dated 27.05.2019 leaving it open for the Selection Board to proceed with the appointment as per the final select list dated 28.02.2019, subject to the condition that the selected candidates shall not claim any lien or right over

3.Special Leave to Appeal (C) No.13551 of 2019

the appointment and their appointment shall be subject to the final outcome of the pending writ petition, wherein the following order dated 12.06.2019 was passed:-

“We do not find any cogent grounds to interfere with the order of the Division Bench impugned. The selected candidates have given an undertaking that they shall not claim any lien or right over the appointments which shall be subject to the result of the writ petition. The special leave petition is not entertained.

We, however, request the Chief Justice of the High Court to constitute a special Division Bench to expeditiously hear the writ petition on day-to-day basis without granting unnecessary adjournments and to dispose of the writ petition as expeditiously as possible preferably within thirty days from the date of constitution of the Bench.

The special leave petition and pending applications are accordingly disposed of.”

12. In pursuance of the said order, on the application moved by the learned Advocates appearing for the petitioners dated 07.07.2019, this Special Division Bench has been constituted by Hon'ble the Chief Justice by the order dated 15.07.2019. The matter was placed before this Bench on 02.08.2019 with the office report dated 01.08.2019 alongwith all connected writ petitions pending at Allahabad High Court. The arguments of learned Advocates for the petitioners commenced on the said date i.e. on 02.08.2019 itself, but could not be concluded and as such the matter was fixed for 06.08.2019 in the additional cause list. Further hearing was resumed on 19.08.2019 and continued on day-to-day basis upto 22.08.2019.

13. The arguments of learned Additional Advocate General was heard and concluded on 26.08.2019 and the counsel for the private respondent commenced his arguments on that date itself. The matter was posted on 28.08.2019 for further hearing, but could not be taken uptill 04.09.2019 because of the strike observed by the lawyers of this Court. The arguments of Sri Sankalp Narain learned Advocate for the private-respondent concluded today. No other counsel had appeared on behalf of the private-respondents in any of the connected matters.

14. To summarise the arguments of the learned counsels for both sides, Sri R.K. Ojha learned Senior Advocate appearing for the petitioners submits that the process of normalization adopted by the respondents for preparation of the eligibility list is not contemplated in the Recruitment Rules. Even the Selection Board while issuing notification dated 17.06.2016 in Clause 4.1 and 4.2 thereunder under provided that selection would be made on the criteria of 50% marks being the qualifying marks in the written examination and select list calling the candidates for participation in the process of scrutiny of documents and Physical Standard test would be drawn on the said criteria.

15. In the notification dated 28.06.2017 (which was issued in Hindi), it was categorically provided that the candidates who did not attain 50% marks would be disqualified and would not be treated as eligible candidates. In paragraph no.'4' of the said notification it was provided that normalisation of the total marks obtained by the candidates taking the question paper as one unit would be made by applying Equi Percentile method

for the purpose of drawing inter-se merit of the selected candidates. The Selection Board had committed illegality in drawing the final merit list by exclusion of all those candidates who did not attain 50% normalized marks (by applying the Equi-percentile Method) in each subject though they attained 50% actual/raw marks in each four subjects of the question paper for written examination and, thus, were qualified to be included in the list of eligible candidates for participation in the further stage of “Physical test and scrutiny of document” as per the Rule 15 (c) of the Recruitment Rules. The criteria of selection had been changed during the course of the selection process which was not permissible in view of the settled legal proposition that rules of the game cannot be changed during mid of the game.

16. Sri Ashok Khare learned Senior Advocate for the petitioners adding to the above contentions submits that minimum qualifying marks has been provided in the statute. The Equi-percentile Method only denotes inter-se ranking of the candidates and cannot be confused with the “qualifying marks” to be attained by a candidate for being included within the zone of consideration. The question paper consisted of multiple-choice questions to be evaluated by the computerized scanner. There was no examiner variability nor there was any optional paper in the main written examination. The syllabus displayed by the Board on its Website appended as Schedule-I to the advertisement notification dated 17.06.2016 was uniform for preparation of the question papers comprising of all compulsory subjects. The question papers were set up from the various topics provided in the common syllabus for the subject

Hindi, Legal/General Knowledge, Numerical/Mental Ability, I.Q and reasoning. There was, therefore, no possibility of variation in the difficulty level of the question papers and, even if this was so, moderation of question papers itself was required to be done by the Selection Board. Looking to the pattern of examination which was Online test of multiple-choice questions, it cannot be said that the candidates of different batches were required to undertake the examination at different difficulty levels. In-fact the syllabus of the examination provided by the Selection Board sets common difficulty level of the questions from the entire syllabus uniformly for all candidates of different batches.

17. Placing three different sets of questions papers filed with the Compilation provided by the learned Senior Advocate, it is contended that there was no justification for adoption of normalization process (Equi-percentile Method) for preparation of list of “eligible candidates”. The method adopted by the Selection Board was contrary to the Recruitment Rules which provides the entire scheme for evaluation of the question papers of written examination for the purpose of preparation of the merit list. Reliance has been placed upon the judgement of the Supreme Court in **Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another**⁴, to submit that the “scaling system” adopted by the Selection Board by normalization of actual/raw marks obtained by the candidates in the written examination was not permitted being contrary to scheme of the Recruitment Rules.

4.2007 (3) SCC 720

18. It is pointed out that the Supreme Court while answering the question no.(iii) in **Sanjay Singh**² had held that the “scaling score” or “scaling mark” cannot be considered to be “marks awarded to the candidates in the written examination” and, thus, concluded that scaling violated the recruitment rules therein.

19. The Recruitment Rules provided for preparation of merit list on the basis of “marks awarded to the candidates in the written examination” which can only be read as “percentage of marks” awarded on the answer scripts evaluated by computerized scanner. Appendix-'3' which provided syllabus for the written examination and mode & method thereof, attached to the original Recruitment Rule' 2015 had been deleted w.e.f. 03.11.2015 with the First amendment of the Recruitment Rules, but the legislature consciously has retained Rule 15 (b) of the Recruitment Rules providing maximum marks in each of the four subjects of the written examination and the minimum passing percentage. The legislative intent to provide the qualifying criteria is explicitly clear. Exclusion from the zone of consideration of the candidates who had scored 50% or more marks in each of the four subjects of the question papers (qualified under the rules), therefore, was not permitted.

20. Reliance is placed on the judgement of the Supreme Court in **State of Kerala Vs. Kumari T.P. Roshana & another**⁵ to submit that it was held therein that minor differences in the marks obtained by the candidates in the qualifying examination

2.Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720
5.1979 (1) SCC 572

conducted by different Universities with different standard, question papers and set of examiners are inconsequential.

21. Sri Tarun Agrawal learned Counsel urged that the percentage is a measure of the absolute/raw marks obtained by a candidate on a scale of 100 which is calculated by the formula= **(marks obtained upon/total marks) x 100**. Whereas 'percentile' is the relative rank of the candidate within his group which can be seen from the formula= **(total number of students)-of the candidates rank)/(total number of students-1)**.

22. "Hundred (100) percentile" means the candidate is above 99% candidates who had appeared in the test in the same batch or in other words it can be understood as that there are 0% candidates above him in his batch. Similarly, 90% percentile means the candidate is above 90% candidates or 10% candidates are above him. The 'percentile' thus, denotes the relative standing of a candidate vis-a-vis other candidates in his group or batch.

23. The 'Standardized Equi-percentile Method' which is applied by a standard formula $\{“Y=Y1+((Y2-Y1))/((X2-X1))x(X-X1)”\}$, has been derived to give level playing field to the candidates of different group or batches, looking to the difference in the standard of papers, for drawing the inter-se merit of all candidates for final selection. A batch where maximum number of students undertook examination if taken as the 'reference batch' or 'base batch'; by using both 'marks' and 'percentile' of the candidates of 'reference batch' in comparison to the candidates of other batches the normalized score i.e. value of 'Y' of candidates of those batches is obtained.

24. The values being used in the aforesaid formula are:-

- Y1= marks corresponding to immediate lower percentile of ref.batch
- Y2= marks corresponding to immediate upper percentile of ref. batch
- X2= immediate upper percentile of ref. batch
- X1= immediate lower percentile of ref. batch
- X= percentile of the candidate of the target batch
- Y= normalized score of the candidate of the target batch

25. The value of “Y”, i.e. 'normalized mark', thus, only denotes the position or placement or ranking of the candidates of different batches in relation to the 'reference batch' or 'base batch', as 'Y-1' and 'Y-2' in the formula are the marks corresponding to the immediate 'lower and upper percentile' of the 'reference batch' and 'X-1' and 'X-2' are immediate 'lower and upper percentile' of 'reference batch'; whereas 'X' is the percentile of the candidate concerned whose marks are to be normalized by finding the value of “Y”.

26. It is contended by the learned Counsel that Equi-percentile Method based on the doctrine of level playing field, by using both 'raw marks' and 'percentile' of the candidates of the reference batch and 'percentile' of the candidates of other batches for finding the value of “Y” (normalized marks), places the candidates of other batches somewhere in between the candidates of the reference batch so as to give them their position in the common inter-se merit list. The 'normalized marks' are, thus, used for the purpose of preparation of inter-se merit of the candidates appearing in multiple batches with

different sets of question papers in one competitive examination, tested on different difficulty level.

27. From the prospectus of Medical Entrance Test conducted by AIIMS, New Delhi, it is demonstrated that it was notified therein for stage 2, the candidate who had obtained “50% percentile” or above in the written examination (at stage no.1) would be called. The prospectus of AIIMS, New Delhi, January' 2018 of a fellowship programme, has been placed before us to submit that 'percentile' is the score based on relative performance of the candidates who appeared in the examination.

28. It is further contended that even the process of normalization as adopted in M.A.H, M.B.A, M.M.S, CET 2015 which has been taken as a model for adopting normalization in the examination-in-question, provides that Equi-percentile Method would be applied at the time of preparation of merit list for admission.

29. It is contended that the eligibility list as per Rule 15 (b) can only be prepared on the basis of raw/actual marks of the candidates in the written examination. As there is no indication in the rule that normalized marks will be used as “qualifying marks” to determine “eligibility of candidates”, there is inherent flaw in the method adopted by the respondent. The normalized marks cannot be treated either as percentile (in their own batch) or actual or raw marks of the candidates.

30. By taking clue from a judgement of the High Court of Rajasthan in **Sarita Naushad Vs. R.P.S.C**⁶, it is contended that

6.2009 SCC Online Raj 4616

in the instant matter, scaling formula has resulted in unjust, unreasonable, irrational and arbitrary increase and decrease of marks to the detriment of the petitioners vis-a-vis persons who had been selected on the basis of normalized marks. The candidates who were not qualified as per the actual marks obtained were not entitled to be declared qualified as per the scaled marks or normalized marks.

31. The challenge to the said judgement was turned down by the Supreme Court in **Rajasthan Public Service Commission Vs. Balveer Singh Jat & others**⁷, noticing that the method of scaling for the purpose of assessment of answer sheets adopted by Rajasthan Public Service Commission for calling the candidates for interview was bad.

32. In order to substantiate his above submissions, Sri Agrawal has placed judgement of the Supreme Court in **Mahinder Kumar & others Vs. High Court of Madhya Pradesh**⁸. (Emphasis was laid to paragraphs nos.13 to 17, 19 to 24, 40, 50, 51, 53 & 55). It is contended that the normalized marks were not the basis therein for determining eligibility of the candidates to participate in the viva-voce or interview in the scheme of the Recruitment Rules namely Madhya Pradesh Uchchar Nyayik Seva (Bharti Tatha Seva Sharten) Rules' 1994 amended in the year 2005.

33. Sri Shashi Nandan learned Senior Counsel appearing for the petitioners in one of the connected writ petition, however, vehemently contends that under the scheme of the Recruitment Rules, 15(b) & (e), there was no room for any deviation in the

7.2015 (13) SCC 620

8.2013 (11) SCC 87

procedure of evaluation of performance of the candidate in the written examination. The role of the Selection Board was specified as to how it will prepare the select list of qualified candidates. It was absolutely beyond the jurisdiction of the Selection Board to prescribe or add any procedure for selection. The first part of Rule 15(b) is specific with regard to the written examination, the type of question paper, the maximum number of marks assigned to each subject or section of the question papers and the requirement that the candidates have to obtain '50% marks' in each of the four subjects for being eligible for recruitment. Only option given to the Selection Board was to decide the syllabus of the examination and the mode and manner in which the written examination was to be conducted. The words used in the latter part of clause (b) of Rule 15 “detail procedure for written examination shall be determined by the Selection Board” and will be displayed on its website does not include the procedure for evaluation for selection. Even Rule 15(e) states that final merit list shall be determined on the basis of marks obtained by each of the candidates in the written examination under clause (b) of the said rule. It was, therefore, not open for the Selection Board to adopt any normalization process or Equi-percentile Method at all even to draw the final merit list. The process of selection of candidates being enumerated elaborately in the rules will also include the procedure for evaluation of the performance of candidates.

34. For the aforesaid, the whole procedure adopted by the Selection Board in preparation of final select list dated 28.02.2019 is in contravention of the mandatory requirement of

the Recruitment Rules. The notification dated 28.06.2017 displayed by the Board on its website is, therefore, liable to be quashed being in violation of the recruitment rules.

35. Learned Senior Counsel referring to **Mahinder Kumar**⁷ submits that the said decision fortifies his argument that once the procedure for selection is determined in the Rule, it is not open to the selecting body or agency to deviate from the procedure. The normalization process upheld by the Supreme Court therein was in view of the rules prevailing, wherein the High Court was empowered to formulate its own procedure, which is not so in the present case.

36. Even the brochure of advertisement notification dated 17.06.2016 specified in clause 4-(i) that the candidates not attaining 50% marks in each subject would not be eligible for recruitment. After the notification of the vacancies providing conditions of selection in terms of the rule, it was not open for the Selection Board to adopt any other method for preparation of the merit list.

37. Sri Satendra Tirpathi learned Advocate for the petitioners adopting the arguments of Sri Ashok Khare and Sri R.K. Ojha learned Senior Counsel urged that the respondent have misconstrued the normalized marks as percentage, to decide cut-off marks for preparation of list of qualifying candidates. Even otherwise, as per the Selection Board's notification dated 28.06.2017, the normalized marks could be worked out only on the total marks obtained by a candidate in the question papers taken as a unit and not for each section/subject. The petitioners

⁷Mahinder Kumar & others Vs. High Court of Madhya Pradesh, 2013 (11) SCC 87

could not be declared failed for having not obtained normalized marks in anyone of the four sections. Reliance is placed on the judgement of the Supreme Court in **U.P.S.C Vs. S. Thiagarjan & others**⁹ and **State of Madhya Pradesh and others vs. Sanjay Kumar Pathak and others**¹⁰ to submit that meritorious candidates cannot be left out from the select list and the selection process marred by arbitrariness and unfairness cannot be allowed to stand. The selected candidates do not have any legal right merely for the fact that their names were found in the select list as no indefeasible right for appointment accrue in their favour.

38. Ms. Shreya Gupta learned counsel for the petitioners assailing the notification dated 28.03.2019 for applying Standardized Equi-percentile Method for normalization of marks obtained by the candidates in the written examination submit that the said method was not in consonance of the Recruitment Rules. The Selection Board's notification dated 28.03.2019 deviating from the procedure of selection is in transgression of its delegated power under the Recruitment Rules. It is settled that if a particular field is occupied by a statutory legislation, there is no scope for any addition or subtraction by any subordinate legislation.

39. She further proceeded to challenge the validity of clause 15 (f) of the first Amendment Rules' 2015 which provides that the candidates whose names are in the select list prepared as clause (e) of the Rule 15, if found unsuccessful in the medical examination conducted by a Board under the Rules shall be

9.2007 (9) SCC 548

10.2008 (1) SCC 456

declared unfit by the appointing authority, and the vacancies occurred shall be carried forward for next selection.

40. Contention is that the medical examination of the selected candidates is only one of the four stages of selection; first stage being written examination under Rule 15(b); second scrutiny of documents and Physical Standard Test as per clause (c) of Rule 15; third Physical Efficiency Test as per clause (d) of Rule 15 and fourth and last stage is medical test as per clause (f) of Rule 15. Till medical test is conducted, the process of selection is not over and as such the vacancy occurred on account of any candidate having been found unsuccessful in the medical test will be the existing vacancy of the same selection. The principle of carry forward of the vacancy for the next recruitment year can only be related to the vacancies pertaining to Scheduled Caste, Scheduled Tribes and Women, that too due to unavailability of suitable candidates of that category.

41. The State of U.P. had given an undertaking to the Supreme Court in **Manish Kumar Yadav**¹ on an affidavit that all existing vacancies to the post of Constable and Sub Inspector of police will be filled up within the time lines given therein and in case of breach of the same, the officers of the State would be personally liable. As many as 821 vacancies in total are proposed to be carried forward which include Scheduled Caste, Scheduled Tribes & women and also include vacancies occurred on account of exclusion of those candidates who could not qualify the medical test. It is thus, vehemently contended that the vacancies occurred on account of exclusion of the candidates failing in the medical test, from the final select list

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under Clause (e) of Rule 15, are to be filled by placement of the candidates from list-7 (of non-selected candidates) by bringing down the cut off marks.

42. With the above contentions, the submissions of learned Advocates appearing for the petitioners have been concluded. All other Advocates appearing for the petitioners in this bunch have either adopted the arguments noted above or reiterated the same. We, therefore, need not burden this judgement with their arguments separately.

43. Sri Manish Goyal learned Additional Advocate General on behalf of the State-respondents and the Selection Board, in reply to the arguments advanced by the learned counsels for the petitioners and to justify the process of normalization adopted by the Selection Board made the following submissions:-

44. The first submission is that the normalization is an universally approved standard method applicable in case of variable difficulty level of question papers and, therefore, application thereof was well within power of evaluation of the Selection Board. Placing the affidavit dated 12.04.2019 filed on behalf of the respondent Nos.2 & 3, it is contended that normalized marks “Y” were derived after applying the Equi Percentile formula on fraction of 100 and as such denote percentage and not percentile. The said formula was worked out by the agency which had conducted the examination and prepared result for the Selection Board. The experts/statistician of the company had applied Equi-percentile Method in co-ordination with and under the instructions of the Selection

Board. It is wrong to assert that normalized marks achieved by the Equi-percentile Method and percentile are one and the same thing. Ultimate value of “Y” being value out of '100' is percentage marks of the candidates. The equation of Equi Percentile formula re-written on fraction of 100 at page no.'10' (Annexure no.2 of the said affidavit) is noted hereunder:-

$$Y = \frac{Y1}{100} + \frac{\left(\frac{Y2}{100} - \frac{Y1}{100}\right)}{\left(\frac{N_{Y2}}{N_{bb}} \times 100 - \frac{N_{Y1}}{N_{bb}} \times 100\right)} \times \left(\frac{N_x}{N_{cb}} \times 100 - \frac{N_{Y1}}{N_{bb}} \times 100\right)$$

45. It is then contended that looking to the huge number of applicants more than 6 lacs, the Selection Board had decided to adopt Equi-percentile Method to normalize the marks of candidates who appeared in multiple batches with different sets of question papers as there was no other method to keep uniformity in the question papers. The scaling method is well accepted norm to adjudge the merit and suitability of the candidates in a public examination, in as much as, the very concept of examination presumes prescription of same benchmark for all candidates. The adoption of normalization process in order to streamline the whole selection in a fair and just manner as has been approved by the Supreme Court in **Mahinder Kumar⁷, Sunil Kumar & others Vs. Bihar Public Service Commission & others¹¹ & Disha Panchal & others Vs. Union of India the Secretary & other with connected matters¹².**

7. Mahinder Kumar & others Vs. High Court of Madhya Pradesh, 2013 (11) SCC 87

11 .2016 (2) SCC 495

12 .AIR 2018 SC 2824

46. Sri Goyal by reading different clauses of Rule 15 submits that the entire scheme of the Rules gives ample power to the Selection Board to evaluate the performance of the candidates for the purpose of preparation of the merit list. As the power of selection was given to the Selection Board, modalities thereof could be adopted by the Selection Board by moulding the procedure. Rule nowhere restricts the power of the Selection Board to decide eligibility as 50% criteria of marks, as latter part of Rule 15(b) cannot be read in isolation. Merit list of the qualifying candidates had to be prepared at the stage of second part of Rule 15 (b) itself; i.e., at the time of preparation of result of the written examination, as only the scores in the written examination were to be used for preparation of the select list contemplated as final list in Rule 15 (e) of the Recruitment Board, from amongst those candidates who had qualified all subsequent stages of selection.

47. The Recruitment Rule contains adequate flexibility and is not in rigid framework as is sought to be contended by Sri Shashi Nandan learned Senior Advocate and other counsels for the petitioners. It cannot be accepted that there was no scope at all for application of normalization method or the power of the Selection Board was limited in this respect. The action of the Selection Board in issuance of the notification dated 28.06.2017 intimating its decision to adopt normalization procedure was well within the four corners of the statutory rules.

48. It is vehemently argued that the Supreme Court in **Mahinder Kumar**⁷ upheld the normalization process with the

7. Mahinder Kumar & others Vs. High Court of Madhya Pradesh, 2013 (11) SCC 87

observation in paragraph no.'37.5' which states that the expression “evaluation” would take into its folds the minimum marks to be scored, the manner in which the evaluation is to be made and in the event of any requirement, to equalise the merits of the candidates in written examination and follow any appropriate procedure in consonance with law, in order to ultimately arrive at a fair process by which the candidate can be called for interview, based on the evaluation of the marks in the written examination.

49. Submission is that no-one has challenged the adoption or application of the said method. Only grievance is about the stage when it could be applied. On harmonious construction of Rule 15 (b) and 15 (e), the expression “50% marks” be read as “normalized marks”, relative interpretation is to be given to normalized marks being equal to the qualifying marks, more-so when normalized marks also denote percentage having been calculated on the scale of 100, as per the equalise formula adopted by the expert agency in consultation with the Selection Board. The expression “more than one day in different shifts with separate question papers” has to be read positively to hold that the Selection Board was empowered to adopt “process of evaluation” for assessment of performance of the candidates in the written examination as “the pattern of evaluation has to be in consonance with the pattern of the examination”.

50. To substantiate the plea of purposive and harmonious construction of the statutory Rule 15 (b) read with 15(e), reliance is placed upon the judgement of the Supreme Court in **Paradise Printers & others Vs. Union Territory of Chandigarh &**

other¹³; **D. Saibaba Vs. Bar Council of India & another**¹⁴; **Tirath Singh Vs. Bachittar Singh & others**¹⁵ & **Rakesh Wadhawan & others Vs. Jagdamba Industrial Corporation & others**¹⁶.

51. He vehemently urged that the reliance placed on the decision in **Sanjay Singh**² is misplaced in view of the Supreme Court decision in **Sunil Kumar & others**¹⁰ wherein it is clarified that **Sanjay Singh**² did not lay down any binding principle of law or directions or even guidelines with regard to the holding of public examination; evaluation of papers and declaration of results by the examining body. Emphasis was laid on the observations in paragraph No.'17' of **Sunil Kumar & others**¹⁰ to submit that holding of public examination is a complex task and the procedure for preparation of syllabus, evaluation of answer papers and preparation of result are the areas which have to be left to the expert bodies in the field and the scope of judicial review is limited to instances of arbitrary or malafide exercise of power. No such grounds have been taken by the petitioners in their efforts to challenge the select list. It is contended that the correctness of a statistical equation is within the domain of expert and normalized score achieved therefrom cannot be said to be invalid. (Reference **Rutvj Waze & another Vs. Union of India & others**¹⁷).

13 . AIR 1988 SC 354

14 .2003 (6) SCC 186

15 .AIR 1995 SC 830

16 .2002 (5) SCC 440

2.Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

10 . Sunil Kumar & others Vs. Bihar Public Service Commission & others, 2016 (2) SCC 495

2.Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

10 .Sunil Kumar & others Vs. Bihar Public Service Commission & others, 2016 (2) SCC 495

17 .2015 (SCC) online (MP) 3482

52. It is lastly contended that the decision of the Board to adopt normalization method for preparation of merit list was notified vide notification dated 28.06.2017 displayed on its website. The candidates being fully aware had participated in the selection without raising any dispute. Now having been declared unsuccessful, they cannot be permitted to challenge the procedure. Reliance is placed on the decisions of the Supreme Court in **K.H. Siraj Vs. High Court of Kerala & others¹⁸**; **D. Saroj Kumari Vs. R. Helen Thilakom & others¹⁹**; **Ashok Kumar & another Vs. State of U.P. & others²⁰** , **Union of India & others Vs. C. Girija & others²¹**.

53. Further that mere participation in different stages of selection does not vest any right in the candidates much less a legitimate expectation to be included in the final list. Reference **Union Public Service Commission Vs. S. Thiagarajan & others²²** & **Sanjay Kumar Pathak⁹**.

54. Any mistake in the process of the selection does not make the entire selection invalid. Reference **Man Singh Vs. Commissioner, Garhwal Mandal Pauri & others²³**.

55. In the end, it is contended that the selected candidates have not been put to notice in various writ petitions connected with this bunch. The relief as prayed by the petitioners, therefore, cannot be granted in absence of the affected persons being party.

18. 2006 (6) SCC 395

19. 2017 (9) SCC 478

20. 2017 (4) SCC 357

21. 2019 SCC Online SC 187

22. JT 2007 (8)

9. State of Madhya Pradesh Vs. Sanjay Kumar Pathak, 2008 (1) SCC 456

23. 2009 (11) SCC 448

56. Sri Sankalp Narain learned Advocate for the selected candidates, private-respondents, impleaded in the leading Writ Petition No.23733 of 2018 submits that to apply normalization process the notification was issued by the Selection Board and all the lists from 'list-1 to list-8' displayed at the website on 28.02.2019. Prior to the declaration of final result, a Writ Petition No. 16160 of 2018 was filed by some candidates with the prayer that the Selection Board be directed to adopt normalization method as notified and the said writ petition had been rendered infructuous with the declaration of the final result. It is contended that due to variance of question papers individual performance of the candidates varied in different batches. More than 6 lacs candidates had participated in the selection and unless and until normalization was adopted at the stage of Rule 15 (b), i.e; for preparation of eligibility list for calling the candidates for further process of selection, the entire object of adoption of the normalization process would be negated. The candidates who were required to answer tough question papers cannot be asked to compete with the candidates who answered an easy question paper. Variance in the question papers in different shifts had an impact on the overall assessment of performance of the candidates which was ruled out by the Selection Board by applying normalization at the stage of preparation of eligibility list under Rule 15(b).

57. The marks obtained in the written examination under both Rule 15(b) and (e) should be read as “normalized marks” as Rule 15 (e) itself contemplates for preparation of merit list on the basis of marks obtained by the candidates in the written examination. The stages of application of Equi-percentile

Method cannot be different for the language employed in Rule 15(b) and 15(e). The methodology of equalizing marks obtained in the written examination had to be adopted at the threshold.

58. In rejoinder, Sri Ashok Khare Senior learned Counsel has placed the judgement of the Supreme Court in **Umesh Chandra Shukla Vs. Union of India & others**²⁴, to state that it was held therein that the examining body cannot deviate from the Recruitment Rules while drawing the merit list so as to include ineligible candidates in the list of qualified candidates to appear at the viva-voce itself. With reference to **Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others**²⁵, it is contended that the Selection Board does not have inherent jurisdiction to lay down the norms for selection or to adopt its own standard in addition to what is prescribed under the Rules, as it would amount to legislating a rule of selection, which is beyond its power.

59. Placing **Motilal Padampat Sugar Mills Vs. State of U.P.**²⁶, it is contended that principle of waiver or estoppel would not be attracted in the instant case, in as much as, the basic requirement for applying the said principle is that the act of waiver must be an intentional act with knowledge. The persons who are said to have been fully informed of their right and have acted with full knowledge of such right can only be said to have intentionally abandoned it. It is contended that the Selection Board did not even adhere to the procedure notified by it in the notification dated 28.06.2017.

24. 1985 (3) SCC 721

25. AIR 1996 SC 352

26. 1979 (3) SCC 409

60. Placing the judgement of Supreme Court in **Veerendra Kumar Gautam & others Vs. Karuna Nidhan Upadhyay**²⁷ and the Division Bench of this Court in **Karuna Nidhan Upadhya & another Vs. State of U.P. & others**²⁸, it was asserted that estoppel and acquiescence by conduct on the principle of waiver have no role where the selection process is marred by glaring illegality in the procedure of selection.

61. Having noted the rival contentions, at length, the submissions of the learned counsel for the petitioners, in brief can be summarized as follows:-

(i) the Selection Board has been conferred limited power under the Recruitment Rules only to determine the procedure of written examination;

(ii) the Selection Board is not vested with the power and authority to determine the procedure of selection which has been prescribed by the rule making authority;

(iii) the eligibility condition of obtaining 50% marks by a candidate is a condition precedent mandated under the Rules, which is not subject to any alteration or substitution by normalized score;

(iv) normalization is a method of evaluation falling within the ambit of written examination and not an eligibility condition, normalized score at the best can be applied for preparing the select list in order of merit;

(v) the Selection Board by eliminating the qualified candidates having scored 50% marks in each subject by applying the normalized score exceeded its power and authority vested by the Recruitment Rules;

62. In rebuttal the submissions on behalf of the respondents, can be briefly summarized as follows:-

27. 2016 (14) SCC 18

28. 2012 (5) ADJ 182

(i) the Selection Board is vested with the power and authority to equalize the marks obtained by a candidate in the backdrop of written examinations held on multiple dates/multiple shifts with different papers;

(ii) the Selection Board has inherent power to adopt a fair and just procedure by equalizing the marks to place all the candidates on a level playing ground;

(iii) the Selection Board has power to equalize the eligibility marks (50%) prescribed under the Rules in an examination held in multiple shifts with different standard of papers;

(iv) candidates appearing in difficult papers would be in disadvantageous position as against candidates appearing in relatively easier question papers. The word 'marks' used in Sub-clause (b) and (e) of Rule 15 would mean and include normalized marks.

(v) petitioners after participating in the selection process cannot turn around to challenge the same.

63. Rival submissions fall for consideration.

64. The question that arises for our consideration is: (i) whether the Selection Board was within its power and authority in applying the normalized percentile score to determine the eligibility of the candidates or in the alternative whether the Selection Board transgressed its authority to alter/substitute the eligibility criteria (50% marks) mandated in Sub-clause (b) of Rule 15 by normalized score to non-suit, all such candidates from the recruitment process who obtained 50% marks and above; (ii) the scope of judicial review of the Standardized Equitable Percentile Method adopted by the Selection Board.

65. The Selection Board came to be constituted under the Recruitment Rules promulgated by the Governor in exercise of powers under the Police Act, 1861. The Recruitment Rules was notified on 19 August 2014, subsequently, amended on 3 December 2015, in supersession of all existing Rules and Orders, issued in this behalf, with a view to regulating the

selection, promotion, training, appointment, determination of seniority and confirmation etc. of Sub-Inspector and Inspector of the Civil Police in Uttar Pradesh Police Force.

66. The scheme for recruitment is provided under the Rule 15 of the Recruitment Rules. The relevant portion of Rule 15, for the purposes of the instant case is extracted:-

“Procedure for Direct Recruitment to the post of Sub-Inspector:-

15. (a) Application form and call letter:-

A candidate shall fill only one application Form. The Board will accept only online applications. The application of candidates, who fill more than one form, may be rejected by the Board. The Head of the Department, in consultation with the Board, shall fix an application fee for any recruitment. Detailed procedure of filling the Application Form and issuance of call letter shall be determined by the Board and will be displayed on its own website.

The Government may change the number of vacancies for any recruitment at any time before the first examination and may also cancel any recruitment at any time or stage of recruitment without assigning any reason therefor.

(b) Written examination

Candidates whose applications are found correct, shall be required to appear for written test of 400 marks. In this written examination, the Board will keep one objective type question paper of the following subjects:-

Subject	Maximum Marks
1. General Hindi	100 marks (objective type)
2. Basic Law/ Constitution	100 marks

/General Knowledge	(objective type)
3. Numerical and Mental Ability Test	100 marks (objective type)
4. Mental Aptitude Test/I.Q. Test/Reasoning	100 marks (objective type)

Candidates failing to obtain 50% marks in each of the above subjects shall not be eligible for recruitment. The detailed syllabus for the examination will be decided by Board and will be displayed on its own website. The Board will decide at its own level to conduct written examination on one date in a single shift or in more than one shift or on more than one date in different shifts with different question paper. Detailed procedure for written examination shall be determined by the Board and will be displayed on its own website.

(c) Scrutiny of documents and physical standard test:-

Candidates found successful in written examination under clause (b) shall be required to appear in Scrutiny of Documents and physical Standard Test. Keeping in view the total number of vacancies, the Board shall decide at its own level, the number of candidates on the basis of merit to be called for this test. Physical Standards for candidates are as follows:-

1. Minimum Physical Standards for male candidates are as follows:-

(a) Height:-

XXXXXXXX

(b) Chest:-

XXXXXXXX

2. Minimum Physical Standards for female candidates are as follows:-

(a) Height:-

XXXXXXX

(b) Weight:-

For conducting this examination a committee will be constituted by the Board in which a Deputy Collector nominated by the District Magistrate will be the Chairman and the Deputy Superintendent of Police nominated by the District Superintendent of Police will be the member, the other members of the committee shall be nominated by the District magistrate or the Superintendent of Police if requested by the Selection Board.

Detailed procedure for this examination shall be determined by the Board and will be displayed on its own website.

XXXXXXXXXXXXXXXXXX

(c) Physical Efficiency test:-

Candidates found successful in Scrutiny of Documents and Physical Standard Test as per clause (c) will be required to appear in Physical Efficiency Test, which will be of qualifying nature. XXXXXXXXXXXXXXXXXXXX Detailed procedure for Physical Efficiency Test shall be determined by Board and will be displayed on its own website. For conducting this exam a committee will be constituted by Board XXXXXXXXX

(e) Selection and final merit list:-

From amongst the candidates found successful in Physical Efficiency Test under clause (d), on the basis of marks obtained by each candidate in written examination under clause (b). Board shall prepare, as per the vacancies, a select list of each category of candidates, as per order of merit keeping in view of reservation policy and send it with recommendation to the Head of the Department subject to Medical test/character verification. No waiting list shall be prepared by the Board. List of all candidates with

marks obtained by each candidate shall be uploaded on its website by the Board. The Head of the Department shall after his approval forward the list sent by the Board to the Appointing Authority for further action.

Note:- xxxxxxxxx

(f) Medical Test:-

The candidates whose names are in the select list as per clause (e), will be required to appear for Medical Examination by the Appointing Authority. For conducting the medical examination, the Chief Medical Officer of the concerned district shall constitute a medical Board, which will have 03 doctors, who will conduct Medical Examination as per “Police Recruitment Medical Examination Forms” as prescribed and codified by the Head of Department in consultation with the Director General of Medical Health. Any candidate not satisfied by his Medical Examination, may file an appeal on the day of examination itself. xxxxxxxx The candidates found unsuccessful in Medical Examination shall be declared unfit by the Appointing Authority and such vacancies shall be carried forward for next selection”.

(emphasis supplied)

67. The Selection Board issued a notification/advertisement dated 17 June 2016, inviting applications from eligible male/female candidates for following posts:-

Sub-Inspector Civil Police (Male)	-	2,400
Platoon Commander (P.A.C.) (Male)	-	210
Fire Brigade Section Officer (Male)	-	97

Total		2,707

Sub-Inspector Civil Police (Female)	-	600

68. The advertisement specified that the selections would be made in terms of Recruitment Rules. The candidates were required to submit forms online and take the written examination online. The Selection Board by notification informed that the candidates were required to answer objective type 160 questions divide into four subjects/sections, each carrying 100 marks. Two hours time was prescribed for the examination, each question was of 2.5 marks and there was no provision for negative score. The relevant portion of notification is extracted:-

Sl. No.	Subject	Number of Questions	Maximum Marks	Time
1.	General Hindi	40	100	2.00
2.	Basic Law/Constitution	24	100	Composite
	General Knowledge	16		
3.	Numerical and Mental Eligibility Test	40	100	Time
4.	Mental Aptitude Test/I.Q. Test/Reasoning	40	100	
	Each Questions 2.50 Marks	Total Questions 160	Total Marks 400	2.00 Hours

69. The candidates were required to obtain 50% marks in each of the four subjects to qualify for the subsequent round of recruitment process i.e. document verification/physical efficiency test. In other words, a candidate failing to obtain 50% marks in any of the subjects would render him/her ineligible to participate in the further selection process.

70. The Selection Board vide notification dated 28 June 2017 disclosed that 6,30,926 application forms were received,

consequently, the Selection Board having due regard to the large number of candidates informed the candidates that the online examinations would be conducted on multiple dates in different shifts and in different question papers for each date/shift. Since the level of multiple question papers would vary, accordingly, Normalization based on “MAH-MBA/MMS CET 2015” applying Standardized Equi-Percentile method would be adopted.

71. Emphasis has been placed by the respondents upon paragraph nos. 4 and 9 of the notification to contend that in the backdrop of the Recruitment Rules and the advertisement, the Selection Board by notification dated 28 June 2017, primarily specified that Normalization would be adopted and the raw/actual marks obtained by the candidates would be equalized. In other words, candidates scoring less than 50% of normalized score would not be eligible. Paras 4 and 9 are extracted:

“4— उप निरीक्षक नागरिक पुलिस, प्लाटून कमाण्डर, पीएसी एवं अग्निशमन द्वितीय अधिकारी के पदों पर सीधी भर्ती ऑनलाइन लिखित परीक्षा में सफल अभ्यर्थियों के प्राप्तांको की श्रेष्ठता के आधार पर संचालित हो रही है। अभ्यर्थियों की संख्या के अनुसार ऑनलाइन लिखित परीक्षा एक से अधिक तिथियों में विभिन्न पालियों में विभिन्न प्रश्नपत्रों के साथ संचालित कराने की आवश्यकता उद्भूत हुई है। प्रत्येक पालियों के प्रश्न-पत्र अलग-अलग होंगे जिनमें समानता न होने की सम्भावना के दृष्टिगत विभिन्न पालियों में इन अलग-अलग प्रश्नपत्रों में अभ्यर्थियों द्वारा प्राप्त अंकों के प्रासामान्यीकरण (Normalization) “MAH-MBA/MMS CET 2015” में प्रयुक्त Standardized Equi-percentile method द्वारा किया जायेगा।

xxx xxx xxx xxx xxx

9— प्रत्येक विषय में 50 प्रतिशत अंक प्राप्त करने में विफल रहने वाले अभ्यर्थी भर्ती के लिए पात्र नहीं होंगे।”

“4. The direct recruitment to the posts of Sub Inspector Civil Police, Platoon Commander, PAC and Fire Officer II is being conducted on the basis of merit in terms of the marks obtained by the candidates successful in the online written examination. In view of the number of candidates, need has arisen for conducting online written examination on more than one date in different shifts with different sets of papers. Question papers of the different shifts shall be different, and keeping in view the possibility of them being not similar, the normalization of the marks obtained by the candidates in different question papers shall be done by the “MAH-MBA/MMS CET 2015” Standardized Equi-percentile method.

X X X X X X X X
9. *The candidates who fail to obtain 50 percent marks in each subject shall not be eligible for the recruitment.”*

(Translation by the Court)

72. Having due regard to the large number of applications received, the Selection Board vide notification dated 28 February 2019, informed the candidates that the written examination would be conducted at 17 districts, on and between 12 December 2017 to 23 December 2017.

73. Petitioners, herein, applied for the post of Sub-Inspector, they appeared and participated in the online written examination conducted by the Selection Board. All of them scored 50% marks in each subject, accordingly, were invited to participate in the next stage of selection process i.e. document verification/physical efficiency test. It is not disputed by the Selection Board that petitioners successfully qualified the physical efficiency test. The Selection Board, however, while declaring the final result (select list) have eliminated the petitioners on the ground that they failed to obtain 50% of the

Normalized score. Consequently, petitioners were declared ineligible failing to have obtain the cut of marks prescribed under Sub-clause (b) of the Rule 15 of the Recruitment Rules.

74. It is well settled that it is the rule-making authority to prescribe the mode of selection and minimum qualification for any recruitment. The Courts and tribunals can neither prescribe the qualifications nor entrench upon the powers of the executive so long as the rule prescribing the qualification are not violative of any provisions of the Constitution, statute and rules. It is, therefore, not open to the respondents to contend that '50% marks' should be read to include the normalized percentile score by the Court.

75. In **P.U. Joshi and Others vs. Accountant General, Ahmedabad and others**²⁹, it was held that Courts or Tribunals should restrain from directing the government/Selection Boards to have a particular method of recruitment or eligibility criterion, it pertains to the field of executive policy and is within the exclusive discretion and jurisdiction of the State.

"10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service includingcriteria.....pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to

29. (2003) 2 SCC 632

change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service from time to time, as the administrative exigencies may need or necessitate." (Refer: V.K. Sood vs. Secretary, Civil Aviation³⁰)”

76. Similarly in **Chandigarh Administration vs. Usha Kheterpal Waie and others³¹**, the Supreme Court observed thus:

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. [See J. Rangaswamy vs. Govt. of A.P.³² and P.U. Joshi vs. Accountant General³³.

77. The Recruitment Rules prescribes the mode of selection. Rule 8 mandates that a candidate for direct recruitment to the post of Sub-Inspector must possess a Bachelor degree from any University established by law in India. The procedure for direct recruitment to the post of Sub-Inspector is provided under Rule 15. Sub-clause (b) of Rule 15 provides that the candidates shall be required to appear in a written examination comprising of 400 marks. The candidates would have to answer objective type question in four subjects of 100 marks each. The Rule

30.AIR 1993 SC 2285

31. (2011) 9 SCC 645

32 (1990) 1 SCC 288

33 (2003) 2 SCC 632]

further mandates that a candidate 'failing to obtain 50% marks' in each of the subjects shall not be 'eligible for recruitment'.

78. On a plain reading of Sub-clause (b) of Rule 15, the rule making authority explicitly and clearly mandated that a candidate fulfilling the educational qualification would have to take the written examination, in the event of the candidate 'failing to obtain 50% marks' in each subject would not be 'eligible' to participate in the subsequent stages of recruitment. The latter part of Sub-clause (b) confers power upon the Selection Board to determine: (i) detail syllabus for the examination; (ii) to conduct written examination on one date in single shift or in more than one shift or on more than one date in different shifts with different question papers; (iii) to determine the procedure for written examination. Sub-clause (c) of Rule 15 provides that candidates found "successful in written examination under sub-clause (b)" shall be required to appear in scrutiny of documents and physical efficiency test.

79. On conjoint reading of Sub-clause (b), in particular, the first part with sub-clause (c), it is evidently clear that the Selection Board has not been conferred power to dilute, alter or prescribe the eligibility of a candidate by substituting the mandated '50% marks' by the 'normalized score' to qualify the candidates for subsequent stages of selection. The rule making authority upon prescribing the eligibility criteria, conferred limited power upon the Selection Board to determine the detailed procedure of written examination. The procedure of selection was prescribed by the rule making authority under Rule 15, however, the Selection Board was conferred limited

power to determine the procedure of written examination. In the facts of the instant case, the Selection Board exceeded its authority and power by applying the normalized score and not the raw marks to determine the eligibility of the candidates while preparing the select list. The petitioners, herein, qualified the written examination by scoring '50% marks' in each subject, thereafter, were invited by the Selection Board to participate in the subsequent stages of recruitment i.e. document verification and physical efficiency test, which is of a qualifying nature, no marks are allotted. The Selection Board, however, eliminated the petitioners by applying the normalized score in order to determine the eligibility qualifying marks in contradiction to that mandated under the Rule in gross violation of Sub-clause (b) of Rule 15. The conduct of the Selection Board tantamounts to re-writing/amending the mandatory rule, thereby, vitiating the select list.

80. In **Mahinder Kumar**⁷, the issue before the Supreme Court was as to whether the High Court was empowered to formulate its own procedure in the matter of selection for the post of Madhya Pradesh Judicial Services. The ancillary question was, as to whether, the merit list could have been drawn solely based on the written examination marks and interview marks put together, without adopting the normalization process as was done by the High Court, which was not mentioned in the advertisement.

81. Rule 7 of the Madhya Pradesh Uchchar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994, which conferred

7. Mahinder Kumar & others Vs. High Court of Madhya Pradesh, 2013 (11) SCC 87

power upon the High Court to specify from time to time “the procedure of selection for direct recruitment and promotion” was considered. In view of the rule, as well as, the prescription contained in the advertisement the High Court resolved that based on the evaluation of written examination papers made by the District Judges, a minimum 35% of marks in respect of SC/ST candidates and 40% of marks in respect of general candidates was required in the first and second papers to qualify for viva voce. Going by the said resolution the evaluation made by the District Judges was to be kept as the basis for ascertaining the marks scored by the candidate, both in reserved category, as well as, in general category in order to become eligible for attending the interview.

82. As per the second resolution, the Selection Committee for the purpose of determining merit of the candidates finally, felt necessary to evaluate the papers of those candidates who were short listed for the purpose of interview by way of common evaluation in which process the marks scored by the candidates in the written examination, would be normalized. The apparent purposes was, having regard to the different yardsticks applied by the District Judge evaluators, to make a further evaluation for the purpose of normalization in order to finalise the selection. After normalization was done, the marks awarded by the common evaluators and marks scored in the viva-voce would be added for the purposes of determination of merit position. In other words, the normalized marks were not the basis for determining the eligibility of the candidates to

participate in the viva voce, but were applied for the purpose of determining the *inter-se* merit position of the candidates.

83. The Court having regard to the statutory prescription and the conditions stipulated in the advertisement held that the High Court was fully empowered on administrative side, to find a fair method by which the normalization of the marks could be worked out.

“40. We have, therefore, no hesitation in holding that by virtue of Rule 7 and para 9(i), (iii), (iv) and (vi), there was enough prescription empowering the High Court to follow its own procedure in evaluating the answer sheets initially by the District Judges and subsequently by common evaluators, before holding the interview. We, therefore, reject the said submission made on behalf of the Petitioners in attacking the procedure followed by the High Court in the matter of holding the selection....”

84. In the facts of the case at hand, the primary issue is as to whether the Selection Board was empowered to adopt the normalization equi-percentile method in scaling the raw marks obtained by the candidates, and thereafter, applying the normalized score to determine the eligibility by substituting/altering the '50% marks' prescribed in Sub-clause (b) of Rule 15 to non-suit the petitioners from the select list.

85. It is urged by the learned Additional Advocate General and the learned counsel for the private respondents/selected candidates that the word 'marks' employed in Sub-clause (b) and (e) of Rule 15 would mean and include the 'normalized score' and not the raw marks obtained by the candidates in the written examination held in multiple shifts. The Selection Board in exercise of its inherent power was within its jurisdiction and

authority to scale (normalize) the raw marks obtained by the candidates in the written examinations having due regard to the variance in the level of question papers. A just and fair selection would justify the approach of the Selection Board so as to place all the candidates on a level playing field before determining their eligibility.

86. The learned counsel for the respondent placed heavy reliance, in particular, on para 4 and para 9 of the notification dated 28 June 2017 to urge that the Selection Board had spelled out the rules and method of the game viz. written examination. The normalization method as per the notification was to be applied scaling the raw marks. The notification provides that having due regard to the written examination being held in multiple shifts normalization method would be adopted. Para 9 would have to be read with para 4 conjointly to mean that normalized percentile score would determine the eligibility criterion and not 50% marks. The submission on face value appears attractive but on closer examination of the notification, lacks merit being in gross violation of the statutory provisions.

87. We have carefully gone through the notification with the assistance of the learned counsel for the parties and find no such prescription as is being suggested by the respondents. The conduct of the Selection Board in inviting all the candidates who scored 50% raw marks to take the subsequent stage of selection, clearly reflects that the Selection Board was not clear whether to apply 50% marks or 50% percentile score for determining the eligibility of the candidates to qualify for the

subsequent stage of selection. The petitioners herein obtained 50% marks and were invited to participate in the selection process. Even taking the case of the respondents that the notification did provide that the normalised percentile score would determine the eligibility criteria which we do not find on reading the notification. Then in that event, as held by us, the Selection Board would exceed its power and authority conferred under the Recruitment Rules, encroaching upon the domain of the rule making authority by amending/rewriting the mandatory prescription of minimum 50% marks. To that extend the notification would be in teeth of the statutory provision [Rule 15(b)] and would have to be struck down. In our opinion the notifications of the Selection Board are in consonance with Recruitment Rules.

88. On reading Sub-clause (b) and (e) of Rule 15 the word “marks” used therein have different connotation. The phrase ‘failing to obtain 50% marks’ employed by the rule making authority in Sub-clause (b) prescribes the eligibility criterion which is mandatory qualification. In other words, a candidate failing to obtain the prescribed eligibility marks gets excluded from the recruitment process automatically. Whereas, the phrase “marks obtained by each candidates” employed in Sub-clause (e) of Rule 15, would not mean and include the marks obtained by the candidate for determining his/her eligibility, but would take within its fold the 'normalized score' for preparing the select list in order of merit after equalising the marks obtained by the candidates in Sub-clause (b). Sub-clause (b) refers to marks prescribed by the rule for eligibility

purpose, whereas, Sub-clause (e) refers to marks/score obtained upon evaluation upon normalization of the marks referred to in Sub-clause (b) for the purpose of making the select list in the order of merit. Such an approach in drawing the select list in an examination held in multiple shifts would be just and fair. The Selection Board is within its powers in adopting a method of evaluation of written examination papers in the backdrop of multiple shifts/different paper exams to arrive at a process to prepare the select list in order of merit.

89. The submission of Sri Shashi Nandan, learned senior counsel that the Selection Board has not been conferred power to equalize the raw marks obtained by the candidates in the written examination at any stage of recruitment process, cannot be accepted. On harmonious interpretation of Sub-clause (b) read with Sub-clause (e) it is unambiguous and clear that Selection Board has been vested with the power and authority to determine the procedure of written examination which would include the process of evaluation. After evaluation of the papers, the Selection Board has to prepare the select list in order of merit. The marks, in a multiple shift examination, would include the 'normalized score' obtained by applying the method of scaling, be it moderation or normalization, as the case may be, in order to draw the inter-se merit of the candidates. In case the submission of the learned Senior Counsel is accepted it would render Sub-clause (e) and the power of the Selection Board in determining the procedure of written examination nugatory. The Selection Board, however, is not vested to determine the eligibility of a candidate which has

been prescribed by the rule making authority i.e. 50% marks. Any alteration or substitution of 50% marks would be negation of Sub-clause (b) of Rule 15.

90. In **Sajnay Singh²**, the Court was of the view that the expression “marks awarded” or “marks obtained in written examination” employed in the rule would not only refer to the actual marks awarded by the examiner. The process of evaluation does not end on marks being awarded by an examiner but would imply that the marks awarded by the examiner can be altered by moderation. Para '20' is extracted:

*“20. We cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refers only to the actual marks awarded by the examiner. 'Valuation' is a process which does not end on marks being awarded by an Examiner. Award of marks by the Examiner is only one stage of the process of valuation. **Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate.** In fact Rule 20(3) specifically refers to the 'marks finally awarded to each candidate in the written examination', thereby implying that the marks awarded by the examiner can be altered by moderation.”*

(emphasis supplied)

91. Once the written examination part is fulfilled, the Examining Body/ Selection Board has to formulate a procedure by which the answer papers are to be evaluated in order to ascertain the marks scored by the respective candidates. The expression 'evaluation' takes within its fold the manner in

2.Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

which the evaluation is to be made, to equalize the merits of the candidates in the written examination. Paragraph '37.5' of **Sanjay Singh²** is extracted:

“37.5. The expression 'evaluation' would, therefore, take into its fold the minimum marks to be scored, the manner in which the evaluation is to be made and in the event of any requirement, to equalize the merits of the candidate in the written examination and follow any appropriate procedure in consonance with law, in order to ultimately arrive at a fair process by which the candidate can be called for interview, based on the evaluation of the marks in the written examination.”

92. The Selection Board, in the instant case, however, erred in applying the normalized score in violation of the mandatory rule [Rule 15(b)] to determine the eligibility of a candidate to take the subsequent round of selection, instead of confining the normalized score to determine the *inter-se* merit of the candidates.

93. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under Article 309. It is basically the function of the rule making authority to provide the qualification for selection. In the instant case, the rule making authority conferred limited power upon the Selection Board to determine the ‘procedure of written examination’, which would include evaluation of papers and to draw the select list in order to merit. The Selection Board has

2.Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

not been conferred power by the rule making authority to prescribe the criteria/eligibility (minimum marks) for selection, rather, the procedure of selection has been codified by the rule making authority which could not have been breached/alterd by the Selection Board while exercising its limited power of determining the procedure of written examination.

94. In **Umesh Chandra Shukla**²³, the challenge was with regard to the validity of the candidates relating to the competitive examination held by the High Court of Delhi for the purpose of recruiting candidates for the posts in the Delhi Judicial Service. The Delhi Judicial Service Rules, 1970, *inter alia*, mandated that only such candidates would be called for viva voce who have obtained 50% in each written paper and 60 per cent in the aggregate except in the case of candidates belonging to the Scheduled Castes/Tribes, in whose case the qualifying marks would be 40% in each written paper and 50% in the aggregate.

95. The issue before the Supreme Court was whether it was open to the High Court to include in the list prepared under the rules names of the candidates who had not secured the minimum marks prescribed in the written examination for being eligible to appear in the viva-voce test. In other words, the Supreme Court was considering as to whether the High Court, having regard to the rules, had the power to add two marks to the marks obtained in each paper by way of moderation to make a candidate eligible. The Court in para-'13' held as follows:

23. Umesh Chandra Shukla Vs. Union of India & others reported in 1985 (3) SCC 721

“13. The question for decision is whether such a resolution can be passed by the High Court which is entrusted with the duty of conducting the examination. The High Court had not found any defect in the question papers or any irregularities in the valuation of the answer books. It may be that some candidates had obtained high marks in some papers and by reason of their not obtaining the required marks in the other papers or 60% and above in the aggregate they may not have become qualified for the viva voce test. In our opinion this alone would not be sufficient to add any marks by way of moderation. It is relevant to note the mandatory character of clause (6) in the Appendix to the Rules which says only such candidates will be called for viva voce who have obtained 50% marks in each written paper and 60% in the aggregate..... Addition of any marks by way of moderation to the marks obtained in any written paper or to the aggregate of the marks in order to make a candidate eligible to appear in the viva voce test would indirectly amount to an amendment of clause (6) of the Appendix.”

(emphasis supplied)

96. Further, the Court held that moderation had an adverse effect on the candidates who otherwise scored the required qualifying marks in the examination but were declared ineligible for viva-voce test.

“The candidates who appear at the examination under the Delhi Judicial Service Rules acquire a right immediately after their names are included in the list prepared under rule 16 of the Rules which limits the scope of competition and that right cannot be defeated by enlarging the said list by inclusion of certain other candidates who were otherwise ineligible, by adding extra marks by way of moderation.

....

Exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public

appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules. We are of the opinion that the list prepared by the High Court after adding the moderation marks is liable to be struck down.” (para 13)

97. The decision was followed in **Durgacharan Misra v. State of Orrisa and others**³⁴ and the limitation of the Selection Committee was pointed out that it had no jurisdiction to prescribe the “minimum marks which a candidate had to secure at the viva-voce test.” The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.

98. In **Ramachandra Iyer and others vs. Union of India and others**³⁵, Supreme Court observed that the Selection Board had no power to add to the required qualification. The relevant para is extracted:

“By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm.”

34. 1987 AIR 2267

35. 1984 SCC (2) 141

99. It may be pointed out that rule making function under Article 309 is legislative and not executive as was laid down by the Supreme Court in *B.S. Yadav and others v. State of Haryana and others*³⁶. For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.

100. Similarly, in *Umesh Chandra Shukla*²³, it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules.

101. The precedents cited hereinabove have been noticed and followed by the Supreme Court in *Krushna Chandra Sahu*²⁴

102. In view thereof, it follows that the power to make rules regulating the conditions of service of persons appointed or seeking appointment on government posts is available to the Governor of the State under the Proviso to Article 309 or under a statute and it is in exercise of this power the Recruitment Rules, was made. Where the statutory Rules, in a given case, is not made either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government, the Central Government under Article 73 and the State Government under Article 162, to issue executive instructions. Further, if the Rules have been made but are silent on any subject or point in issue, the omission can be supplied and the rules can be

36. 1981 AIR 561

23. Umesh Chandra Shukla Vs. Union of India & others reported in 1985 (3) SCC 721

24. Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others reported in AIR 1996 SC 352

supplemented by executive instructions. But where the rules prescribe the procedure of selection by categorically providing the qualification and the eligibility criteria then in that event the examining Selection Board lacks inherent jurisdiction to entrench upon the eligibility criteria. (See: **Sant Ram v. State of Rajasthan**³⁷.)

103. We are also fortified in our conclusion while tracing the evolution of the Rules pertaining to the recruitment of Sub Inspector. The Recruitment Rules came to be amended on 3 December 2015. The selections have been made pursuant to the amended Rules. Sub clause (b) of Rule 15 provides that “candidates failing to obtain 50% marks in each of the subject shall not be eligible for recruitment”. The same phrase was employed in Sub-clause (e) of Rule 15 that came to be amended. In other words, eligibility criteria was not altered or changed by rule making authority. The only change brought about by the amendment was that the procedure for written examination was entrusted upon the Selection Board exclusively by omitting Appendix-3 which prescribed the procedure of written examination. We are informed that the superseded Rule (prior to enactment of Recruitment Rules) governing the appointment and selection of Sub-Inspector, viz., “The Uttar Pradesh Sub-Inspector And Inspector (Civil Police) Service Rules, 2008”, Rule 15(f) provided that the candidate ‘who fails to obtain minimum 50% marks’ in each subject shall not be eligible for recruitment. It is, thus, evident that the rule making authority was fully conscious that the candidates are required to score minimum marks (50%), failing which, they

³⁷ . AIR 1967 SC 1910

shall not be eligible for recruitment. The eligibility criteria was retained while promulgating Recruitment Rules. The Selection Board was not conferred the power and jurisdiction by the rule making authority to alter or amend the eligibility criteria. The Selection Board by the amended rules was vested with exclusive, but limited power to determine the procedure of the written examination, which includes evaluation of papers by adopting method of scaling to equalise the different levels of papers in examination held in multiple shifts and, accordingly, draw the select list. We accordingly find merit in the contention of the petitioners that Selection Board exceeded its authority by disqualifying the petitioners.

104. Now coming to the ancillary issue whether the Selection Board was justified in scaling the raw marks. Whether percentile and percentage are the same concepts. The scope of judicial review of the normalisation method adopted by the Selection Board.

105. Where the number of candidates taking the examinations are limited, it is to be assumed that there will be uniformity in the evaluation, but where large number of candidates take the examination, in different shifts and in different papers, it therefore, becomes necessary to evaluate the question papers by evolving a procedure to ensure uniformity in the level of question papers. The examining bodies have been adopting different methods, and most examining bodies/Selection Boards appear to take the view that moderation is the appropriate method to bring about uniformity in evaluation where several examiners manually evaluate the answer scripts of descriptive

(conventional) type question papers in regard to same subjects. Scaling is resorted to where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them. Scaling places the scores from different tests or test forms on to a common scale. Normalization is adopted to equalize objective question papers held in different shifts. There are, thus, different methods of statistical scoring. Standard Score method, Linear Standard Score method, Normalized Equi-Percentile method are some of the recognized methods for scaling.

106. The concept of normalisation of marks was introduced to equalise the level of difficulty of question paper of government exams, conducted in various shifts, in different papers. For example, a student who has appeared in first session or shift of the written exam might have scored low marks. However, the same student would have scored more or even higher marks if he had appeared in any of the latter shifts of the same exam. To eradicate this discrepancy the exam conducting Selection Boards have introduced the concept of normalisation of marks in exams to equalize the different levels of objective question papers held in multishifts in same subjects, based on common syllabus.

107. Normalisation of marks, therefore, means increasing and/or decreasing the marks obtained by students in different timing sessions (shifts) to a certain number. In statistics, the term normalization refers to the scaling down of the data set such that the normalized data falls in the range between 0 and

1. Such normalization techniques help in comparing corresponding normalized values from two or more different data sets in a way that it eliminates the effects of the variation in the scale of the data sets i.e. a data set with large values can be easily compared with a data set of smaller values. The normalized score/percentile is obtained by applying a formula.

108. Percentiles, however, should not be confused with percentage. The latter is used to express fractions of a whole, while percentiles are the values below which a certain percentage of the data in a data set is found. In practical terms, there is a significant difference between the two. The percentage score reflects how well the student did in the exam itself, the percentile score reflects how well he did in comparison to other students. Percentile rank would, therefore, mean percentage of scores that fall at or below a given score. Usually written to the nearest whole percent and are divided into 100 equally sized groups. The lowest score is at the first percentile and the highest score is at the 99th percentile.

109. It is relevant to place on record that none of the aggrieved candidates have made any allegation of *mala fides* or lack of *bona fides*, as against the Selection Board or its members or for that matter in the manner in which subsequent stages of selection were held by the Committee or with regard to the computation of normalized score arrived at by applying the Standardized Equi-Percentile method. In the absence of challenge to the normalization method and the scores obtained by the Selection Board in scaling the marks of the candidates scored in written examination, we take it that the normalisation

formula and the normalized percentile score worked out by the Selection Board is just and fair.

110. Shri Tarun Agrawal, learned counsel for the petitioners on the strength of hypothetical statistics/data attempted to persuade the Court to examine whether the normalisation adopted by the Selection Board would lead to absurd results. The learned counsels for the respondents on the other hand attempted to show on hypothetical data that the method adopted by the Selection Board was just and fair. On specific query, they, however, submit that hard (actual) data pertaining to the written examination has not been relied upon by either of the parties nor it is available on the record. In absence of pleadings and hard data to that effect we decline to examine the methodology of evaluation on hypothetical statistical data. Academic questions based on hypothesis cannot be gone into to determine the issue *inter se* parties.

111. We would, however, examine briefly the precedents where the Court interfered or declined to interfere with results of written examination adopting methods to equalise the raw marks.

112. In **Sanjay Singh²**, the Supreme Court was considering the validity of the selections held for appointment in the U.P. Judicial Service on the basis of a competitive examination in which the Rules prescribed five papers, all of which were compulsory for all the candidates. The U.P. Public Service Commission had scaled the marks awarded to the candidates by

².Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

following the scaling method. The Court, on examining the Judicial Service Rules which governed the selection did not permit scaling down the marks obtained by the candidates. A further question with regard to the correctness of the adoption of scaling method to an examination where the papers were compulsory and common to all the candidates was also considered. In doing so the Court observed as follows:-

“24. The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is, creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalized equipercentile method are some of the recognized methods for scaling.”

113. It was furthermore observed:

“25...Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognized method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination.”

114. The Court came to the conclusion that the U.P. Public Service Commission had not ensured nor considered the preconditions of the scaling method and the consequential

effects in the declaration of the results which were found to be unacceptable. The Supreme Court held that the adoption of the scaling method in the given facts had resulted in treating unequals as equal.

115. In **Sunil Kumar**¹⁰, the question before the Supreme Court was whether **Sanjay Singh**² laid down any principle or direction regarding the methodology that has to be adopted by the Commission while assessing the answer scripts of the candidates in a public examination and specially whether any such principle or direction has been laid down governing public examinations involving different subjects in which the candidates are to be tested. Closely connected with the aforesaid question was the extent of the power of judicial review to scrutinize the decisions taken by another constitutional authority i.e. the Public Service Commission in the facts of the case.

116. The appellants therein had contended that **Sanjay Singh**² categorically held that the system of moderation is applicable only to cases where the candidates take a common examination i.e. where there are no optional subjects and all the papers in which the candidates appear are the same. In a situation where the subjects are different, according to the appellants, it has been held in **Sanjay Singh**² that it is the scaling method has to be applied and in such situations the system of moderation

10 .Sunil Kumar & others Vs. Bihar Public Service Commission & others, 2016 (2) SCC 495

2. Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

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would not be relevant. The Court rejected the contention of the appellants that in **Sanjay Singh**² there was a declaration of law of precedent that in an examination where the papers are common, the system of moderation must be applied and to an examination when the papers and subjects are different, scaling is the only available option. Paragraph 19 is extracted:

*“19. The entirety of the discussion and conclusions in Sanjay Singh (supra) was with regard to the question of the suitability of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context. But did Sanjay Singh (supra) lay down any binding and inflexible requirement of law with regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult to understand as to how this Court in Sanjay Singh (supra) could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. **What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable results. Sanjay Singh (supra) did not decide that to such an examination i.e. where the papers are common the system of moderation must be applied and to an examination where the papers/subjects are different, scaling is the only available option. We are unable to find any declaration of law or precedent or principle in Sanjay Singh (supra) to the above effect as has been***

2.Sanjay Singh and another. Vs. U.P. Public Service Commission, Allahabad and another, 2007 (3) SCC 720

canvassed before us on behalf of the appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus.”

(emphasis supplied)

117. The Supreme Court further observed that the requirement of adoption of moderation, scaling or normalization by their very nature should be left to the expert bodies in the field, including, Public Service Commission and the scope of judicial review is limited to instances of arbitrary or *mala fide* exercise of power or being against statutory provision.

“20. We cannot understand the law to be imposing the requirement of adoption of moderation to a particular kind of examination and scaling to others. Both are, at best, opinions, exercise of which requires an indepth consideration of questions that are more suitable for the experts in the field. Holding of public examinations involving wide and varied subjects/disciplines is a complex task which defies an instant solution by adoption of any singular process or by a strait jacket formula. Not only examiner variations and variation in award of marks in different subjects are issues to be answered, there are several other questions that also may require to be dealt with. Variation in the strictness of the questions set in a multi-disciplinary examination format is one such fine issue that was coincidentally noticed in Sanjay Singh (supra). A conscious choice of a discipline or a subject by a candidate at the time of his entry to the University thereby restricting his choice of papers in a public examination; the standards of inter subject evaluation of answer papers and issuance of appropriate directions to evaluators in different subjects are all relevant areas of consideration. All such questions and, may be, several others not identified herein are required to be considered, which questions, by their very nature should be left to

the expert bodies in the field, including, the Public Service Commissions. The fact that such bodies including the Commissions have erred or have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances of arbitrary or malafide exercise of power.”

(emphasis supplied)

118. The Supreme Court declined to interfere with the results and the decision of the Bihar Public Service Commission in adopting the scaling method to the examination.

119. It therefore, follows that the appropriate method to bring about uniformity in evaluation is left to the examining authorities. The method adopted by the examining authority/Selection Board is not subject to judicial review until it is shown that the exercise of the authority was mala fide, violative of the statutory provision or the method had resulted in absurd results rendering the entire selection manifestly arbitrary. In the facts of the instant case no allegation of mala fide has been made against the Selection Board or its members or with regard to the procedure of selection. It has not been shown by either of the parties based on hard statistics that normalisation had resulted in manifest, arbitrary or fair result.

120. The learned Additional Advocate General finally has submitted that it is well within the domain of the Selection Board under Sub-clause (b) of Rule 15 of the Recruitment Rules, to determine the procedure for written examination. It cannot be objected by the petitioners after having appeared in the examination knowing fully well about the procedure of the

written examination notified by the Selection Board on 28 June 2017. In support of his above contention, reliance has been placed on the Supreme Court judgment in *D. Sarojakumari vs. R. Helen Thilakom and others*³⁸.

121. In reply to the contention, learned counsels for the petitioners would urge that when a candidate appears at an examination without objection and is subsequently found to be unsuccessful, a challenge to the process is precluded, but in the facts of the present case, the petitioners are not assailing the process of selection nor the notification of the Selection Board prescribing the procedure, but are respectfully praying that the process of selection mandatorily prescribed under the Recruitment Rules, be followed and applied strictly. It is further submitted that there may be no estoppel against the statute or Rules and if the process of selection is in derogation of the Rules, the same could have been assailed by the candidates who have been declared unsuccessful. The petitioners, herein, qualified the written examination and all subsequent stages of selection, but have been excluded from the select list. Reliance has been placed on the *Raj Kumar and others vs. Shakti Raj And others*³⁹, referring para-16 which reads thus:-

"16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rule and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the posts were taken out from the

38. 2017 (9) SCC 478

39.1997 (9) SCC 527

purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal vs. State of J & K [(1995) 3 SCC 486] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection. But in this case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules & so also in the method of selection and exercise of the power in taking out from the purview of the Selection Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action take by the Government are not correct in law."

(emphasis supplied)

122. On specific query, learned Additional Advocate General submits that all the petitioners herein who obtained 50% minimum marks (qualifying marks) were allowed to participate in the subsequent stages of selection i.e. physical standard test, document verification and physical efficiency test. It is, therefore, urged that the Selection Board would not be required to undertake any fresh exercise of selection/recruitment in preparation of the select list in order to merit.

123. Having due regard to the facts and circumstances of the case and the provisions mandated by the Recruitment Rules, the writ petition is **allowed** by passing the following orders:

i) the select list dated 28 February, 2019 is set aside and quashed;

ii) the candidates having failed to obtain 50% marks (raw marks) in each subject are declared ineligible for recruitment/selection;

iii) the Selection Board shall prepare the select list in order to merit on normalized score, derived by Standardized Equi-Percentile Method;

iv) Selection Board to comply the order within six weeks from the date of filing of certified copy of this order and the selected candidates shall be sent for training.

124. No order as to costs.

Order Date: 11.09.2019
Himanshu/Mukesh/Shashi/Atul

(Sunita Agarwal,J.)

(Suneet Kumar,J.)