

combined hospital which in the meanwhile had come up and its construction was complete and had become operational. The petitioner joined the hospital on 01.03.2016 and continued till 12.12.2024. The said hospital undoubtedly has come up in the same premises as Community Health Centre, Sirauli Gauspur, Barabanki.

13. This Court has also noticed that the Community Health Centre Sirauli Gauspur, Barabanki is included as a rural posting. The said entry has been made only on account of the fact that the said place is more than 25 km. away from the district headquarter as has been stated in the Government Order dated 15.03.2022. Once the Community Health Centre, Sirauli Gauspur, Barabanki has been held to be a rural posting, this Court does not find any reason why as to another hospital even though a hundred bedded hospital situated in the same premises would not be considered to be a rural posting for a limited purposes of grant of 'No Objection Certificate' for the entrance of NEET PG Examination-2024.

14. Accordingly, this Court finds that there is no reason forthcoming for denial of the benefit for having worked in the hundred bedded combined hospital at Sirauli Gauspur, Barabanki, which is also equally distance as the Community Health Centre, Sirauli Gauspur, Barabanki. Accordingly, this Court finds that the impugned order dated 21.01.2025 has been passed solely on a consideration that the Community Health Centre, Sirauli Gauspur, Barabanki has been mentioned as a rural posting in the Government Order dated 15.03.2022 while the entry with regard to a hundred bedded combined hospital is not included. Apart from the above, this Court does not find any consideration by the respondents with regard to as to whether Sirauli Gauspur, Barabanki would be considered as a rural posting or not? It is not the case of the respondents that the hundred bedded combined hospital Sirauli Gauspur, Barabanki would not

be included as a rural posting but only till date it has not declared to be a rural posting.

15. Accordingly, this Court find that the respondents have not adequately considered the grounds for grant of 'No Objection Certificate' to the petitioner, and even otherwise, this Court does not find any reason as to why the respondents could have denied the benefit to the petitioner for having worked at the hundred bedded combined hospital for more than eight years which is situated in the same compound as the Community Health Centre, which has been declared to be a rural posting. Accordingly, this Court finds that the petitioner is duly entitled to be granted a 'No Objection Certificate' for having worked in the rural area for the period she has worked at Community Health Centre, Sirauli Gauspur, Barabanki as well the hundred bedded combined hospital at Sirauli Gauspur, Barabanki.

16. In light of the above, the writ petition is allowed and the impugned order dated 21.01.2025 is set aside.

17. The respondents are directed to grant a 'No Objection Certificate' forthwith to the petitioner, so that she can participate in the NEET PG Examination-2024.

(2025) 1 ILRA 424

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 08.01.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ-A No. 4610 of 2024

With

Writ-A No. 7284 of 2024

**Ravi Kumar Shukla & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents**

Counsel for the Petitioners:

Ripu Daman Shahi, Chhaya Tripathi, Vivek Kumar Verma

Counsel for the Respondents:

C.S.C., Shireesh Kumar, Utkarsh Kumar

A. Service Law-Constitution of India,1950-Article 226-U.P. Police Radio Adhinasht Sewa Niyamawali 2015-Clause 8(c)-Niyamawali 2015 prescribes diploma as the minimum qualification for the post of Head Operator(Mechanical) in U.P. Police Radio Cadre-The police recruitment board exceeded its jurisdiction by issuing a 2021 order equating a B.E./B.Tech degree to a diploma without State Government approval-Candidates who participated in the recruitment process based on 2021 board decision had a legitimate expectation of eligibility-The midway change in eligibility after the exam was conducted was illegal violating principles of fairness and non-arbitrariness-Recruitment rules. once set in an advertisement cannot be altered during the process-Held, the entire selection process is vitiated and set aside due to administrative mismanagement and lack of clarity on eligibility-The entire selection process is canceled, and a fresh recruitment drive must be initiated. (Para 1 to 33)

The writ petitions are partly allowed. (E-6)

List of cases cited:

1. Neil Aurelio Nunes(OBC Reservation) Vs U.O.I. (2022) 4 SCC 1
2. K. Manjusree Vs St. of A.P. (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841
3. Mah. SRTC Vs Rajendra Bhimrao Mandve (2001) 10 SCC 51: 2002 SCC (L&S) 720
4. Tej Prakash Pathak Vs Raj. HC (2013) 4 SCC 540: (2013)2 SCC (L&S) 353
5. Prerit Sharma Vs Bilu B.S. (2022) 2 SCC 751

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Ripu Daman Shahi along with Ms. Chhaya Tripathi and Sri Pradeep Kumar Mishra for the petitioners, learned Additional Chief Standing counsel on behalf of State-respondent No.s 1 and 2 and Sri Shireesh Kumar and Sri Utkarsh Kumar for respondent No.s 3 and 4.

2. Sri Shireesh Kumar has moved an application for impleadment stating that the applicants are necessary party considering the fact that they have also participated in the selection for the post of Head Operator / Head Operator (Mechanical) in U.P. Police Radio Cadre and are diploma holders and has sought to be impleaded as a respondent.

3. The application for impleadment is not opposed by the learned Counsel for petitioners and on consideration of the application for impleadment, we find that the applicants are necessary parties and accordingly, the application for impleadment is allowed.

4. Learned counsel for the petitioners is directed to implead them as respondents.

5. Since common questions of facts and law are involved in both the writ petitions, as such, they are being heard and decided by this common judgment and order. All the parties have been heard at length including Sri Shireesh Kumar, counsel for the respondents and accordingly, with the consent of the parties, the Court is proceeding to dispose of the petition at the admission stage itself.

6. It has been submitted by counsel for the petitioners that an advertisement was issued on 06.01.2022 by the Additional

Secretary (Recruitment) Uttar Pradesh Police Recruitment and Promotion Board Lucknow inviting online applications for the post of Head Operator / Head Operator (Mechanic) in the Police Radio Department. It has been submitted that in Clause 3.2 of the said advertisement, the qualifications were prescribed as per the provisions contained in the Uttar Pradesh Police Radio Adhinasth Sewa Niyamawali, 2015 where in Clause 8(c) the qualifications required for the post of Head Operator / Head Operator (Mechanic) are that the candidate should have passed three years diploma course in Electronics / Telecommunication / Electrical / Computer Science / Information Technology / Instrumentation Technology / Mechanical Engineering by a board established by law in India or a qualification recognized by the Government as equivalent thereto.

7. The petitioners, who are degree holders in various branches of engineering considering themselves to be eligible had applied for participation in the said recruitment and they were also issued admit cards for appearing in the online examinations and the written examination was conducted on 31.01.2024. It has been submitted by counsel for the petitioners that prior to publication of the said advertisement, the Police Recruitment Board had taken a decision on 25.08.2021 where it was resolved that the candidates having four years as Bachelor of Engineering (BE) / Bachelor of Technology (B.Tech) in stream like Electrical, Mechanical, Electronics, information Technology, Computer Science and Telecommunication were also to be treated as eligible on account of them having higher qualifications. Accordingly, the reading of the advertisement dated 06.01.2022 along with the resolution of the

Police Recruitment Board, the petitioners were in a bonafide belief that they were fully eligible to participate in the said selection. After the written examination the answer key of the said result was also published by the respondents on 06.02.2024.

8. Before any further steps could be taken by the Police Recruitment Board, by means of order dated 23.04.2024, a decision of the Board was communicated to the effect that the previous order of the Board dated 25.08.2021 has been substantially modified and now it is provided that four years degree in Engineering of different streams have been held to be ineligible for recruitment to the post of Head Operator / Head Operator (Mechanic).

9. The petitioners, who are degree holders in various streams of Engineering, who had applied and participated in the said recruitment process have now been held to be ineligible and have approached this Court assailing the decision of the respondents and have submitted that once the respondents have held the petitioners to be eligible and on the basis of said resolution, they have participated in the said examination than in the middle of the recruitment process the terms and conditions of the recruitment cannot be changed and accordingly, have assailed the validity of the order dated 23.04.2024 and further sought a direction to the respondent to treat the petitioners as eligible on account of them having a degree of Bachelor of Engineering and permitted them to participate in the said recruitment process and appoint them on the various post in case, they are declared to be selected.

10. It has been submitted by counsel for the petitioners that according to the service rules, a person who possesses a diploma in various streams of Engineering or any other equivalent qualification would be eligible to participate in the said recruitment. With regard to the equivalence, the Police Recruitment Board by order dated 25.08.2021 had declared that the persons possessing a degree of Engineering in various streams would also be eligible considering the fact that the degree is a higher qualification than diploma. It is on account of the deliberate decision taken by the Police Recruitment Board that the petitioners participated in the recruitment process and have legitimate expectation with regard to their eligibility and accordingly, submits that the respondents could not have passed the impugned order treating them to be ineligible after permitting them to participate in the written examination and also publishing the answer key, accordingly prayed for a direction to the respondents to treat them as eligible in the said selection process and declare their results.

11. Learned Standing Counsel, appearing on behalf of the State as well as the Police Recruitment Board on the other hand has opposed the writ petition and it has been submitted that there is no doubt with regard to the fact that according to the service rules, the eligibility for the post of Head Operator / Head Operator (Mechanic) is a diploma in the various streams of Engineering or any other equivalent qualifications. With regard to the equivalence of the qualification, he has submitted that it is only the State Government which can determine the said equivalence and, the Police Recruitment Board was denuded of any power and had wrongly exercised its power while passing

the order dated 25.08.2021 declaring Engineering to be equivalent to a diploma and declaring that the Engineering degree to be higher qualification than Diploma and consequently, such persons holding engineering degree would be ineligible for participating in the said recruitment. Order dated 25/08/2021 amounts to declaration of equivalence which power is not vested in the Police Recruitment Board. Accordingly, the order dated 21.08.2021 was illegal and arbitrary and as soon as the said issue came to the notice of the respondents, they had proceeded to pass the impugned order annulling the same. He submits that the Board has sufficient power to resile from any order which has been passed by them, which is contrary to the rules and accordingly, they have inherent power of reviewing the order and hence in exercise of the power, they have substantially modified the order dated 25.08.2021 and restoring the status quo ante and declaring the persons like the petitioners, who are possessing qualification of degree in Engineering to be not qualified for participating in the said selection process or being appointed on the post of Head Operator / Head Operator (Mechanic)

12. Sri Shireesh Kumar, appearing on behalf of the candidates possessing a diploma, has submitted that in fact there is no dispute with regard to the eligibility of candidates, who are eligible to participate in the said recruitment process. He has submitted that the Uttar Pradesh Police Radio Subordinate Service Rules, 2015 are very clear in terms and Rule 8 clearly provides the qualifications to be possessed by a person, who can participate or be appointed on the said post. He submits that the equivalence, if any, would have been with the diploma qualifications. In any

view of the matter, a degree can never be equivalent to a diploma and therefore, from the very start the Board had illegally passed the order dated 25.08.2021 which they have sought to rectify by means of the impugned order dated 23.04.2024 and accordingly, has opposed the writ petition and prayed for dismissal of the same.

13. I have heard the rival contentions and perused the record.

14. Without reiterating the facts as discussed herein above, this Court proceeds to consider the rival contentions. The Police Recruitment Board proceeded to issue the order dated 25.08.2021 declaring that the degree is a higher qualification than diploma, and accordingly holding that candidates having degree in the respective fields would also be eligible for the post of Head Operator/Head Operator (Mechanic). The dispute has arisen on account of the subsequent order dated 23/04/2024 where the Police Recruitment Board had noticed certain judgments with regard to equivalence and has taken a decision that even during an ongoing selection process they could change the qualifications and hence proceeded to pass the impugned order dated 23/04/24.

15. This Court has taken into consideration the arguments of the respondents that the Police Recruitment Board had exceeded its jurisdictions where it proceeded to pass the order dated 25.08.2021 thereby making a degree to be equivalent to a diploma and accordingly, permitted all the persons possessing a degree in the streams of engineering eligible to participate in the examination for the Head Operator / Head Operator (Mechanic). It is on the strength of the order passed by the Police Recruitment

Board that the petitioners had applied and participated in the recruitment process. It has further been brought to the notice of this Court that the Police Recruitment Board further proceeded to ratify the order dated 25/08/2021 by order dated 01.04.2024. In the order dated 01.04.2024, they had reiterated the stand that the persons who possess four years degree in engineering, which is a higher degree than a diploma and accordingly, such candidate would also be permitted to participate in the said selection process.

16. Undoubtedly, considering the provisions of section 8 of the U.P police Subordinate Service Rules the Police Recruitment Board had exceeded its jurisdiction by interpreting the provisions of the eligibility conditions in the service rules pertaining to the eligibility of the candidates for appointment to the post of Head Operator / Head Operator (Mechanic), holding that degree would be equivalent to a diploma. It is the order dated 25.08.2021 that has permitted the petitioners and the other persons possessing degree in engineering to determine that they are eligible to participate in the said recruitment process. The rules as it stands out today clearly indicate that it is only the diploma holders who are eligible to be appointed to the post of Head Operator / Head Operator (Mechanic). The Board, in exercise of its power to process the selection is an executive body tasked only to carry out the machinery provisions of recruitment. They are not the appointing authority or the controlling authority of the persons who they seek to recruit. They must comply with various service rules which provide for eligibility conditions of the candidates who are to be recruited. They are bound by the conditions of service rule, and they are totally incompetent to

issue any clarification with regard to the eligibility of the candidates who are to participated in the recruitment process. Such an order passed by the relevant recruitment board was at the very start arbitrary, illegal and without jurisdiction. Subsequently, they proceeded to ratify the order by means of order dated 31.01.2024 and subsequently, in a few days they took a u-turn and by means of the impugned order dated 23.04.2024 stated that they substantially modified the previous order dated 25.08.2021 and further to declare that the candidates having qualification of four years' degree course of engineering would not be eligible to participate in the said recruitment examination. When the Police Recruitment Board was aware of the fact that they could not determine or modify or change the eligibility conditions then they should have refrained from making any statement/declaration with regard to the eligibility of persons possessing a degree in the impugned order dated 23.04.2024. It was only the State government who could have passed any order pertaining to the equivalence.

17. From the aforesaid facts, it is clear that merely because of the unauthorized and unlawful interference of the Police Recruitment Board by issuing the order dated 25.08.2021 and subsequently, issuing orders on 01.04.2024 and 23.04.2024 the entire selection process has been called in question and majority of the candidates are not aware as to whether they are eligible to participate or they are ineligible to participate in the said recruitment examination. We have been informed by the learned standing counsel that 75% of the candidates who have participated in the

selection process are engineering degree holders.

18. On the face of it, degree holders who may not have been eligible to participate in the said examination were held to be eligible and they were allowed to participate. It is not only the petitioners but other innocent candidates, who may be possessing degree in engineering but after reading the advertisement, may have rightly concluded that it is diploma holders who are only qualified to participate in the said examination would not have applied for participation in the said exam. Accordingly, the arbitrary orders passed by the Police Recruitment Board prior to commencement of the said examination as well as during the said examination pertaining to the eligibility have vitiated the entire examination. We further take notice of the fact that despite the passing of the order dated 25/08/2021, the advertisement which was issued subsequently on 06/01/2022 did not provide eligibility to the engineering graduates. There is no doubt that the law in this regard is very clear and it has been consistently held by the Supreme Court as well as by this Court that the terms and conditions as laid down in the advertisement for recruitment cannot be altered or changed during the course of the recruitment process. Once the advertisement is published, the recruitment agencies are required to scrupulously follow the guidelines and the qualifications prescribed therein and no variation or deviation is permitted in the same. The Supreme Court has considered this aspect in the case of *Neil Aurelio Nunes (OBC Reservation) v. Union of India, (2022) 4 SCC 1* and also considered various other Supreme Court decisions as under:-

“79. In **K. Manjusree v. State of A.P.** [*K. Manjusree v. State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841], the selection of candidates to ten vacant posts of District and Sessions Judges (Grade II) in the Andhra Pradesh State Higher Judicial Service was the subject-matter of the appeal. The selection and appointments to the post of District and Sessions Judges (Grade II) are governed by the Andhra Pradesh State Higher Judicial Service Rules, 1958. The Rules prescribe that one-third of the posts are to be filled by direct recruitment. However, the method of recruitment is not prescribed in the Rules. Therefore, the High Court determines the method of selection when the vacancies are notified. An advertisement was issued on 28-5-2004 calling for applications. The Administrative Committee by its resolution dated 30-11-2004 decided to conduct a written examination for seventy-five marks and an interview for twenty-five marks, and prescribed minimum category marks for the written examination. The exam was held on 30-1-2005. The results were declared on 24-2-2005. The merit list was prepared by aggregating the marks obtained in the written examination out of 100 and the interview for 25 marks. However, the Full Court did not agree with the selection list and another Committee of Judges was constituted to prepare the list. The Committee was of the view that the select list changed the proportion of marks of the written exam to the interview from 3 : 1 to 4 : 1 since the written exam marks (out of 100) were not converted to 75 marks. The Sub-Committee also directed that there must be minimum marks for the interview component, in the same cut-off percentage as applied to the written test component. Another selection list was prepared based on the revised selection criteria. Candidates whose names were featured in

the first select list but were absent in the second list, challenged the second selection list.

80. A three-Judge Bench of this Court in **K. Manjusree case** [*K. Manjusree v. State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841], held that the scaling down of marks in the written exam in proportion to the maximum of 75 marks was valid since it was in consonance with the resolution dated 30-11-2004. However, it was observed that introducing minimum marks in the interview component “after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible”. (SCC p. 524, para 27) The facts in *K. Manjusree* [*K. Manjusree v. State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] differ from the factual matrix before us since the impugned notice notifying reservation in the AIQ was introduced even before the examination was held. Further, unlike the case before us, there was in that case, a change in the selection criteria.

81. In **Maharashtra SRTC v. Rajendra Bhimrao Mandve** [*Maharashtra SRTC v. Rajendra Bhimrao Mandve*, (2001) 10 SCC 51 : 2002 SCC (L&S) 720], the selection to the post of drivers and conductors was in question. The writ petitioners satisfied the qualifications and possessed the requisite experience. A total of 12.5% marks was initially allotted to the personal interview component. However, a change in the criteria for selection was introduced after the driving test was conducted. This Court then held that the new criteria was invalid since it proposed to change the rules of the game after the game had begun. In *Umrao Singh v. Punjabi University* [*Umrao Singh v. Punjabi University*, (2005) 13 SCC 365 :

2006 SCC (L&S) 1071] , this Court held that the selection norms for selection to the posts of lecturers could not have been relaxed after the last date for making the application and after the process for selection had started.

82. In **Tej Prakash Pathak v. Rajasthan High Court** [Tej Prakash Pathak v. Rajasthan High Court, (2013) 4 SCC 540 : (2013) 2 SCC (L&S) 353] , the Rajasthan High Court had called applications for the post of “translators”. According to the Rajasthan High Court Staff Service Rules, 2002, 100 marks was prescribed for the written exam and 50 marks for the personal interview. After the exam was conducted, 75% marks were prescribed as the qualifying marks in the written examination. Chelameswar, J. writing for a three-Judge Bench observed that changing the “rules of the game” midstream or after the game has been played is an “aspect of retrospective law-making power”. This Court held that the principle applied in *Manjusree* [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] , without further scrutiny would not further public justice and efficient administration. This Court referred the question to a larger Bench in the following terms [The Bench noticed the judgment in *State of Haryana v. Subash Chander Marwaha*, (1974) 3 SCC 220 : 1973 SCC (L&S) 488 where the Supreme Court upheld the decision of the State to not appoint all candidates who had secured the minimum percentage of marks.] : (Tej Prakash Pathak case [Tej Prakash Pathak v. Rajasthan High Court, (2013) 4 SCC 540 : (2013) 2 SCC (L&S) 353] , SCC pp. 545-46, para 15)

“15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of

eligibility criteria is concerned as was done in *C. Channabasavaih v. State of Mysore* [C. Channabasavaih v. State of Mysore, AIR 1965 SC 1293] , etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.”

83. In **Prerit Sharma v. Bilu B.S.** [Prerit Sharma v. Bilu B.S., (2022) 2 SCC 751] , the Information Bulletin for NEET-SS 2020 was issued on 3-8-2020. The examination was held on 15-9-2020, and the results were declared on 25-9-2020. Clause 5.16 of the Information Bulletin that was released when the registration process had begun stipulated that there would be no reservation in the SS courses. The Medical Counselling Committee issued the counselling scheme for AIQ for NEET-SS course 2020-2021 in which it was mentioned that there would be no reservation for the SS courses by referring to the judgments of this Court in *Preeti Srivastava* [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] and *Sandeep v. Union of India* [Sandeep v. Union of India, (2016) 2 SCC 328 : 7 SCEC 518] . The counselling for the SS course was postponed. The State of Tamil Nadu issued GOMS No. 462 dated 7-11-2020 stipulating that 50% of the SS seats in government medical colleges in the State of Tamil Nadu would be reserved for in-service candidates. This Court observed that when the process for admissions to the SS courses had begun, it was notified

through the Information Bulletin that there would be no reservation in the SS courses. Therefore, it was held that reservation for in-service doctors shall not be permitted for the current academic year."

19. In the present case, we find that after issuing of the advertisement, the Police Recruitment Board has passed the order varying the eligibility conditions of the candidates after publication of the advertisement, after conduct of the written examination and declaration of the answer key and such course of action during the recruitment process is totally impermissible.

20. The issue for consideration is whether the entire selection process stands vitiated in the facts of the present case, where doubt has been created regarding the eligibility of candidates to participate in the said selection process. It has been informed that about 75% of the total number of candidates who participated in the selection process possesses engineering degree. Undoubtedly, the fact that the advertisement did not list an engineering degree as an eligible qualification, yet allowing engineering graduates to participate, clearly demonstrates that the selection process was unfair and arbitrary from the very start.

21. Subsequently, by order dated 01.04.2024, the selection board reiterated its stand regarding the equivalence of an engineering degree with a diploma. The final nail in the coffin was the impugned order dated 23.04.2024, wherein the selection board concluded that only the State Government could issue orders concerning the equivalence of educational qualifications required for participation in the selection process. Consequently, the

board rescinded its earlier order dated 25.08.2021 and proceeded to hold that an engineering degree would not qualify as an educational qualification rendering a candidate ineligible to participate in the said selection process.

22. One of the hallmarks of any selection process is the fairness and transparency with which it is conducted. All eligible candidates have a right to be informed about the eligibility conditions of the examination prior to its commencement, and the advertisement must clearly specify the exact eligibility criteria required from applicants. These conditions must undoubtedly align with the service rules, which outline the prescribed eligibility requirements. Any deviation from the conditions stipulated in the rules would vitiate the entire selection process, rendering it illegal and arbitrary, and thereby subject to judicial interference in appropriate proceedings.

23. Recently a Bench of Seven Hon'ble Judges of the Supreme Court has answered the reference in the case of in the case of **Tej Prakash Pathak vs Rajasthan High Court** and others Civil Appeal No.2634 of 2013 where the terms of reference were:-

"1. A three-Judge Bench of this Court while accepting the salutary principle that once the recruitment process commences the State or its instrumentality cannot tinker with the "rules of the game" insofar as the prescription of eligibility criteria is concerned, wondered whether that should apply to the procedure for selection. In that context, doubting the correctness of a coordinate Bench decision in K. Manjusree² for not having noticed an earlier decision in Subash Chander

*Marwaha*³, vide order⁴ dated 20 March 2013, it was directed that the matter be placed before the Chief Justice for constituting a larger Bench for an authoritative pronouncement on the subject.

The reference was answered in the following terms after considering numerous judgements in this regard:-

42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in *K. Manjusree* (supra) lays down good law and is not in conflict with the decision in *Subash Chander Marwaha* (supra). *Subash Chander Marwaha* (supra) deals with the right to be appointed from the Select List whereas *K. Manjusree* (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ nonarbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

24. In the present case, the petitioners would not have been eligible to participate in the selection process since an engineering degree was not prescribed as a requisite qualification. However, guided by the decision of the selection board dated 25.08.2021, they applied for and were permitted to participate in the written examination.

25. The decision of the selection board dated 25.08.2021 declaring engineering degree holders eligible was questionable, as any determination of equivalence between an engineering degree and a diploma should have been made solely by the State Government in accordance with Rule 8 of the said rules. Recognizing its mistake, the selection board attempted to rectify the error through the impugned order, declaring engineering degree holders ineligible to participate in the selection process.

26. Such an exercise, carried out during the selection process, strikes at the very root of its fairness and transparency. Determining or clarifying the eligibility of candidates after the commencement of the

selection process is inherently flawed, as such matters should have been resolved before the publication of the advertisement. This failure to finalize eligibility conditions in a timely manner vitiates the entire selection process.

27. Once a selection process is initiated, the foundational elements of the process cannot be changed or altered until its completion, as in the present case the service rules do not provide for any change being made during the selection process. Eligibility conditions, examination procedures, and marking patterns are foundational elements of any selection process and must be explicitly stated in the advertisement, which, in turn, should adhere to the relevant service rules. Any change or amendment to these fundamentals after the publication of the advertisement and before the declaration of results is impermissible.

28. The advertisement serves a crucial purpose: informing prospective applicants about the rules, conditions, and guidelines governing the selection process. It establishes a legitimate expectation for candidates regarding the method of selection. Based on the information provided in the advertisement, candidates may take decision about whether to participate in the process.

29. Similarly, the authorities are bound by the terms and conditions they have set forth in the advertisement. Therefore, it is imperative that the foundational elements laid out in the advertisement remain unchanged, as any alterations could unfairly disadvantage candidates. In the present case, the respondents' conflicting orders concerning the fundamental eligibility criteria undermine the integrity

of the selection process, rendering the entire exercise liable to be set aside.

30. After holding that the impugned order dated 24/04/2024 is illegal and arbitrary, the question which arises is as to whether the petitioners would be entitled to participate in the recruitment process on the strength of the order dated 25/08/2021?

31. This aspect of the matter has also been discussed above, and this Court is of the considered opinion that setting aside of the order dated 24/04/2024 would not have the effect of reviving the previous order dated 25/08/2021, which itself was illegal and arbitrary having been passed unauthorizedly by the Police Recruitment Board, and even otherwise is also de hors the provisions of the Rule 8 of the relevant service rules which only prescribes the eligible candidates to possess diploma in the relevant field of engineering. On plain reading of the service rules the degree holders would not be eligible, as only diploma holders in respect of stream of engineering would be eligible subject to any order passed by the State government regarding equivalence. Accordingly, no direction as sought by the petitioners can be passed in their favour for permitting them to participate further in the selection process in absence of any order of equivalence having been passed by the State government.

32. Accordingly, we find that the entire selections which has been conducted stands vitiated on account of the unwarranted interference and passing of orders by the Police Recruitment Board and also considering that a substantial percentage (about 75%) of the candidates are adversely affected by the illegal and arbitrary interference of the selection

board. Accordingly, the entire selection as such is **set aside**. The respondents are directed to finalize the eligibility conditions and amend the service rules, in case they so desire. Once they have taken a decision in this regard, they should publish a fresh advertisement clearly indicating the eligibility conditions for the qualification for the post of Head Operator / Head Operator (Mechanic) and after publishing of the said advertisement they should conduct the recruitment process and conclude the same at the earliest in accordance with law. Since two and half years have lapsed since the advertisement was issued and many of the candidates may have become overage, and considering it is only on account of the acts of omission/commission of the respondents that the present recruitment is being **set aside**, it would be in the interest of justice, to permit such candidates who possess requisite educational qualifications and have participated in the present recruitment process to participate in the next recruitment process, ignoring only their requirement of age.

33. In light of the above, both the writ petitions are partly **allowed**.

(2025) 1 ILRA 435
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.01.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ-A No. 8637 of 2024

Anil Kumar Gangwar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Shireesh Kumar, Utkarsh Kumar

Counsel for the Respondents:

C.S.C., Anagh Shukla, Jyotinjay Verma,
 Ratnesh Chandra

A. Service Law-Constitution of India,1950-Article 226-Petitioner retired on 30.04.2021-initially his pension was fixed at Rs. 56,200-Later authorities reduced his pay and ordered recovery, leading to multiple writ petitions-High court quashed the recovery order and directed fresh proceedings after issuing a show cause notice-A new recovery order was challenged where the court stayed the recovery-Held, As per Supreme Court judgment in Rafiq Masih and Jagdish Singh Case, retrospective recovery from retirees is impermissible-The petitioner's undertaking was given post-retirement making Jagdev Singh inapplicable-Pay fixation cannot be done after a long time gap-The reduction in pension and recovery were quashed and the court ordered the restoration of Rs. 56,200 pension with all consequential benefits. (Para 1 to 42)

The writ petition is allowed. (E-6)

List of Cases cited:

1. In Re Anil Kr. Gangwar Vs St. of U.P. & ors., Writ A No. 1336 of 2024
2. In Re Anil Kr. Gangwar Vs St. of U.P. & ors., Writ A No. 4742 of 2024
3. St. of Punj. & ors.Vs Rafiq Masih(White washer) (2015) 4 SCC 334
4. Jagdish Prasad Singh Vs St. of Bih. & ors.(2024) SCC OnLine SC 1909
5. Syed Abdul Qadir Vs St. of Bih. (2009) 3 SCC 475
6. HC of P& H & ors.Vs Jagdev Singh (2016) 14 SCC 267

(Delivered by Hon'ble Abdul Moin, J.)