IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17640-2021 (O&M)

Date of decision: 18.03.2025

Rajesh Gupta ....Petitioner

V/s

Punjab and Haryana High Court and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate
Ms. Preet Arora, Advocate and
Ms. Tanya Sehgal, Advocate for respondent Nos.1 to 3.

Mr. Puneet Bali, Senior Advocate with
Mr. Aakash Sharma, Advocate for respondent No.5.

None for respondent No.6.

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SUMEET GOEL, JUDGE

1. The petition in hand, in essence, assails the selection process and consequential appointment order dated 21.12.2018 (*hereinafter referred to as the 'impugned appointment order'*) pertaining to the Haryana Superior Judicial Services for the post of Additional District & Sessions Judgeinsofar as it declares Respondent Nos.5 and 6 as successful candidates while excluding the petitioner from the list of selected appointees.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

(i) Aspiring to be a judicial officer, the petitioner applied in response to the advertisement dated 16.7.2015 (*hereinafter to be referred to as 'advertisement in question'*) issued by the Registrar (Recruitment),

Punjab and Haryana High Court (respondent No.2 herein) for appointment to Haryana Superior Judicial Service, by way of direct recruitment, through a competitive examination. The *advertisement in question* has been issued in terms of Rule 6(1)(c) of the Haryana Superior Judicial Service Rules, 2007 (*hereinafter referred to as '2007 Rules'*), relevant whereof reads as under:

"HARYANA GOVERNMENT
PERSONNEL DEPARTMENT
Notification
The 10th January, 2007

No. G. S. R, 1/Const./Art.309/2007:- *In exercise of the powers conferred by article 233 read with the proviso to article 309 of the Constitution of India, the Governor of Haryana in consultation with High Court of Punjab and Haryana hereby makes the following rules regulating the recruitment and conditions of service of persons appointed to the Haryana Superior Judicial Service, namely:-*

1. *xxx* *xxx* *xxx*

2. *xxx* *xxx* *xxx*

3. *xxx* *xxx* *xxx*

4. *xxx* *xxx* *xxx*

5. *xxx* *xxx* *xxx*

Regular recruitment.

6. *(1) Recruitment to the Service shall be made:-*

(a) *xxx* *xxx* *xxx*

(b) *xxx* *xxx* *xxx*

(c) 25 percent of the posts shall be filled by directed recruitment from amongst the eligible advocates on the basis of the written and viva voce test, conducted by the High Court.

xxx *xxx* *xxx*

Procedure for direct recruitment.

7. *The High Court shall before making recommendations to the Governor invite applications by advertisement and may require the applicants to give such particulars as it may specify and may further hold written examination and viva voce test for recruitment in terms of rule 6(c) above and the maximum marks shall be in the following manner:-*

(i) Written Test 750 marks

(ii) Viva Voce 250 marks

xxx *xxx* *xxx*

xxx *xxx* *xxx*

xxx *xxx* *xxx"*

(ii) Clause 15 of the *advertisement in question* (*hereinafter to be referred to as 'Clause 15'*) reads thus:

> *"15. Candidates securing 40% or more marks in each paper will be called for viva –voce. But, merely securing 40% or more marks would not confer any right to be called for viva-voce. The High Court shall have the discretion to shortlist the candidates equal to three times the number of vacancies for viva-voce. Further, no candidates will be considered to have successfully qualified the Haryana Superior Judicial Services Examination unless he/she obtains 50% marks (read 45% marks for the SC/ST/BC category candidates) in the aggregate out of the total marks fixed for the written test and viva voce. It is also made clear that no candidate will get the right to be appointed even if he/she obtains 50% marks (read 45% marks for the SC/ST/BC category candidates) in the aggregate of the written test and viva voce. However, candidates will be appointed strictly in the order of merit (category wise) in which they are placed after the result of written test and viva voce."*

(iii) Pursuant to the *advertisement in question*, the Haryana Superior Judicial Examination-2017 (*hereinafter referred to as 'Examination-2017'*) was conducted.

(iv) The conditional/provisional result of the *Examination-2017* was declared through a notification dated 31.07.2017 (*hereinafter referred to as the 'Provisional Result'*), wherein the shortlisted candidates were to appear for the viva-voce, contingent upon successful resolution of their discrepancies/objections noted against their respective Roll Numbers, in the*provisional result*.

(v) In a meeting convened on 06.09.2017, respondent No. 3upon an examination of the documents/explanations submitted in response to the discrepancies/objections highlighted in the *Provisional Result*, resolved to

provisionally permit six candidates, including the petitioner as well as Respondent Nos. 5 and 6, to participate in the viva-voce.

(vi) By virtue of notification dated 12.09.2017, the Registrar (Recruitment) of Punjab and Haryana High Court, prescribed the schedule for the conduct of the viva-voce for the aforesaid six candidates, fixing the same to be held on 27.09.2017.

(vii) The final result, comprising of both the written examination and the viva-voce, was declared on 16.11.2018, wherein the petitioner is admittedly stated to have obtained a total of 467 marks out of 1000, which fell short of the prescribed minimum qualifying threshold of 500 marks as stipulated in the *advertisement in question*. Consequent to the declaration of the final result, the appointing authority, through the *impugned appointment order*, directed for the appointment of the selected candidates, including Respondent Nos.5 and 6, to the post of Additional District & Sessions Judge.

(viii) The petitioner (herein) being aggrieved of his being unsuccessful in the selection process has thus preferred the present writ petition. It is in this factual backdrop, that the present writ petition has come up for receiving consideration at the hands of this Court.

3. Learned counsel appearing on behalf of the petitioner has argued that the stipulation mandating minimum qualifying marks, as enshrined in *Clause 15,*is illegal and it ought to be struck downon two counts. *Firstly,* it stands in stark contravention of the constitutional edict embodied in Article 309 of the Constitution of India and the rules framed thereunder, namely *2007 Rules,* which do not envisage or prescribe any threshold of minimum marks being a prerequisite for eligibility *nay* final selection. Consequently, the unilateral imposition of such a requirement by

the High Court in the *advertisement in question* is legally untenable, being devoid of statutory sanction. *Secondly,* such unwarranted interpolation by introducing *Clause 15* is manifestly arbitrary as it is *sans* any rationale and, therefore, is *de hors* the constitutional framework especially Articles 14 and 16 thereof.

Learned counsel for the petitioner has further implored, in the alternative, that even if this Court is not inclined to strike down *Clause 15*, it ought to adopt a justice-oriented approach by exercising its extraordinary writ jurisdiction to grant requisite relaxation, by way of grace marks, in favour of the petitioner. It is urged, with solemn apparent conviction, that this Court in the exercise of its plenary writ jurisdiction, is imbued with wide-ranging powers to mould relief in the interest of justice and equity, particularly where adherence to a rigid criterion would result in manifest injustice. It is iterated that the petitioner, having secured 467 marks out of total of 1000, falls short by a mere 33 marks from attaining the prescribed threshold of 50%. In light of this marginal deficiency, it is submitted that the rigor of the impugned requirement ought to be relaxed so as to ensure that the petitioner is not rendered ineligible by the mechanical application of an arbitrary threshold, since the principles of equity and fair play demand, that where a candidate has demonstrably exhibited competence and merit, minor shortfalls should not operate as an insurmountable impediment to appointment, particularly when the overarching purpose of the selection process is to secure the best and most suitable candidates.

Learned counsel for the petitioner has further pleaded, with profound vehemence, that the appointment of Respondents No.5 and 6 stands in glaring contravention of the conditions, explicitly delineated, in the

advertisement in question, as well as, in the provisions enshrined in the *2007 Rules*. It has been strenuously contended that the unwarranted relaxation of eligibility criteria in their favour, particularly at the culminating stage of the selection process, has gravely prejudiced the petitioner's right to a fair consideration for appointment. It is further submitted that had the selection process been conducted in strict adherence to the prescribed stipulations, the petitioner would have faced competition from only two eligible candidates, for a total of three available vacancies, thereby rendering the petitioner's selection a foregone certainty. The arbitrary accommodation of respondents Nos. 5 and 6, in brazen disregard of the governing legal framework, has thus not only vitiated the sanctity of the selection process but has also wrought manifest injustice upon the petitioner. It is further contended that the*ex-post facto* relaxation of selection criteria, being patently illegal and antithetical to the fundamental principles of fairness and transparency, constitutes an egregious violation of the constitutional mandate as the settled canons of law dictate that selection rules cannot be diluted or modified in an ad hoc manner to confer undue advantage upon certain individuals, particularly at the terminal stage of the recruitment process. Such an act of executive indulgence, apart from being arbitrary and legally indefeasible, strikes at the very root of the principles of equality and non-discrimination enshrined in the Constitution. The learned counsel has iterated that the appointment of respondents No.5 and 6, having been effectuated through an abuse of discretion and in derogation of the prescribed legal norms, is *ex facie* null and void, which warrants immediate judicial interdiction. It has been further argued that, in any case, since relaxation was afforded to respondents No.5

& 6, similar treatment ought to have been meted out to the petitioner as well, by affording him grace marks.

On strength of these submissions, grant of writ petition in hand is vociferously entreated for.

4. Pursuant to notice having been issued, respondent Nos.1 to 3 have responded by filing reply. Learned counsel appearing on behalf of the respondents No.1 to 3; led by Shri Vikas Chatrath, Advocate; while raising submissions in tandem with the said reply, has submitted that the plea advanced by the petitioner through the instant writ petition is misconceived since the petitioner, a candidate having failed to meet the prescribed qualifying criteria, is *ex facie* ineligible and hence he lacks the *locus standi* to assail the process of selection/appointment. It has been thus urged that a person who does not possess the requisite essential qualification(s) can neither stake a claim to an appointment/selection nor call into question the legitimacy thereof, made in accordance with the governing rules.

It has been further urged by the learned counsel for respondents No.1 to 3 that the petitioner's claim is premised solely on an afterthought, namely, an attempt to challenge a process in which he has participated and failed. Learned counsel has pressed that a candidate who has willingly participated in a selection process cannot, upon finding himself unsuccessful, turn around to impugn the very conditions under which the process was conducted.

It has been iterated by the learned counsel that the prescription of minimum qualifying marks in *Clause 15* is neither ultra vires nor repugnant to any constitutional or statutory provision(s). It has been further urged by learned counsel that the requirement of minimum marks serves a

legitimate and rational objective, namely, the appointment of only those candidates who exhibit a requisite degree of merit and competence befitting the exalted nature of the post in question.

Learned counsel has further implored that the petitioner's claim for the grant of 33 grace marks, to make up for the shortfall, stands in manifest contravention of the conditions explicitly enshrined in the advertisement.

Learned counsel for respondents No.1 to 3 has further contended that the *Provisional Result* was declared on 31.07.2017, the viva-voce was conducted on 27.09.2017, the final result was declared on 16.08.2018 and the names of the selected candidates were recommended for appointment by impugned appointment order dated 21.12.2018 & the petitioner has belatedly approached this court by way of instant writ in the year 2021.

4.1. None has appeared on behalf of respondent Nos.4 and 6 despite service. Learned senior counsel appearing for respondent No.5 has made submissions, on similar lines as learned counsel for respondents No.1 to 3, while vociferously opposing the plea(s) raised by the petitioner.

On strength of these submissions, dismissal of the instant writ petition is canvassed for by the learned counsel appearing for the represented respondents.

5. We have heard learned counsel for the rival parties and have perused the record.

6. The prime issue that arises for consideration in the writ petition in hand is as to whether the petitioner ought to be granted appointment, as an Additional District and Sessions Judge in the State of Haryana, and the

selection/appointment of respondents No.5 and 6 as Additional District and Sessions Judge in the State of Haryana ought to be quashed.

7. We now proceed to dilate on the rival submissions made on behalf of the represented respondents.

Re: Validity of Clause 15 prescribing the minimum qualifying threshold of 50 percent marks (for general category candidate) in aggregate, out of total marks, fixed for the written exam and the viva voce.

8. Challenge has, *firstly,* been laid to statutory validity of *Clause 15* on account of it being invalid since it contravenes Articles 233 and 309 of the Constitution of India. In other words, veracity of *Clause 15* is sought to be challenged on the ground of the same being beyond the power of the High Court to supplement rules for selection.

At this juncture, it would be apposite to refer herein to a judgment passed by Three Judge Bench of the Hon'ble Supreme Court in case of ***Dr.Kavita Kamboj vs. High Court of Punjab and Haryana & others; 2024 (7) SCC 103,*** relevant whereof reads as under:

> *"65. In numerous decisions, this Court has emphasized the importance of the control which is wielded by the High Court over the District Judiciary. Undoubtedly, it is equally well-settled that when the Rules under Article 309 hold the field, these Rules have to be implemented. Where specific provisions are made in the Rules framed under Article 309, it would not be open to the High Court to issue administrative directions either in the form of the Full Court Resolution or otherwise, that are at inconsistent with the mandate of the Rules. On the other hand, in cases such as the one at hand, where the Rules were silent, it is open to the High Court to issue a Full Court Resolution."*

Further, the Hon'ble Supreme Court in the case of ***Ramesh Kumar vs. High Court of Delhi & others, 2010(3) SCC 104*** has held that:

> *"13. Thus, law on the issue can be summarized to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be*

> *given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specific the minimum Bench Marks for written test as well as for viva-voce."*

The *ratio decidendi* of the above case-law unequivocally reflects that where the Rules framed under Article 309 of the Constitution are silent, as regards the manner in which the merit and suitability would be determined, administrative instructions can well supplement the Rules in that regard. Such an eventuality should not be one where the Rules have made a specific provision in which event the administrative instructions cannot transgress a Rule which has been made in pursuance of the power conferred under Article 309 of the Constitution of India. In other words, the appropriate concerned authority cannot amend or supersede a statutory Rule by administrative actions. However, it is open to it, to issue required instructions, to fill up the gaps and supplement the Rules, where they are silent on any particular point. Such instructions have a binding force provided they are subservient to the statutory provision and are not in violation thereof. It is, therefore, a jurisprudential canon that where the principal statutory provision(s) and the extant regulatory framework governing the selection process are silent on a particular aspect thereof, the High Court, in the exercise of its administrative authority as the appointing body, is imbued with the inherent power to supplement such deficiencies. In the absence of express legislative prescription, it is within the High Court's prerogative to fill the interstices of the law, by formulating necessary rules and modalities governing the conduct of examinations, the methodology for adjudging merit, and the criteria for assessing suitability, thereby ensuring

integrity, fairness, and efficacy of the selection process. It thus cannot be said that in the absence of any explicit provision in the extant legal framework necessitating a minimum qualifying threshold, the introduction of such a criterion by an administrative fiat amounts to a transgression of fundamental tenet(s) of jurisprudence, namely, that the selection bodies cannot engraft additional conditions that are neither contemplated nor envisaged by the extant rules.

Reverting to the factual matrix of the *lis* in hand; *2007 Rules*, when scrutinized in the backdrop of Article 309 of the Constitution, manifest that current situation is not the one wherein the principal statutory provision(s) or extant regulation(s) has expressly stipulated a specific mandate thereby rendering *Clause 15* repugnant to or in derogation thereof or any other overarching Constitutional or statutory framework. On the contrary, no explicit proscription emanates from these foundational provisions that would render the requirement prescribed therein ultra vires or in transgression of the governing legal regime. The expression "*may further hold written examination and viva voce test for recruitment"* as employed in Rule 7 of the *2007 Rules*, confers upon the High Court an implied and inherent authority to regulate & prescribe the modalities governing the selection process. This plenary discretion encompasses the power to determine the mode and manner of conducting examinations, including the prerogative to stipulate minimum qualifying marks, should it deem such a prescription necessary to uphold the standards of merit and suitability. The phrase, by its very tenor, signifies a broad and enabling mandate, vesting the High Court, with the latitude to devise and implement measures that ensure

integrity, fairness, and efficacy of the recruitment process, in consonance with the overarching constitutional and statutory framework.

It is thus indubitable that the criteria for securing minimum marks in the aggregate, out of the total marks fixed for the written test and the viva-voce, do not proscribe any lawful mandate. *Ergo,* the challenge made by the petitioner on this account deserves to meet failure.

8.1. The petitioner has, *secondly,* sought to assail the criteria prescribed in *Clause 15* (to the extent it mandatorily requires a candidate to have successfully secured 50% marks, in case of general category candidate, in the aggregate out of the total marks fixed for the written test and viva-voce) on the premise that no minimum marks can be prescribed in context of a selection process, as the same is competitive in nature *inter se* the candidates.

The Hon'ble Supreme Court in a judgment titled as ***Abhimeet Sinha & others vs. High Court of Judicature of Patna & others; 2024(7) SCC 262,*** while dealing with the issue as to whether prescription of minimum marks for viva-voce being violative of Articles 14 and 15 of Constitution of India has held thus:

> *"67. The above would show that there is a reasonable and direct nexus with the object sought to be achieved i.e. the appointment of well-rounded judicial officers. The prescription of minimum cut off is also not perceived to be of such a nature that it reeks of irrationality, or was capricious and/or without any adequate determining principle. It does not appear to be disproportionate so as to adversely affect "meritorious" candidates, as has been argued. It is certainly not manifestly arbitrary, or irrational or violative of Article 14 of the Constitution of India. For recruitment of judicial officers, ideally the effort should be to not only test the candidate's intellect but also their personality. An interview unveils the essence of a candidate - their personality, passion, and potential. While the written exams measures knowledge, the interview reveals*

> *character and capability. Therefore, a person seeking a responsible position particularly as a judicial officer should not be shortlisted only by their performance on paper, but also by their ability to articulate and engage which will demonstrate their suitability for the role of a presiding officer in a court. In other words, the capability and potential of the candidate, to preside in Court to adjudicate adversarial litigation must also be carefully assessed during the interview."*

The *ratio decidendi* of this judgment reflects that, in case of appointment to judiciary, the prescription of minimum marks in viva voce is in tandem with the tenets of law. The *dicta* would apply *mutatis mutandis* to a condition prescribing minimum qualifying marks in the written exam as also to aggregate of the written exam and the viva voce. There is no gainsaying that it may be necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected, as otherwise the standard of judiciary would get diluted and sub-standard candidates may get selected. It falls squarely within the prerogative of the selecting authority to stipulate criteria that ensures the recruitment of candidates of the highest caliber, particularly for a post of significant judicial responsibility since the power to determine the essential qualifications for a given position is an intrinsic attribute of the selecting authority. Interview may also be the best mode and most efficacious way for assessing the suitability of a candidate for a particular position, as it brings out overall intellectual qualities of the candidates and judicial temperament that they possess. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a Judicial officer. It is thus ineluctable that a condition, as

is contained in *Clause 15*, is permissible for adjudging the qualities and capacities of the candidate seeking an appointment to judiciary. Thus, the challenge made by the petitioner in instant writ petition on this account, deserves to be rejected.

Re: An unsuccessful candidate's right to challenge conditions/qualifications of a selection process after having voluntarily participated therein.

9. The factual matrix of the case in hand reflects that the *advertisement in question* was issued on 16.07.2015, examination was conducted thereafter and *provisional result* of the written examination was declared on 31.07.2017, the viva-voce was conducted on 27.09.2017, the final result was declared on 16.08.2018 and the names of the selected candidate came to be recommended vide the *impugned appointment order* dated 21.12.2018.This factual backdrop unequivocally reflects that the petitioner had chosen to voluntarily participate in the selection process.

At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Tajvir Singh Sodi and others vs. The State of Jammu and Kashmir and others 2023(3) SCR 714,*** relevant whereof reads as under:

> *"13.1 It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A*

> *challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence."*

Indubitably, it is an ineluctable legal principle that once a candidate has voluntarily applied for and participated in a selection process, he is interdicted from subsequently challenging its legality or fairness of the process, based on the doctrine of estoppel. This principle operates to prevent a party from approbating and reprobating at the same time viz.; one cannot accept the benefits of a process while simultaneously disputing its validity. Such conduct would be contradictory and inconsistent, akin to blowing hot and cold simultaneously, undermining the integrity of the process and the principles of fairness that govern administrative procedures. The doctrine of estoppel by election is one among the species of estoppel, which essentially is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak for asserting a right which he would have otherwise had. The law is thus stated in Halsbury's Laws of England, Vol.XIII, p.464, para 5412, reads thus:

> *"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it."*

Ergo; having voluntarily participated in the selection process with *Clause 15* of the *Advertisement in question* being clearly in vogue and

not raising any demur or protest to veracity thereof; the petitioner is precluded from disputing its fairness or legality, at this stage, by way of the writ petition in hand simply because the result of the selection process is not palatable to him. To put it differently, a challenge has been raised against the selection criteria only after the petitioner found himself unsuccessful in the selection process. The petitioner, in the factual matrix of the case in hand, having acquiesced to the terms of the advertisement and having subjected himself to the prescribed criteria, is estopped in law from challenging the requirement of minimum qualifying marks merely as an expedient recourse to secure a second opportunity at appointment. Such a challenge, post facto, is not only untenable but also reeks of an afterthought, at the end of the petitioner, aimed at circumventing the due process of selection. The writ petition in hand, thus, deserves dismissal on the score of the petitioner's challenge not being entertainable in the light of principle of waiver and acquiescence.

Re: *Locus standi of an ineligible candidate to challenge the result of selection process*

10. The unambiguous, crystal clear and lucid language of *Clause 15* admits no ambiguity in its imperative mandate, that a candidate who fails to secure the prescribed minimum qualifying marks is thereby rendered ineligible for consideration of an appointment. The requirement of attaining a minimum of 50% marks is not a mere procedural formality; nor a dispensable threshold that may be overlooked at judicial discretion; rather, it constitutes an indispensable prerequisite, a *sine qua non*, for eligibility. The petitioner, having secured marks (i.e. 467 marks) falling below the prescribed threshold of minimum qualifying marks (i.e. 500 marks), stands

ex facie ineligible for consideration for an appointment, in light of the categorical mandate enshrined in *Clause 15.*

It is a trite canon of law that an individual who stands disqualified *ab initio* is precluded from impugning the selection process or assailing the appointment of those who have duly met the prescribed criteria and have been lawfully inducted into service. To permit an ineligible aspirant to challenge the recruitment process would be to subvert the very foundation of meritocratic selection and to countenance a claim that the law itself has foreclosed.

It would be apposite to refer herein to a judgment passed by Division Bench of this Court in the case of ***Puran Chand vs. State of Haryana and others; 2012(1) SCT 247;*** relevant whereof reads thus:

> *"10. It is well settled that if a person lacks qualification to be eligible for appointment to a post then he is not permitted to challenge the selection process because in such a situation no effective relief could be granted to him. Accordingly, he would not have any locus standi. In* ***Jeet Singh and another v. State of Punjab, 1979(1) SLR 604****, the question fell for consideration of Hon'ble the Supreme Court. In para 8 of the judgment it has been held that those petitioners lacked locus standi to file a petition because they were not qualified for promotion and they did not have any right for promotion prior for the selected candidate nor they could succeed in their claim."*

It is one matter to challenge an appointment to a public office through a writ of *quo warranto*, a remedy firmly entrenched in the domain of public law, which is concerned exclusively with ensuring that no individual usurps or encroaches upon a public office without possessing the lawful authority to do so. The essence of *quo warranto* lies in scrutinizing the appointee's qualifications *vis-à-vis* the eligibility criteria prescribed for the post, without regard to the personal interest of the petitioner. However, it is

an altogether different proposition to mount a challenge by means of a writ of certiorari, coupled with a prayer for *mandamus,* whereby a litigant not only seeks the quashing of the selection process but also aspires to a consequential direction for his own appointment, in substitution of those duly selected and appointed. The latter form of challenge is distinctly personal in nature, hinging not upon a question of public right but upon an individual assertion of entitlement to the office in question.

In such circumstances, the doctrine of *locus standi* assumes paramount importance. The litigant must first establish his legal standing to maintain such a challenge, for the invocation of *certiorari* and *mandamus* is not an exercise open to all and sundry, but a privilege contingent upon demonstrable eligibility and entitlement. Where a litigant is himself bereft of the requisite qualifications, he is correspondingly bereft of the *locus* necessary to call into question the selection process or the resultant appointments through *certiorari* or to seek *mandamus* in his own favour. The law does not lend itself to be wielded as an instrument of subterfuge by one who, by his own ineligibility, stands disentitled to the very relief he seeks. It is a well-settled tenet of our jurisprudence that one who has failed to surmount the threshold of eligibility cannot, in the same breath, seek to vitiate the appointment of those who have lawfully succeeded, nor can he aspire to don the mantle of an office through the indirect means of judicial intervention. The courts, acting in their extraordinary writ jurisdiction, do not permit the misuse of constitutional remedies as a stratagem to achieve what the law has expressly denied. To entertain such a claim would be to set at naught the sanctity of the selection process and to extend a remedy where none is warranted in law.

A litigant who lacks the foundational eligibility for appointment stands wholly disqualified from challenging the selection and appointment of others, particularly under the pretended invocation of *quo warranto*. The attempt to entwine *quo warranto* with *certiorari* and *mandamus* in pursuit of personal redress is not merely legally untenable but jurisprudentially perverse. The extraordinary jurisdiction of the court is a sanctuary for the enforcement of legal rights, not a forum for the redress of disqualified aspirations. The law, in its wisdom, does not grant standing to those who seek to accomplish by litigation what they could not secure by merit. To hold otherwise would be to subvert the very principles of fairness, legality, and due process that the writ jurisdiction exists to uphold.

Re: *Plea of negative equality raised at instance of an unsuccessful candidate*

11. The petitioner has further sought to assert his claim as a successful candidate by invoking the doctrine of *negative equality,* predicating his entitlement upon the perceived infirmities in the candidature of the respondents No.5 and 6. However, it is a well-settled principle of law that equality cannot be claimed in illegality and mere reliance on ostensible lapses or procedural lacunae in the credentials of others does not confer a right upon the petitioner. The doctrine of equality finds no application where the petitioner himself fails to meet the prescribed criteria, for parity cannot be drawn from irregularities nor can an illegality be perpetuated on the anvil of another.

Before dilating on this aspect of the matter, it would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court in the

case of ***Gurushanan Singh and others vs. New Delhi Municipal Committee and others, 1996(2) SCC 459,*** relevant whereof reads thus:

> *"9. xxxxxxxxxxxxxxxxxxxxxx. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."*

It is, thus, indisputable that equality, as a right, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or the court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction for repeating or multiplying the same irregularity or illegality.

Re: Award of grace marks to an unsuccessful candidate

12. Another plea, which is clearly in the nature of the last ditch ground, made by the petitioner is, for grant of grace marks for qualifying the selection process. The petitioner's plea, for relaxation in the prescribed threshold is wholly devoid of legal foundation, for it is a well settled principle that eligibility conditions, once lawfully stipulated, cannot be attenuated, diluted, or tailored to accommodate the exigencies of an individual candidate. Thus, conferment of additional or grace marks, in the realm of public appointments, without the imprimatur of reasoned justification, would amount to an egregious departure from the sacrosanct principles of fairness and equality. Such an arbitrary indulgence, extended to a particular candidate, would be in stark defiance of the constitutional guarantees enshrined under Articles 14 and 16, which mandate that all candidates be accorded equal treatment in matters of public employment. At this juncture, it would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as ***Bhanu Pratap vs. State of Haryana and others, AIR 2011 Supreme Court 3272,*** dealing with the issue of rounding off the marks of a candidate to make such candidate eligible, relevant whereof reads as under:

> *"14. In the light of the records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The relevant Rules have already been extracted above. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers. The further mandate of the rules is that a candidate would not be considered as qualified in the examination unless he obtains atleast 50% marks in the aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the*

concerned candidate there cannot be a question of relaxation or rounding off as sought to be submitted by the counsel appearing for the appellant.

15. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement.In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation.

16. We may also draw support in this connection from a decision of this Court in ***District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi reported in (1990) 3 SCC****655. In the said judgment this Court has laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.*

17. In the case of ***Umrao Singh Vs. Punjabi University, Patiala and Ors. reported in (2005) 13 SCC 365*** *this Court while dealing with the power of Selection Committee for relaxation of norms held thus: -*

> *"Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In* ***P.K. Ramchandra Iyer and Ors. v. Union of India and Ors. (1984)ILLJ314SC*** *this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."*

The *ratio decidendi* of the above case law - unequivocally shows that the Apex Court has proscribed the exercise of power for rounding off the marks of a candidate so as to enable him to be selected unless such power exists, expressly. When the words of statute are clear, plain or unambiguous, i.e. the same are susceptible to only one meaning, a Court of law is bound to give effect to that meaning irrespective of consequences flowing therefrom, since the statute speaks for itself. This canon of law, would apply with even more fervour, to a plea seeking grant of grace marks.

The factual matrix of the case under consideration reflects that, *Clause 15,* which is mandatory in nature, does not provide for any power for giving grace marks so as to bring up a candidate to a minimum requirement. In other words, *2007 Rules* are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the same for giving benefit of relaxation by way of grace marks. The emphasis provided for in *Clause 15* itself is as regards the minimum marks to be obtained as qualification, therefore, unless such minimum marks have been obtained by the petitioner, there cannot be a question of relaxation muchless grant of grace marks. The eligibility criteria, including regarding obtaining minimum qualifying marks, ought to be strictly adhered to and no grace marks can be given to the petitioner *lest* such dilution or tampering with the mandatory requirement of *Clause 15* may precipitate injustice on other candidates. The law countenances no preferential treatment or ad hoc relaxation in favour of an individual, particularly when such relaxation has neither statutory sanction nor any reasonable nexus with the avowed objective of securing meritorious appointments. The effusive *clarion call* by petitioner for granting justice, by way of awarding grace marks, is

essentially founded on a paradox of, wresting compassion on one hand and asserting a prerogative on another hand, which is beyond the purview of the legal framework. We, *ergo*, are unable to affirmatively respond to such a plea raised by the petitioner, which indubitably calls for rejection.

Decision

13. In view of the preceding ratiocination, the writ petition in hand is dismissed. Pending application(s), if any, shall also stands disposed of accordingly. There shall be no order as to costs.

(SUMEET GOEL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

March 18, 2025
Ajay

Whether speaking/reasoned: Yes
Whether reportable: Yes