

2022 LiveLaw (SC) 20

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UDAY UMESH LALIT; VINEET SARAN, JJ.**

7th January, 2022

STATE OF UTTAR PRADESH & ORS. *VERSUS* ATUL KUMAR DWIVEDI & ORS.

Public Employment - Recruitment - The decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out. (Para 53)

Interpretation of Statutes - Same expression appearing at different places in a statute - it is the context which must determine whether the same expression occurring at two different places must be considered differently or in the same light. (Para 49- 50)

CIVIL APPEAL NO. 228 OF 2022 (@ Special Leave Petition (Civil) No.29972 of 2019) WITH CIVIL APPEAL NO(S). 229 OF 2022 (@ Special Leave Petition (Civil) No.30456 of 2019) WITH CIVIL APPEAL NO(S). 230 OF 2022 (@ Special Leave Petition (Civil) No.30607 of 2019) WITH CIVIL APPEAL NO(S). 231 OF 2022 (@ Special Leave Petition (Civil) No.30552 of 2019) WITH CIVIL APPEAL NO(S). 232 OF 2022 (@ Special Leave Petition (Civil) No.3157 of 2020) WITH CIVIL APPEAL NO(S). 233 OF 2022 (@ Special Leave Petition (Civil) No.322 of 2022) (@D.No.13480 of 2020) WITH CIVIL APPEAL NO(S). 234 OF 2022 (@ Special Leave Petition (Civil) No.323 of 2022) (@ D.No.14425 of 2020) AND WITH CIVIL APPEAL NO(S).235 OF 2022 (@ Special Leave Petition (Civil) No.324 of 2022) (@ D.No.23718 of 2020)

(Arising out of impugned final judgment and order dated 11-09-2019 in WA No. 23733/2018 passed by the High Court of Judicature at Allahabad)

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J U D G M E N T

Uday Umesh Lalit, J.

Leave granted.

1. These appeals arise out of the final judgment and order dated 11.09.2019 passed by the High Court¹.
2. A notification was published by the State Government inviting online application forms from male candidates for filling up 2400 posts of Sub-Inspector of Police, 210 posts of Platoon Commander (PAC²) and 97 posts of Fire Officer (Grade-II) in Uttar Pradesh Police. The procedure for recruitment contemplated Online Written Examination, Physical Standard Test and Physical Fitness Test whereafter the final list of selected candidates would be published. The relevant portion of the notification dealing with online written examination was as under:

¹ High Court of Judicature at Allahabad in Writ Application No.23733 of 2018 and all other connected matters.

² Provincial Armed Constabulary.

“4. Procedure of Recruitment

This recruitment is done under Uttar Pradesh Sub Inspector and Inspector (Police) Service (1st Amendment) Rulebook – 2015.

4.1 Online Written Examination

All the applicants whose application have been found to be correct and accepted will be expected to take up a 400 marks online written examination. This examination will contain question based on 4 subjects listed below and will be based on multiple choice type questions.

Sr. No.	Subject	Maximum Marks
1	General Hindi	100 Marks

2	Law/ Constitution/ General Knowledge	100 Marks
3	Maths & Mental Ability Exam	100 Marks
4	Mental Interest Examination/ Brainstorming Examination/ Logic-based Examination	100 Marks

Applicants who will fail to score a minimum of 50 percent marks in the test will not be eligible for recruitment. Depending on the number of applicants the written examination will be carried out on one day and one session, or on one day multiple sessions or on multiple days multiple sessions. For each session the question paper will be different. The course for the online examination is in Annexure-1. If after completion of online examination and being invited by the board the applicant makes any objection then he has to pay a pre-determined charge. If the objection has been found to be true then the amount will be refunded.”

2.1 Similar notification was published on the same date with respect to 600 posts of Sub-Inspector (Nagrik Police) for female candidates. The recruitment procedure was dealt with in Para 4 of the notification and the portion dealing with “Online Written Examination” was identical to Para 4.1 quoted hereinabove.

3. In response to these advertisements, 6,30,926 applicants submitted their online application forms. Considering the large number of candidates who had offered their candidature, a notification was published on 28.6.2017, the translated portion of which was as under:

“NOTICE/ RELEASE

No.PRPB-Anu-6-P-18/2016

Dated: June 28, 2017

1. For the Males for the Direct Recruitment 2016 on the posts of the Sub- Inspector (Nagrik Police), Platoon Commander PAC and Fire Brigade Second Officers and for filling up 2400 posts for the Sub-Inspector (Nagrik Police), 210 posts for the Platoon Commander PAC and 97 posts for the Fire Brigade Second Officer from the Males candidates online application was invited.

2. Similarly for the Females for the post of Sub-Inspector (Nagrik Police) under the Direct Recruitment – 2016 in the Uttar Pradesh Police for the 600 posts for filling up the posts for the Sub-Inspector (Nagrik Police) from the Females candidates online application was invited.

3. For the Males on the posts of Sub-Inspector (Nagrik Police), Platoon Commander, PAC and Fire Brigade Second Officers under the Direct Recruitment-2016 total 5,42,124 candidates and for the Females for the filling up the post for the Sub-Inspector (Nagrik Police) under the Direct Recruitment-2016, 88,802 viz. total 6,30,926 candidates had applied.

4. On the posts of Sub-Inspector (Nagrik Police), Platoon Commander PAC and Fire Brigade Second Officer in the direct online written examination on the basis of the seniority of the received marks this examination is being run/ organized. In accordance with the number of the candidates the online written examination in more than one date in the different sitting along with the different questions papers the need has come for getting organized the same. The question paper of every sitting will be different in which there may not be possibility of equality and keeping in view the same in the different questions paper by the candidates the Normalisation of the received marks “MAH-MBA/MMS CET 2015” by the used Standardized Equi-percentile method it will be done.

5. The construction of the question paper of the online written examination will be as under:-

No.	Subject	Number of questions	Maximum Marks	Time
1	General Hindi	40	100	2.00 Hours Composite Time
2	Original Law Constitution	24	100	
	General Knowledge	16		
3	The Statistics and Mental Eligibility Examination	40	100	
4	Mental Interest Examination/ Wise Availability Examination/ Logical Examination	40	100	
Every Question = 2.50 marks		Total Questions 160	Total Marks 400	2.00 Hours

6. In the question paper total 160 questions will be there. For every question there will be four alternative answers, in which the candidates will select one out of four alternative answers which the candidate feels it correct. For every question select only one answer and fill up online answer.

7. For every correct answer 2.50 marks is fixed or for any incorrect answer no negative marking will be done there.

8. In any subject in case of cancelling of any question the valuation procedure in the Writ Petition No.2669/2009 (MB) – Pawan Kumar Agrahari vs. Uttar Pradesh Public Service Commission by the Hon'ble High Court it will be done in accordance with the established law and order.

9. In every subject in receiving 50% marks the candidate who failed to do so for the recruitment procedure he will not be eligible.

10. In the question paper leaving the general Hindi subject the question paper of other subjects there will be in Hindi and English Language. Any question in other native language on the login screen it will be selected it may be seen. In case of any doubts the English translation will be acceptable.....”

4. Paragraph 4 of the notification dated 28.06.2017 thus stated that normalization of marks received, would be done as per “Standardized Equipercentile method” used in MAH-MBA/MMS CET 2015.

It may therefore be relevant at this stage to set out relevant instructions pertaining to MAH-MBA/MMS CET 2015. The instructions issued by the Directorate of Technical Education, Maharashtra State, Mumbai for holding the online Common Entrance Test were:-

“Instructions for Registration for MAH-MBA/MMS-CET 2015 by candidate:

1. MAH-MBA/MMS-CET 2015 shall be conducted only in the ONLINE mode in multiple sessions. Competent Authority, using standardized equi-percentile method, will be equating scores across sessions.

... ..”

The information brochure dealt with issue of arriving at the equated score as under:

“(i) Number of questions answered correctly by a candidate in each objective test is considered for arriving at the Corrected Score.

(ii) The Corrected Scores so obtained by a candidate are made equivalent to take care of the minor difference in difficulty level, if any, in each of the objective test held in different sessions to arrive at the Equated Scores.*

*Scores obtained by candidates on any test are equated to the base form by considering the distribution of scores of all the forms.

(iii) testwise scores and scores on total is reported with decimal points upto two digits.

Please note that the types of questions shown here are only illustrative and not exhaustive. In the actual examination you will find questions of a higher difficulty level on some or all of these types and also questions on the types not mentioned here.”

5. Written examination was held between 12th to 23rd December, 2017 in 29 different sittings. In other words, 29 different batches of students appeared for the written examination where the question papers were different. After the completion of written examination, 11741 students were called for further stages to participate in “Physical Standards Test” and “Physical Efficiency Test”. This number comprised of 5461 candidates who had secured more than 50% actual marks in the written examination which shall hereafter be referred to as “raw marks”; while 5713 candidates had secured more than 50% marks after the process of normalization as set out in para 4 of the Notification dated 28.06.2017 was adopted, which marks shall hereafter be referred to as “normalized score”.

All these 11741 candidates were allowed to take part in the further stages of the process of selection.

6. In October, 2018, Writ Petition No.23733 of 2018 was filed in the High Court by certain candidates who had secured more than 50% raw marks submitting *inter alia* that the Board³ had wrongly applied the normalization process by issuing call letters to all those candidates who had not obtained more than 50% raw marks but had secured more than 50% normalized score. It was submitted that the candidates who had not secured more than 50% raw marks but could cross 50% only with the help of normalized score could not be included in the list of qualified candidates and were required to be excluded from the process of selection.

In the affidavit in reply filed by the Member Secretary of the Board³ to said writ petition, it was stated:-

“10. That in the present selection all the candidates who has obtained 50% marks either in the category of raw marks or after the process of normalization in each of the subject such candidates has been declared successful for next stage of recruitment such as document verification and physical standard test and the aforesaid process of normalization is being adopted by the Board in accordance with law and as the present writ petition as framed is devoid of any merits and the grounds taken therein have no force and as such the present writ petition is liable to be dismissed.”

³Uttar Pradesh Police Recruitment and Promotion Board, Lucknow.

7. On 28.02.2019, the final result of the selection process was declared which comprised of eight lists 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 candidates 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.”

8. Thereafter, an application seeking amendment of Writ Petition No.23733 of 2018 was filed and the following prayer was sought to be added: -

“(iii-a) issue a writ, order or direction in the nature of certiorari and quash the impugned result dated 28.02.2019 (Annexure-8) regarding List-B showing name of Petitioners Nos.1, 2, 4, 12, 21, 26, 41, 61, 62, 63, 70, 80, 81, 82, 84, 90, 94, 97, 98 and 99 as well as other candidates failed in written exam.”

The aforesaid amendment application was allowed by a Single Judge of the High Court vide Order dated 06.03.2019.

9. Some of the unsuccessful candidates had also filed Writ Petition SS No.6540 of 2019 (Manish Kumar Yadav and 49 Ors. v. State of U.P. Thru Addl. Chief Secy. Home Lucknow and Ors.) before the Lucknow Bench of the High Court.

In the reply dated 23.03.2019, filed by the Principal Secretary, Department of Home, Government of Uttar Pradesh to said Writ Petition, it was submitted:-

“It is further submitted that the written examination has been organized by the U.P. Public Service Commission by different papers and same has been evaluated by the different examiners and as such scaling system has been adopted by the U.P. Public Service Commission. Hence the aforesaid judgment cited by the petitioners is not applicable.

It is also relevant to mention here that selection in question has been conducted online but in the aforesaid online examination there is no difference in the subject, however, considering the huge number of candidates online examination was held on different dates and different shifts, as such different set of papers with varying levels of difficulty have been used. It is further submitted that for normalization of the Marks of the candidates who appeared in different papers, Standardized Equi-percentile Method has been applied. Where the Examination were held in different dates, different shifts and different set of papers. The Normalization process has been adopted in different National Examination, therefore, the Normalization process adopted by board is legal and justified.”

10. In said Writ Petition No.6540 of 2019 and other connected matters, a Single Judge of the High Court passed an interim order on 30.03.2019, the operative portion of which was:-

“As an interim measure, it is provided that till the next date of listing, no appointment letter shall be issued to the selected candidates pursuant to the select list / result dated 28.02.2019, which is contained as Annexure No.1 to the writ petition, however, the process of selection which is being undertaken by the State Authorities may go on.”

11. The aforestated Order dated 30.03.2019 was challenged by some of the selected candidates by preferring Special Appeal (Defective) No.210 of 2019 (Satyendra Kumar Singh and Ors. vs. State of U.P. Thru. Add. Chief Secy, Deptt. of Home and Ors).

The Division Bench of the High Court considered rival submissions advanced by the concerned candidates and the State Government and by its order dated 27.05.2019 modified the interim directions issued by the Single Judge. The operative portion of the order passed by the Division Bench was:-

“...After considering the rival submissions, this Court is of the opinion that the process of recruitment, which was initiated in the year 2016 for which the final select list has been issued on 28.02.2019 could not be hampered on account of any order passed by the Court. It is not in dispute that the introduction of the Rule of Equi-percentile Methodology was notified by means of the notice dated 28.06.2017 i.e. prior to the date when the examination was held and none of the writ petitioners had assailed the said Methodology. After having appeared in the examination and upon declaration of the final select list, it would not be appropriate for such candidates to hold the entire recruitment process to ransom. However, without entering into the merits of making any observations, this Court in the facts and circumstances deem appropriate that subject to the directions given in this special appeal, the respondent No.2 i.e. U.P. Police Recruitment and Promotion Board may issue the appointment letters, which shall be subject to the final outcome of the writ petition pending before the learned Single Judge.

The appellants and other selected candidates shall give their undertaking before the appropriate authority concerned that they shall not claim any lien or right over the appointment and their appointments shall be purely subject to the outcome of the writ petitions pending before the learned Single Judge. The appellants shall ensure that they file their counter affidavit before the next date of listing before the learned Single Judge, who shall upon exchange of pleadings shall consider the issue involved shall decide the writ petitions pending before it.”

12. Consequently, selected candidates were sent for training.

13. The Order dated 27.05.2019 passed by the Division Bench was challenged by some of the candidates by preferring Special Leave Petition (Civil) No.13551 of 2019 (Manish Kumar Yadav and Ors. vs. State of Uttar Pradesh and Ors.) which came up before the Vacation Bench of this Court on 12.06.2019 when following order passed by this Court: -

“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 necessary 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.”

14. Thereafter, a Special Division Bench was constituted at Allahabad. Similarly, a Special Bench was also constituted at Lucknow Bench of High Court. The Special Division Bench constituted at Allahabad allowed Writ Petition No.23733 of 2018 and other connected matters by its judgment and order dated 11.09.2019 which is presently under challenge.

14.1 The rival submissions advanced by the parties, were summarized by the Special Division Bench at Allahabad as under:-

“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:-

- (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.”

14.2 The questions that arose for consideration were formulated as under: -

“(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.”

14.3. In paragraph 66 of its judgment, the Special Division Bench quoted Rule 15 of the Recruitment Rules⁴:

⁴ The U.P. Sub Inspector and Inspector (Civil Police) Service (First Amendment) Rules, 2015 framed in exercise of powers under the Police Act, 1861.

“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/ General Knowledge	100 marks (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 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:- xxxxxx

(b) Chest:- xxxxxx

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

(a) Height:- xxxxxx

(b) Weight:- xxxxxx

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.

XXX XXX XXX XXX

(d) 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..... 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.....

(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 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:- xxxxxxxxxx

(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)

14.4 The Special Division Bench was not satisfied with the translation of the relevant parts of the notification dated 28.06.2017 and as such, it translated paragraphs 4 and 9 of the notification as under:-

"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 Equipercentile Method.

xxx xxx xxx

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

14.5 The submissions advanced by the learned counsel for the writ petitioners were summed up as under:-

"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 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 normalization 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 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."

14.6 The submissions on behalf of the State were:-

“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 coordination 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:-

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

14.7 The relevant discussion and the conclusions arrived at by the Special Division Bench were:-

“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 rewriting/ amending the mandatory rule, thereby, vitiating the select list."

.....

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 Subclause (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.

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 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 equalize 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.

.....

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.

... ..

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 of merit on normalized score, derived by Standardized EquiPercentile 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."

15. The points which were noted or weighed with the Special Division Bench of the High Court can be summed up as under:-

a. There were no allegations of mala fides or lack of bona fides as against the Selection Board or its Members or with respect to the manner in which the subsequent

stages of selection were held or with regard to the computation of normalization score or the normalization method and formula adopted by the Selection Board.

b. The expression “marks” as used in Rule 15 (b) of the Recruitment Rules must be construed as “raw marks”.

c. Rule 15 (b) dealt with eligibility condition and a candidate failing to obtain 50% “raw marks” in each of the subjects would not be eligible for recruitment.

d. Only those candidates who were successful in written examination under clause (b) of Rule 15 that is to say who had obtained more than 50% “raw marks” were eligible to appear in the further stages of scrutiny of documents and physical efficiency test.

e. The expression “marks obtained by each candidate in written examination under clause (b)” as appearing in Sub-rule (e) of Rule 15 must be understood and construed as “normalized score”. In other words, the process of normalization could be applied only for preparing the select list after all stages of examination contemplated under Sub-rules (b), (c) and (d) were over.

f. The Selection Board was not competent to adopt the process of normalization at Rule 15(b) stage and such conduct on part of the Selection Board amounted to re-writing or amending the mandatory rule.

In the light of these conclusions, the directions passed by the Special Division Bench required the concerned authorities to rule out the candidature of those who had failed to obtain 50% “raw marks” in each subject and then to prepare the select list in order of merit using “normalized score”.

16. Relying on the aforesaid decision of the Special Division Bench at Allahabad, the Special Division Bench at Lucknow disposed of all the matters pending before it namely SS No.6540 of 2019 and connected matters (Manish Kumar Yadav and others vs. State of Uttar Pradesh and others) by its order dated 18.10.2019. Said order of the Special Division Bench at Lucknow was challenged in Special Leave Petition (C) Diary No.39931 of 2019 (Ajay Singh v. Manish Kumar Yadav and 49 others). The Special Leave Petition was rejected summarily by this Court by its order dated 18.11.2019 as under:-

“Application for permission to file Special Leave Petition is allowed.

Heard learned counsel for the parties.

The Special Leave Petition is dismissed.

Pending applications stand disposed of.”

17. State of Uttar Pradesh and some of the candidates being aggrieved by the judgment and order dated 11.09.2019 passed by the Special Division Bench at Allahabad have challenged the decision by filing Special Leave Petitions from which

the instant appeals arise. In its order dated 28.02.2020, this Court directed the State and the Board as under:

“We direct the State and the Board to file appropriate affidavits indicating:

(a) How many candidates had secured minimum 50% of marks before the normalization process was applied and who were also found to be eligible in the subsequent two stages namely scrutiny of documents and physical standard test.

(b) How many candidates were found to have secured minimum 50% marks after normalization process was applied and who were also found to be eligible in the subsequent two stages namely scrutiny of documents and physical standard test.

In other words, the number of candidates who were found eligible without resorting to normalization and after taking resort to normalization, must be available.

(c) Out of these two lists, which are the common names who irrespective of, whether normalization is applied or not would still be qualified.

(d) The affidavit shall also indicate the current vacancy position category-wise and how many seats were actually advertised to be available in the current selection process.

Let the exercise be done within next four days and appropriate affidavits be filed on or before 5.3.2020.

Pending further consideration, there shall be stay of proceedings in any contempt filed in relation to the present matter.”

18. Accordingly, an affidavit was filed on behalf of the State and the Board placing on record the factual information as under:

“3. That for recruitment of Sub Inspector Civil Police and equivalent post of direct recruitment 2016, 2400 posts of Sub Inspector Civil Police, 210 posts of PAC Platoon Commander, 97 posts of Fire Service Second Officer regarding Male candidates and 600 posts of Sub Inspector Civil Police regarding female have been advertised separately for male and female vide notification dated 17-06-2016 respectively. Against the said advertisement total 630926 online applications (Male 542124 & Female 88802) have been received. Out of which total 364539 candidates (Male 317828 & Female 46711) have participated in the written examination.

4. That 9158 male candidates had secured 50% of marks in each section/ subject before the normalization process was applied. Out of these 9158 candidates, 7930 candidates were present/ appeared in DV/ PST (Document Verification and Physical Standard Test-Height/ Chest) and 1181 remain absent. Out of these 7930 candidates, 7603 were qualified in DV/PST. 5723 candidates out of 7603 were qualified in Physical Efficiency Test (Running).

In addition to above, it has to be clarified that 47 male candidates were qualified before normalization as per instructions of Hon'ble High Court, Allahabad, they were awarded extra marks for two wrong questions but they could not be called for DV/ PST because they could not qualify in normalized marks as by that time the selection result was being prepared on the basis of only normalized marks.

Status of male candidates-SI-2016 before normalization is applied

Score criteria	Qualified for DV/PST	Absent in DV/PST	Present in DV/PST	Failed in DV/PST	Qualified in DV/PST	Failed in PET	Qualified in PET
Based on Raw Scores (before Normalization)	9158	1181	7930+47*	327	7603+47*	1721	5723

5. That 501 female candidates had secured minimum 50% of marks in each section/ subject before the normalization process was applied. Out of these 501 female candidates, 448 candidates were present/ appeared in DV/ PST (Document Verification and Physical Standard Test-Height/ Weight) and 53 candidates remained absent. Out of 448 candidates, 441 were qualified in DV/ PST and 348 candidates out of 441 candidates were qualified in Physical Efficiency Test (Running).

Status of Female candidates-SI-2016 before normalization is applied							
Score criteria	Qualified for DV/PST	Absent in DV/PST	Present in DV/PST	Failed in DV/PST	Qualified in DV/PST	Failed in PET	Qualified in PET
Based on Raw Scores (before Normalization)	501	53	448	7	441	84	348

6. That 5229 male candidates had secured minimum 50% of marks in each section/ subject after the normalization process was applied. Out of these 5229 candidates 4452 candidates were present/ appeared in DV/ PST (Document Verification and Physical Standard Test-Height/ Chest) and 777 candidates remained absent. Out of 4452 candidates, 4261 were qualified in DV/ PST and 3148 candidates were qualified in Physical Efficiency Test (Running) out of these 4261.

Status of Male candidates-SI-2016 after normalization is applied							
Score criteria	Qualified for DV/PST	Absent in DV/PST	Present in DV/PST	Failed in DV/PST	Qualified in DV/PST	Failed in PET	Qualified in PET
Based on normalized score	5229	777	4452	191	4261	1008	3148

7. That 484 female candidates had secured minimum 50% of marks in each section/ subject after the normalization process was applied. Out of these 484 candidates 400 candidates were present/ appeared in DV/ PST and 84 candidates remained absent. Out of 400 candidates, 395 were qualified in DV/ PST. 309 candidates were qualified in Physical Efficiency Test (Running) Out of 395 candidates.

Status of Female candidates-SI-2016 after normalization is applied							
Score criteria	Qualified for DV/PST	Absent in DV/PST	Present in DV/PST	Failed in DV/PST	Qualified in DV/PST	Failed in PET	Qualified in PET

Based on normalized score	484	84	400	5	395	78	309
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8. That in the male category 3899 names are common. Out of which finally 2498 candidates were qualified in PET (Running)

9. That in the female category 352 names are common. Out of which finally 246 candidates were qualified in PET (Running)

Status of candidates based on before and after normalization is applied							
Score criteria	Qualified for DV/PST	Absent in DV/PST	Present in DV/PST	Failed in DV/PST	Qualified in DV/PST	Failed in PET	Qualified in PET
MALE	3899	457	3442	123	3319	741	2498
FEMALE	352	41	311	3	308	55	246

10. That the position of unfilled vacancies is as follows: After completion of this section process 821 posts are unfilled/ vacant due to non-availability of suitable candidates.

(a) Category wise unfilled posts in Males-526

Category	S.I., Civil Police	Platoon Commander	FSSO
Open Category (unreserved)	NIL	NIL	NIL
OBC	NIL	NIL	NIL
SC	410	44	19
ST	47	04	02
Total	457	48	21

(b) Category wise unfilled posts in Females-295

Category	S.I., Civil Police
Open Category (unreserved)	NIL
OBC	157
SC	126
ST	12
Total	295

11. That the said online written examination, scrutiny of document and Physical Efficiency Test has been got conducted by highly certified undertaking NSEIT's Ltd. a Government of India undertaking and the information in respect of present affidavit has been supplied by the said executing agency NSEIT's Ltd. which is entirely transparent and non-discriminatory."

19. As some of the respondents were not served, the subsequent order dated 28.07.2020 passed by this Court directed the State Government to publish appropriate advertisement in two newspapers having wide circulation in the State i.e. one in vernacular language and other in English, indicating that the judgment and order dated 11.09.2019 passed by the High Court was under challenge in this Court and that any person interested in supporting said judgment could appear either in-person or through his counsel. It was also observed that in any case, those respondents who were served in the matters and were being represented by number of learned counsel, would be taken to be representing the interest of all the concerned respondents.

Accordingly, the advertisements were published by the State and compliance affidavit was filed in the Registry of this Court. The matters were thereafter directed to be placed for final disposal.

20. In these appeals, Mr. Vinod Diwakar, learned Additional Advocate General advanced submissions on behalf of the State. Mr. P.S. Patwalia, Dr. A.M. Singhvi, Mr. Vikas Singh, Mr. Vinay Navare, learned Senior Advocates and Mr. Amit Pawan and Mr. Shoeb Alam, learned Advocates in that order, advanced submissions on behalf of the concerned candidates supporting the State. The arguments on the part of the respondents were advanced by Mr. Rakesh Dwivedi, Mr. Kapil Sibal, Mr. V. Giri, Ms. V. Mohana, Ms. Vibha Datta Makhija, Mr. Pallav Shishodia, learned Senior Advocates and Ms. Bansuri Swaraj and Mr. Anand Verma, learned Advocates, in that order. Both sides placed reliance on some of the instances highlighting the effects of normalization.

21. The submissions advanced in support of the appeals were:

(a) Expression "marks" could not be given different meaning or connotation at two different stages of the process contemplated by Rule 15 of Recruitment Rules. Rules 15(b) and 15(e), being part of the same Rule and part of the same process, must carry the same meaning for expression "marks" at both the places.

(b) By very nature of having the written examination in 29 sessions, some of the papers were tougher while some were much simpler or easier and therefore there was a necessity to put all the candidates on an even keel. Thus, the process of normalization was rightly adopted at the threshold, that is to say, at the level contemplated by Rule 15(b) of Recruitment Rules.

(c) Considering the large number of candidates, even before the process had begun, the State had made it quite clear that the process of normalization would be adopted. Thus, the action on the part of the State was completely fair and transparent.

(d) In any case, as found by the High Court, there was not even an allegation of *mala fides* or absence of *bona fides* in the action on part of the State.

(e) If the process of normalization was not adopted at the initial stage, some of the rightful claimants and candidates would have got eliminated at the initial stage though upon normalization they had easily qualified.

(f) The equality doctrine under Article 14 of the Constitution would postulate that unequals ought not to be treated equally. If the degree of difficulty in the question papers otherwise demanded normalization being adopted, postponing the process of normalization to the stage of Rule 15(e) of Recruitment Rules would only result in an unfair treatment as against those who by sheer coincidence had to answer tougher question papers.

(g) The decision of this Court in ***Sanjay Singh & Anr. v. U.P. Public Service Commission, Allahabad & Anr.***⁵ had found that moderation would be permissible and it was only in the peculiar fact situation of case that scaling down or normalization was not found to be permissible.

⁵(2007) 3 SCC 720.

(h) Wherever large number of candidates appear at the examination and wherever multiple number of question papers are utilized, a process such as, equalisation, normalization or standardisation or scaling would always be applied so that all the candidates are judged or tested on parameters equal to all.

(i) It was not the submission of the original writ petitioners that the process of normalization could never be adopted. All that they contended was that the stage of normalization ought to be postponed to the state of Rule 15(e).

(j) The normal approach in service jurisprudence, where the extent of judicial review is limited, is to give maximum leeway to the concerned authorities so long as their actions are fair and transparent, uniform in application and without any *mala fides*.

22. On the other hand, the submissions advanced on behalf of the writ petitioners who had succeeded in the High Court, were:

(a) A candidate should always be made well aware of the minimum percentage that he would be required to obtain in order to be eligible for further stages of the selection. The cut off at 50%, therefore, had to be reckoned as against the written examination that a candidate was required to undertake. The parameters ought to be clear and well defined rather than being susceptible to any change or modification depending upon the level of difficulty that the other candidates were required to face.

(b) At the initial stage, that is to say, at Rule 15(b) level what was required was minimum 50% out of maximum marks allocable for such written examination. In other words, the candidate was to be competing against himself and his performance was not to be judged in comparison to that of others in order to be eligible.

(c) What Rule 15(b) required was fifty “percent” of marks and not that the candidate ought to be in fifty “percentile”.

(d) At the Rule 15(b) stage, a specific and known target would be required to be met by the candidate in order to enable him to reach the next level and as such marks required at that stage ought to be “raw marks” and not any “normalized score”.

(e) The “normalized score” would be a measure to compare inter se performance or level of the candidates and therefore, ought to be relied upon only for deciding the *inter se* merit position amongst candidates and not to disqualify those who had secured more than 50% “raw marks”.

(f) Since Rule 15(b) required a candidate “to obtain 50% marks in each of the subjects”, the requirement was rightly construed by the High Court to be 50% “raw marks”.

(g) Obtaining of 50% “raw marks” being a condition of eligibility stipulated by the rule making authority, the Board as a sub-delegate, was not competent and justified in modifying the requirement.

(h) In the process of normalization, what factors would be considered were never known to the candidates at the beginning of the selection process. All that they were made aware was that they had to obtain 50% marks in the written examination. What they had actually obtained, could not have been altered by any artificial process such as normalization resulting in disqualification of the candidates.

(i) A candidate was required to appear for the written test of 400 marks comprising of four subjects, all of which had to be answered in one session as part of the same question paper. It was quite possible that questions regarding one of those said four subjects were tougher while the other subject/subjects were much simpler. It was the sum total of the entire paper that a candidate was required to face and answer in one session. A candidate could as well have devoted more time to solve tougher questions. Thus, by very nature of examination, it was difficult to adopt the process of normalization at the initial stage and thereby hold some of the candidates to be ineligible.

(j) The instant matters were rightly found by the High Court to be covered by the decision of this Court in **Sanjay Singh’s** case.

(k) The decision of the High Court, in any case, stood affirmed by dismissal of Special Leave Petition (C) Diary No.39931 of 2019.

23. At the outset, we must consider the effect of dismissal of Special Leave Petition (C) Diary No.39931 of 2019. It was a summary dismissal at the admission stage and the order does not disclose any reasons why the challenge was negated. The challenge was also not at the instance of the State.

In ***P. Singaravelan and others vs. District Collector, Tiruppur and DT and others***⁶, it was observed by this Court:-

⁶(2020)3 SCC 133

“6. It is evident that all the above orders were non-speaking orders, inasmuch as they were confined to a mere refusal to grant special leave to appeal to the petitioners therein. At this juncture, it is useful to recall that it is well-settled that the dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same. If such an order of this Court is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution, or attract the doctrine of merger. The following discussion on this proposition in *Kunhayammed v. State of Kerala*⁷, is relevant in this regard: (SCC pp. 383-84, para 44)

⁷(2000)6 SCC 359

“(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) *An order refusing special leave to appeal may be a nonspeaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.*

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave

petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

(emphasis supplied)

This view has also been adopted in a plethora of decisions of this Court, including the recent decision in *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.* (2019) 4 SCC 376

7. Applying these observations to the present case, it is clear that there has been no pronouncement by this Court constituting the law of the land as to the interpretation of GOMs No. 162. In such a situation, it is open for us to proceed to decide the instant appeals uninfluenced by the prior orders of this Court dismissing SLPs against the grant of relief to drivers placed similarly as the appellants herein.”

To similar effect are the observations in ***C.G. Govindan v. State of Gujarat and others***⁹, ***U.P. State Road Transport Corporation through its Chairman v. Omaditya Verma and others***¹⁰ and ***State of Orissa and another v. Dharendra Sundar Das and others***¹¹. We, therefore, reject the submission.

⁹(1998) 7 SCC 625 ¹⁰(2005) 4 SCC 424 ¹¹(2019) 6 SCC 270

24. We now proceed to consider the issues arising in these matters.

25. In State of Uttar Pradesh, the matters concerning selection, promotion, training, appointment, determination of seniority and confirmation of service of Sub-Inspectors and Inspectors in Uttar Pradesh Civil Police were dealt with by the Uttar Pradesh Sub-Inspectors and Inspectors (Civil Police) Service Rules, 2008 (“2008 Rules”, for short) which were framed in exercise of powers conferred under Section 46 (2) read with Section 2 of the Police Act, 1861.

Part V of 2008 Rules dealt with “Procedure for Recruitment” and Rule 15 from said Part V was to the following effect:

“15. For the purpose of direct recruitment to the post of Sub-Inspector, there shall be representation to the Scheduled Castes/ Scheduled Tribes and other Backward classes of citizen in Selection Committee shall be made in accordance with the order made under section-7 of the Act, as amended from time to time.

(a) Applications-

(i) A candidate shall fill the application Form from one District only. Regarding allocation of Examination Centre the candidate may give more than one option. However Board may allocate centre other than those indicated by the candidate;

(ii) a separate booklet shall be attached with the application Form containing the information regarding educational qualification, age, minimum qualifying standards for each category of Physical

Standard Test, Physical Efficiency Test, Medical Fitness, Minimum qualifying marks for Written Examination subject wise, copy of O.M.R. sheet for practice and other important guidelines;

(iii) the application Form is on the O.M.R. sheet with carbon copy;

(iv) the space for candidate's both left and right thumb impression is provided in the application Form; two attested photographs of the candidate be pasted on application Form one photo on the application Form and one photo on the admission card are to be pasted at proper places.

(v) it is essential that every application Form must accompany with the attested copies of the certificates of age 10th, 12th and Graduation/ Post Graduation, Sports Certificate, National Cadet Corps Certificate, Home Guard Certificate, Caste Certificate, Unit discharge Certificate in case of Exservicemen and Certificate of Dependent of Freedom Fighters as the case may be.

(vi) Application Form can be purchased on payment of prescribed fees from notified Post Office/ Bank.

(vii) Duly filled up application Forms should be submitted in the same Post Office/ Bank from where it is so purchased.

(b) Call letters:-

All the certificates, submitted by the candidate will be examined before issuance of the call letter. If a certificate is shown to be submitted in the Application Form but not found attached with it, the Application Form of the candidate may be cancelled. After getting the Application Form scanned through computer, computerized call letter will be issued to eligible candidates through the same Post Office/ Bank from where Application Form was submitted. Code/ Name/ Postal address/ Place of the examination centre along with the date and time of the Physical Standard Test, Physical Efficiency Test and medical examination will be clearly mentioned in the call letter. Documents with which the candidates are required to reach for the examination will be clearly indicated in the call letter. Call letter should reach at least a week before the examination. In case call letter is not received till a week before beginning of the examination candidates may contact helpline, serial code of the Application Form will have to be given in this regard. Duplicate call letter will be issued by the Board.

(c) Physical Standard Test:-

All eligible Candidates to appear in a qualifying standard for Physical Standard Test of a qualifying nature the procedure for which is given in Appendix-1.

(d) Preliminary Written Test-

The Candidates who are declared successful in the Physical Standard Test under clause (c) shall be required to appear in an objective type/ Preliminary Written Test of qualifying nature. This test shall carry 200 marks.

It shall comprise three sections, namely General Knowledge (Current Affairs, History, Geography, Constitution of India, Freedom Struggle etc.) of 100 marks. Numerical Ability Test of 50 marks and Reasoning of 50 Marks. The candidate who secure a minimum fifty percent marks in the said test shall be declared successful.

(e) Physical Efficiency Test-

The candidates who are declared successful in the preliminary written test under clause (d) shall be required to appear in a Physical Efficiency Test of qualifying nature. This test shall be of the level of National Physical Efficiency Standard Star-I. The Board shall be empowered to change or

upgrade the standards of the said test which shall, in no case, be lesser than the prescribed standards of Star-I. The procedure for conducting the Physical Efficiency Test shall be such as prescribed in Appendix-2.

(f) Main Written Examination-

The candidates who are declared successful in the Physical Efficiency Test under clause (e) shall be required to appear in the main written examination which shall carry 400 marks in the following subjects:-

Subject Maximum Marks

1. General Hindi/ 75 marks Hindi Essay 25 marks
2. Basic Law and Constitution 100 marks (objective type)
3. Numerical and Mental Ability Test 100 marks (objective type)
4. Mental Aptitude Test/ I.O. Test/ Reasoning 100 marks (objective type)

Note: The procedure for conducting written examination shall be such as prescribed as Appendix-3

The Candidate who fails to obtain minimum fifty percent marks in each subject shall not be eligible for recruitment. The Board shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and others under Rule 6, prepare a list of successful candidates on the basis of marks obtained by them in the Main Written Examination, the entire list along with marks obtained per subject along with answer key would be displayed on the Board's website immediately. The number of candidates to be selected in the main written examination shall be three time the number of vacancies.

(g) Medical Examination-

The candidates who have passed the Main Written Examination will undergo the Medical Examination test shall be such as prescribed in Appendix-3.

(h) Group Discussion:

The candidates selected under the rule 15(f) shall be required to appear in a Group Discussion for which separate groups of ten candidates each shall be formed. The process of Group Discussion shall be carried out under the supervision of a panel comprising Management Expert, Psychologist and Criminologist in the presence of Chairman of the Board or his nominee, one Additional Director General of Police nominated by Director General of Police, Uttar Pradesh). In the said Group discussion, Police Case Study shall be presented for discussion and the entire Group discussion shall be completed within the stipulated timeframe. The Group Discussion shall carry 20 marks and it will include the evaluation of candidates Management Skill (5 marks), Presentation (5marks), Attitude (5 marks) and Personality (5 marks). These marks shall also be uploaded in the Board's website.

NOTE 1- The entire process of Group Discussion shall be video-graphed and a CD thereof shall be prepared.

NOTE 2- Nomination of officers for giving presentation to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of Citizens in the Selection Committee shall be made in accordance with Section 7 of the Act, as amended from time to time.

NOTE 3- The procedure for conducting written examination shall be such as prescribed in Appendix-3.

(i) Selection and Merit List-

The marks obtained by each candidate in the Main Written Examination under Rule 15 (f) shall be added to the marks obtained by him in the Group Discussion under Rule 15 (h).

(j) The Board shall prepare a select list of candidates in order of their merit, keeping in view the reservation policy guidelines as disclosed by the aggregate of marks obtained by each candidate at the main written examination and Group Discussion. If two or more candidates obtain equal marks, the candidate obtaining higher marks in the main written examination shall be placed higher in the list. The Board will upload the Select List on website for all candidates immediately and shall forward it to the Head of the Department.

25.1 Appendix 3 to 2008 Rules dealt with the procedure for written examination which was as under:

“Procedure for Written Examination

All the candidates will have to undergo for a Physical Efficiency Test before the main Written Examination (In the case of direct recruitment of Sub-Inspector). On the pattern of Union Public Service Commission, computerised call letters with pasted photographs will be sent to candidates for main Written Examination through the Post Offices/Banks in the manner it were sent for preliminary examination.

(a) Photograph, thumb impressions of both the hands and code number/name of the examination centre, postal address, date/time of the examination along with the name of the District will be clearly provided in the call letter.

(b) Call letter should reach to the candidates at least a week before the date of the examination. In case call letter is not received a week before the date of the examination the candidate may contact the helpline/landline/mobile phones of the Board or can obtain the duplicate call letter by contacting the Board's website.

(c) Written examination will be conducted on same day at the same time throughout the State.

(d) Candidates will be provided OMR sheet with carbon copy in the examination hall. Candidate can carry the carbon copy with him after the examination. When the result of all the candidates is declared the result will be uploaded along with answer key on Board's website with marks obtained by them subject wise. The candidates can check his marks from the website as per OMR (carbon copy) answer sheet.

(e) After the written examination is over answer sheets will be sent to the Board, centre-wise in sealed covers through the safe custody provided by the District Magistrate/Senior Superintendent of Police/Superintendent of Police.”

26. 2008 Rules were, however, amended by the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2015 on 19th August 2015 and by the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service (First Amendment) Rules, 2015 on 03rd December 2015. Rule 15 of the Amended Rules ('Recruitment Rules', for short) dealing with procedure for direct recruitment to the post of Sub-Inspector has been quoted in the judgment under appeal. It must be noted here that Appendix 3 referable to earlier Rule 15(e) dealing with “Procedure for Written Examination”, was deleted by virtue of the amendment.

27. Rule 15 of 2008 Rules, as it stood before the amendments, thus contemplated :-

- (i) Scrutiny/examination of certificates submitted by the candidates along with their application formed the first step, whereafter, call letter would be issued to the candidates;
- (ii) All candidates were required to appear in the physical standard test and only those who were successful, would appear in an objective type preliminary written test;
- (iii) Those who secured minimum 50% marks in the preliminary written test, would appear in physical efficiency test which was of qualifying nature. Those who qualified at that stage would then be required to appear in the main written examination;
- (iv) As per Rule 15(f), the procedure for conducting the written examination was to be in terms of Appendix 3. In terms of said Appendix, the written examination had to be conducted on the same date at the same time throughout the State. A list of successful candidates who obtained minimum 50% marks would then be prepared.
- (v) Thereafter, there would be medical examination in terms of Rule 15 (g).
- (vi) Finally, there would be group discussion carrying 20 marks.
- (vii) The final selection and merit list would be based on the marks obtained by each candidate in the main written examination and the marks obtained in the group discussion.

28. The steps and stages indicated in Rule 15 of 2008 Rules, have now undergone substantial changes in that:-

- (a) After scrutiny of the application forms under Rule 15(a), all candidates are required to appear for written test of 400 marks. Candidates found successful in written examination will then be required to appear at the stage of scrutiny of documents and physical standard test in terms of Rule 15(c).
- (b) Candidates failing to obtain 50% marks in each of the subjects are not to be eligible for recruitment.
- (c) Candidates found successful in the written examination are required to appear at the stage of scrutiny of documents and physical standard test in terms of Rule 15(c).
- (d) Those who succeeded at the previous stages will then have to undergo physical efficiency test in terms of Rule 15(d).
- (e) Finally at the stage of Rule 15 (e), from amongst the candidates who are successful in physical efficiency test, a select list of each category of candidates shall be prepared on the basis of marks obtained by each candidate in the written examination under clause (b).

(f) It is left to the Board to decide whether 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 papers.

(g) It is again left to the Board to decide the procedure for written examination which must be displayed on its own website.

29. Under the unamended provisions, the procedure for written examination was laid down in Appendix 3, which had to be followed by the Board while holding main written examination in terms of the then Rule 15(f). The procedure mandated that the main written examination be conducted on the same date and at the same time throughout the State.

That procedure now stands displaced and the amended provisions now confer the discretion upon the Board at two levels. Under the first part, it is up to the Board to decide whether the written examination be conducted on the same date, same time and at the same place or it be conducted in more than one shift on the same date or on more than one dates in different shifts with different question papers. Secondly, the procedure for written examination is also to be determined by the Board but it ought to be displayed on its own website.

Going by the requirements of the amended Rule 15, the marks obtained in the written examination will now be the determining factor subject to the candidates fulfilling or meeting the qualifying marks and qualifying at the stages in scrutiny of documents, physical standard test and physical efficiency test.

30. Considering the large number of candidates who had submitted online application forms, a notification was published by the Board on 28.06.2017 indicating:-

a) That the written examination would be held on more than one date in different sittings along with different question papers.

b) Since the question papers of every sitting would be different, there would not be possibility of equality.

c) The exercise would require normalization of the marks by using standardized Equi-percentile Method. Such method would be as adopted in MAH-MBA/MMS CET 2015.

31. The exercise of issuing said notification and declaring the intent as stated above, were well within the powers of the Board in terms of Rule 15(b) as amended by the rule making authority. It was brought to the notice of the candidates well in advance before the written examinations were to be conducted. In view of the large number of candidates, the written examinations were held in 29 different sittings or batches with 29 different question papers. This necessarily implied and required the Board to adopt process of normalization in order to test the merit of the candidates on the same footing or parameter.

The question that arises, however, is about the stage at which the process of normalization was required to be adopted or applied.

32. Before we go into the question, we must consider some of the decisions of this Court which had dealt with the issues of scaling or normalization.

33. In *U.P. Public Service Commission v. Subhash Chandra Dixit and others*¹², the Public Service Commission had applied “scaling of marks” in circumstances noticed by this Court as under:-

¹² (2003) 12 SCC 701

“**6.** 4270 candidates appeared for the examination. For each of the subjects in the written examination, there were around 14 examiners and each of them evaluated about 300 answer-sheets, except in language papers. U.P. PSC had earlier held similar examination for Civil Judge (Junior Division) for selection of Judicial Officers in 1997 and 1999. According to U.P. PSC, there was wide disparity in awarding marks by the various examiners in respect of the same subject. The answer-sheets were randomised before being given to examiners. The randomisation was done at three stages, namely, at the stage of allotment of roll numbers, allotment of centres and at the time of distribution of answer-sheets to the examiners for evaluation. U.P. PSC received representation from several quarters to adopt a scientific method of evaluation of marks awarded by different examiners in respect of common papers. It was noticed that the different examiners adopted different yardsticks to award marks to the candidates. Thus, the candidates were left at the whims of the examiners. The gross disparity between two sets of examiners resulted in injustice to some of the candidates and therefore a check was required. It was noticed that the marks awarded by two different sets of examiners required to be scaled in accordance with certain universally accepted method. U.P. PSC considered the different facets of scaling system and appointed a three-member Committee to carry out an in-depth study of the scaling system. The members of this Committee consisted of Professors from reputed universities. U.P. PSC considered the recommendations made by the Expert Committee and on 7-9-1996 accepted the report of the Committee. U.P. PSC resolved to apply the formula of scaling and thereafter, it was made applicable to PCS Preliminary Examination, 1996 and also in PCS Main Examination held in 1996. Considering the utility of the scaling system, U.P. PSC decided in its meeting on 13-10-1999 to apply the scaling pattern for all the examinations conducted by it. In the case of Civil Judge (Junior Division) Examination, 2000, the answer-sheets were randomised in order to avoid duplicity or any possible mischief. The marks awarded by each examiner were considered and scaled in accordance with the formula adopted by U.P. PSC. The said formula was based on the opinion of experts on the subject and accordingly, the result was published by U.P. PSC. The merit list published by U.P. PSC was challenged by the respondents in SLP (Civil) No. 23723 of 2002 on the ground that the scaling system adopted by U.P. PSC was confusing, arbitrary and without any reasonable basis. It was alleged that arbitrary marks were awarded to certain candidates in the name of scaling system to provide undue favour to them. It was contended that U.P. PSC had not disclosed the guidelines and criteria adopted in implementing the scaling system and, therefore, it was arbitrary and unjustified. It was also contended that several candidates had been awarded less than 40% marks without any basis whereas several other candidates who had secured lesser marks in the written tests were awarded more than 60% or 70% marks.”

33.1 The relevant Rules were quoted in paragraphs 15 and 17 as follows:-

“**15.** Part VI Rule 19 deals with appointment, probation and confirmation. Rule 19 reads as follows:-

“19. *List of candidates approved by the Commission.*—The Commission shall prepare a list of candidates who have taken examination for recruitment to the service in order of their proficiency as disclosed by the *aggregate marks finally awarded* to each candidate. If two or more candidates obtain equal marks in the aggregate, the Commission shall arrange them in order of merit on the basis of their general suitability for the service:

Provided that in making their recommendation, the Commission shall satisfy itself that the candidate has obtained such an aggregate of marks in the written test that he is qualified by his ability for appointment to the service.”

17. Rule 51, which is relevant for the purpose reads as follows:

“51. The marksheets so obtained shall be opened on the last day of interview and immediately thereafter the marks of interview/personality test shall be added to the marks obtained by the candidates in the written examination. Thereafter, on the basis of the totals so obtained, the merit list shall be prepared and placed before the Commission for final declaration of the result:

Provided that the Commission may, with a view to eliminating variation in the marks awarded to candidates at any examination or interview, adopt a method, device or formula which they consider proper for the purpose.”

33.2 The discussion on the point was:-

“19. The question, therefore, that arises for consideration is whether the U.P. Public Service Commission can adopt the scaling system by invoking the power conferred under Rule 51 of the 1976 Amendment Act in view of Rule 19 contained in the Niyamavali, 1951. Of course, Niyamavali, 1951 was made by the Governor in consultation with the U.P. Public Service Commission and the High Court of Judicature at Allahabad by virtue of the powers conferred by Article 234 of the Constitution whereas the provisions of the 1976 (*sic* 1974) Act are general guidelines for the U.P. Public Service Commission, it is not an enactment made in consultation with the High Court. Nevertheless, the provisions of the 1976 (*sic* 1974) Act are applicable for the purpose of conducting examination for recruitment of Judicial Officers in the State of Uttar Pradesh. The expression “aggregate marks” used in Rule 19 of the Niyamavali, 1951 can only be construed as the final marks awarded after the scaling system is applied. Certainly, the proviso to Rule 51 gives ample power to the Commission to adopt any method, device or formula to eliminate any variation in the marks awarded to the candidates. The various provisions contained in the 1974 Act deal with the method and manner in which the examinations are to be conducted. The Niyamavali, 1951 deals with only general provisions regulating recruitment to the posts and the conditions of service. The Niyamavali, 1951 does not deal with the method and the manner in which the examinations are to be conducted. Various steps and procedures have to be adopted in completing the recruitment for which detailed procedure has been laid down. This procedure is not part of the Niyamavali, 1951.

20. We do not think that the proviso to Rule 51 is in any way in conflict with Rule 19 of the Niyamavali, 1951. The aggregate marks can only be considered to mean the total marks finally obtained by the candidate after the complete valuation process is over. The dictionary meaning of “aggregate” is thus: (i) a whole formed by combining several disparate elements; (ii) the total score of a player or team in a fixture comprising more than one game or round; and (iii) formed or calculated by the combination of many separate units or items.

... ..

31. There is a vast percentage difference in awarding of marks between each set of examiners and this was sought to be minimised by applying the scaling formula. If scaling method had not been used, only those candidates whose answer-sheets were examined by liberal examiners alone would get selected and the candidates whose answersheets were examined by strict examiners would be completely excluded, though the standard of their answers may be to some extent similar. The scaling system was adopted with a view to eliminate the inconsistency in the marking standards of the examiners. The counsel for the respondents could not demonstrate that the adoption of scaling system has in any way caused injustice to any meritorious candidate. If any candidate had secured higher marks in the written examination, even by applying the scaling formula, he would still be benefited.

32. The Division Bench of the High Court observed that the process of scaling was done examinerwise only and the scaling formula did not take into consideration the average of mean of all the candidates in one particular paper but took the mean of only that group of candidates which has been examined by one single examiner. The counsel for U.P. PSC submitted that the observation made by the High Court is incorrect. The scaling formula was adopted to remove the disparity in the evaluation of 14 examiners who participated in the evaluation of answer-sheets and the details have also been furnished as to how the scaling formula was adopted and applied. Therefore, we do not think that the observation of the Division Bench that the Commission did not take care of varying standards which may have been applied by different examiners but has sought to reduce the variation of the marks awarded by the same examiner to different candidates whose answer-sheets had been examined, is correct. The Division Bench was of the view that as a result of scaling, the marks of the candidates who had secured zero marks were enhanced to 18 and this was illegal and thus affected the selection process. This finding is to be understood to mean as to how the scaling system was applied. 18 marks were given notionally to a candidate who secured zero marks so as to indicate the variation in marks secured by the candidates and to fix the mean marks.

33. In that view of the matter, we do not think that the application of scaling formula to the examinations in question was either arbitrary or illegal. The selection of the candidates was done in a better way. Moreover, this formula was adopted by U.P. PSC after an expert study and in such matters, the court cannot sit in judgment and interfere with the same unless it is proved that it was an arbitrary and unreasonable exercise of power and the selection itself was done contrary to the Rules. Ultimately, the agency conducting the examination has to consider as to which method should be preferred and adopted having regard to the myriad situations that may arise before them."

34. The basic facts in **Sanjay Singh**⁵ were noticed by this Court as under:-

"2. On the request of the Allahabad High Court, to conduct the examination for filling 347 posts of Civil Judge (Junior Division), the Commission issued an advertisement in Employment News dated 28- 11-2003. As many as 51,524 candidates appeared for the "U.P. Judicial Service, Civil Judge (Junior Division) Preliminary Examination, 2003" conducted by the Commission on 21-3-2004. The preliminary examination was of "objective" type consisting of two papers — General Knowledge and Law. The result was declared on 30-6-2004 and 6046 candidates were declared qualified to appear for "U.P. Civil Judge (Junior Division) Examination (Main), 2003" which was of "descriptive" (conventional) type. The main examination consisted of five papers (each carrying 200 marks) — General Knowledge, Language, Law I, II and III — and was held between 5- 10-2004 and 7-10-2004. The number of candidates who took the said examination was 5748.

3. The answer-scripts relating to each subject were distributed to several examiners for valuation, as it was not possible to get the large number evaluated by a single examiner. The number of examiners, to whom the answer-scripts were distributed for valuation, were as follows: General Knowledge-18, Language-14, Law I-11, Law II-10, and Law III-14. The marks assigned by the examiners were subjected to “statistical scaling” and the results of written examination based on such scaled marks, were declared on 7-3-2005. Thereafter, 1290 candidates were interviewed between 14-4-2005 and 26-4-2005. After such interview, the Commission declared the final results of the examination on 1-5-2005 based on the aggregate of “scaled marks” in the written (main) examination and the marks awarded in the interview. On the recommendations made by the Commission, appointments were made to 347 posts of Civil Judge, Junior Division.”

34.1 This Court was called upon to consider the correctness of “Scaling System” adopted by the Public Service Commission. Considering the text of U. P. Judicial Service Rules, 2001, this Court concluded that the “Scaling System” was unsuited in regard to Civil Judge (Junior Division) Examination. It was noticed that in the earlier decision in **Subhash Chandra Dixit and Ors.**¹² this Court had upheld scaling and had ruled that scaling was a recognized method to bring raw marks in different subjects to a common scale. It was, however, found that there was no provision in Judicial Service Rules akin to proviso to Rule 51 of the Public Service Commission Procedure Rules.

The relevant discussion on the point was:-

“17. It is no doubt true that the Judicial Service Rules govern the recruitment to Judicial Service, having been made in exercise of power under Article 234, in consultation with both the Commission and the High Court. It also provides what examinations should be conducted and the maximum marks for each subject in the examination. But the Judicial Service Rules entrust the function of conducting examinations to the Commission. The Judicial Service Rules do not prescribe the manner and procedure for holding the examination and valuation of answer-scripts and award of the final marks and declaration of the results. Therefore, it is for the Commission to regulate the manner in which it will conduct the examination and value the answer-scripts subject, however, to the provisions of the Judicial Service Rules. If the Commission has made Rules to regulate the procedure and conduct of the examination, they will naturally apply to any examination conducted by it for recruitment to any service, including the Judicial Service. But where the Judicial Service Rules make a specific provision in regard to any aspect of examination, such provision will prevail, and the provision of the PSC Procedure Rules, to the extent it is inconsistent with the Judicial Service Rules, will be inapplicable. Further, if both the Rules have made provision in regard to a particular matter, the PSC Procedure Rules will yield to the Judicial Service Rules.

18. The manner in which the list of candidates as per merit should be prepared is provided both in the Judicial Service Rules and the PSC Procedure Rules. Relevant portion of Rule 20(3) and Note (i) of Appendix II of the Judicial Service Rules and Rule 51 of the PSC Procedure Rules providing for the aggregation of marks and preparation of the merit list, are extracted below:

Judicial Service Rules	PSC Procedure Rules
“20. (3) The Commission then shall prepare a final list of selected candidates <i>in order of their proficiency as disclosed by aggregate of marks</i>	“51. The marks sheets so obtained shall be opened on the last day of interview and immediately thereafter <i>the marks of interview/personality test shall be added to the</i>

<i>finally awarded to each candidate in the written examination and the interview.”</i> Note (i) of Appendix II—“(i) <i>The marks obtained in the interview will be added to the marks obtained in the written papers and the candidate’s place will depend on the aggregate of both.</i>”	<i>marks obtained by the candidates in the written examination.</i> <i>Thereafter, on the basis of the totals so obtained the merit list shall be prepared and placed before the Commission for final declaration of the result:</i> Provided that the Commission may, with a view to eliminating variation in the marks awarded to candidates at any examination or interview, adopt any method, device or formula which they consider proper for the purpose.” (different emphasis supplied)
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As the field is occupied by Rule 20(3) and Note (i) of Appendix II of the Judicial Service Rules, they will prevail over the general provision in Rule 51 of the PSC Procedure Rules.

19. Rule 20(3) provides for the final list of selected candidates in order of their proficiency as disclosed by the aggregate of “*marks finally awarded to each candidate in the written examination and the interview*”. Note (i) to Appendix II of the Judicial Service Rules provides that the “marks obtained in the interview” will be added to “*the marks obtained in the written papers*” and that the candidate’s place will depend on the aggregate of both. Though the Judicial Service Rules refers to “marks finally awarded”, the said Rules do not contain a provision similar to the proviso to Rule 51 of the PSC Procedure Rules, enabling the Commission to adopt any method, device or formula to eliminate variation in the marks. It is not possible to read the proviso to Rule 51 or words to that effect into Rule 20(3) or Note (i) of Appendix II of the Judicial Service Rules. It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules. Therefore, Rule 20(3) and Note (i) of Appendix II have to be read as they are without the addition of the proviso to Rule 51 of the PSC Procedure Rules. If so, what can be taken into account for preparing final list of selected candidates, are “marks finally awarded to a candidate” in the written examination and the interview. The marks assigned by the examiner are not necessarily the marks finally awarded to a candidate. If there is any error in the marks awarded by the examiner it can always be corrected by the Commission and the corrected marks will be “the final marks awarded to the candidate”. Where the Commission is of the view that there is “examiner variability” in the marks (due to strict or liberal assessment of answerscripts) or improper assessment on account of erratic or careless marking by an examiner, they can be corrected appropriately by moderation. The moderation is either by adding (in the case of strict examiners) or deducting (in the case of liberal examiners) a particular number of marks which has been decided with reference to principles of moderation applied. If there is erratic or careless marking, then moderation is by fresh valuation by another examiner. Therefore, the marks assigned by the examiner as moderated will be the marks finally awarded to the candidates or marks obtained by the candidates. Moderation, it has to be held, is inherent in the evaluation of answerscripts in any largescale examination, where there are more than one examiner.

20. We cannot accept the contention of the petitioner that the words “marks awarded” or “marks obtained in the written papers” refer 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.

21. But the question is whether the raw marks which are converted into scaled scores on an artificial scale with assumed variables (assumed mean marks and assumed standard deviation) can be considered as “marks finally awarded” or “marks obtained”. Scaled scores are not marks awarded to a candidate in a written examination, but a figure arrived at for the purpose of being placed on a common scale. It can vary with reference to two arbitrarily fixed variables, namely, “assumed mean” and “assumed standard mean”. We have dealt with this aspect in greater detail while dealing with Question (iii). For the reasons given while considering Question (iii), we hold that “scaled scores” or “scaled marks” cannot be considered to be “marks awarded to a candidate in the written examination”. Therefore, scaling violates Rule 20(3) and Note (i) of Appendix II of the Judicial Service Rules.

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24. In the Judicial Service Examination, the candidates were required to take the examination in respect of all the five subjects and the candidates did not have any option in regard to the subjects. In such a situation, moderation appears to be an ideal solution. But there are examinations which have a competitive situation where candidates have the option of selecting one or few among a variety of heterogeneous subjects and the number of students taking different options also vary and it becomes necessary to prepare a common merit list in respect of such candidates. Let us assume that some candidates take Mathematics as an optional subject and some take English as the optional subject. It is well recognised that marks of 70 out of 100 in Mathematics do not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate an outstanding student whereas in Mathematics, 70 out of 100 may merely indicate an average student. Some optional subjects may be very easy, when compared to others, resulting in wide disparity in the marks secured by equally capable students. In such a situation, candidates who have opted for the easier subjects may steal an advantage over those who opted for difficult subjects. There is another possibility. The paper-setters in regard to some optional subjects may set questions which are comparatively easier to answer when compared to some paper-setters in other subjects who set tougher questions which are difficult to answer. This may happen when for example, in Civil Service Examination, where Physics and Chemistry are optional papers, Examiner ‘A’ sets a paper in Physics appropriate to degree level and Examiner ‘B’ sets a paper in Chemistry appropriate for matriculate level. In view of these peculiarities, there is a need to bring the assessment or valuation to a common scale so that the inter se merit of candidates who have opted for different subjects, can be ascertained. 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, normalised equipercentile method are some of the recognised methods for scaling.

25. A. Edwin Harper Jr. and V. Vidya Sagar Misra in their publication Research on Examinations in India have tried to explain and define scaling. We may usefully borrow the same. A degree “Fahrenheit” is different from a degree “Centigrade”. Though both express temperature in degrees, the “degree” is different for the two scales. What is 40 degrees in Centigrade scale is 104 degrees in Fahrenheit scale. Similarly, when marks are assigned to answer-scripts in different papers, say by Examiner ‘A’ in Geometry and Examiner ‘B’ in History, the meaning or value of the “marks” is different. Scaling is the process which brings the marks awarded by Examiner ‘A’ in regard to Geometry scale and the marks awarded by Examiner ‘B’ in regard to History scale, to a common scale. Scaling is the exercise of putting the marks which are the results of different scales adopted in different subjects by different examiners onto a common scale so as to permit comparison of inter se merit. By this exercise, the raw marks awarded by the examiner in different subjects are converted to a “score” on a common scale by applying a statistical formula. The “raw marks” when converted to a common scale are known as the “scaled marks”. Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognised method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination.”

34.2 Finally, following directions were issued by this Court:-

“53. However, insofar as the petitioners are concerned, we deem it proper to issue the following directions to do complete justice on the facts of the case:

(a) If the aggregate of raw marks in the written examination and the marks in the interview of any petitioner is less than that of the last selected candidate in the respective category, he will not be entitled to any relief (for example, the petitioners in WP (C) No. 165 of 2005 belonging to the category ‘BC’ have secured raw marks of 361 and 377 respectively in the written examinations, whereas the last five of the selected candidates in that category have secured raw marks of 390, 391, 397, 438 and 428 respectively. Even after adding the interview marks, the marks of the petitioners in WP (C) No. 165 of 2005 are less than the marks of the selected candidates).

(b) Where the aggregate of raw marks in the written examination and the interview marks of any petitioner, is more than the aggregate of the raw marks in the written examination and interview marks of the last selected candidate in his category, he shall be considered for appointment in the respective category by counting his appointment against future vacancies. [For example, we find that petitioner Archana Rani, one of the petitioners in WP (C) No. 467 of 2005 has secured 384 raw marks which is more than the raw marks secured by the last five selected candidates (347, 337, 336, 383 and 335) under the SC category and even after adding the interview marks, her marks are more than the five selected candidates. Hence, she should be considered for appointment.] This relief will be available only to such of the petitioners who have approached this Court and the High Court before 31-8-2005.”

35. In ***Mahinder Kumar and Ors. v. High Court of Madhya Pradesh and Ors.***¹³ relevant clauses of Para 9 of the advertisement and the concerned Rule 7 were considered by this Court as follows:-

¹³ (2013) 11 SCC 87

“15. The advertisement stated that out of 20 posts, 11 posts were earmarked for general category candidates and three posts each reserved for Scheduled Castes, Scheduled Tribes and Other Backward Class candidates. It was also made clear that if sufficient number of suitable candidates belonging to the reserved categories were not available, such posts would be treated as unreserved. Para 9 of the advertisement which contains sub-clauses (i) to (vii) are relevant for our purpose. The same are required to be extracted, which read as under:

“(i) The candidates may be shortlisted at the preliminary stage i.e. before written examination, by the High Court.

(ii) Eligible candidates will be required to appear in written examination and interview at their own expenses before the High Court of Madhya Pradesh, Jabalpur, or at such other places as may be specified by the High Court.

(iii) The written examination shall consist of two papers, each of 3 hours' duration and of maximum 100 marks. The object of the written examination is to assess the knowledge of a candidate in Law and latest pronouncements. First paper shall relate to the Constitution of India, the Civil Procedure Code, CrPC, IPC, Hindu Law, the Transfer of Property Act, the M.P. Accommodation Control Act, the Limitation Act, the Evidence Act and the M.P. Land Revenue Code, special Acts like NDPS, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Prevention of Corruption Act, the Negotiable Instrument Act.

Second paper will be in two parts, the first part will contain factual data of a civil case and a criminal case on the basis of which the candidate shall prepare judgment in the civil case and criminal case. The second part will contain a passage in Hindi to be translated into English and a passage in English to translate into Hindi.

(iv) Only such candidates will be called for interview as the High Court may decide, on the basis of evaluation of their performance in the written examination.

(v) The interview shall carry 25 marks.

(vi) Candidates shall be selected on the basis of aggregate marks obtained by them in both the written examination and interview.

(vii) On completion of the selection process, the result of examination (list of selected candidates) shall be published in M.P. Rajpatra and all the candidates both successful and unsuccessful shall be supplied marksheets at their given addresses by ordinary post.”

16. The said Para 9 states as to how the short-listing of candidates at the preliminary stage itself before the written examination were to be made by the High Court, the requirement of the candidates to appear in the written examination consisting of two papers where, the maximum marks in each paper was 100 and the relevant laws in which the examination would be conducted in both the papers was also specified. In Para 9(iv), it was specified that the High Court may decide on the basis of evaluation of their performance in the written examination for calling those candidates for interview. Under Para 9(v), the interview marks were specified as 25. In Para 9(vi), it was mentioned that the candidates would be selected on the basis of aggregate marks obtained by them, both in the written examination and the interview. The last paragraph of the amended Rule 7 is also relevant, which reads as under: “The procedure of selection for direct recruitment and promotion shall be such, as may be specified by the High Court from time to time.”

35.1 On the question whether the High Court was entitled to adopt the process of normalization while evaluating performance in the written examination, this Court observed as under:

“37. Once we steer clear of the said position, the next submission of the learned Senior Counsel for the petitioner was that when assuming Rule 7 empowers the High Court to follow its own procedure, it should have been disclosed in the advertisement. The contention of the learned Senior Counsel was that whatever procedure evolved by the High Court should have been disclosed well in advance by the High Court or at least before the written examination was conducted. When we consider the said submission, we find that there is a clear indication in Para 9 of the advertisement as to in what manner the High Court is going to conduct the selection process:

37.1. Para 9(i) makes it clear that the candidates may be shortlisted at the preliminary stage i.e. before the written examination is held by the High Court. No one can find fault with such a prescription, inasmuch as such short-listing will have to be necessarily made in order to ensure that only such of those candidates who satisfy the conditions in Paras 2-8 of the advertisement are duly complied with.

37.2. In fact, Para 8 makes it clear that non-receipt of the forms of application, etc. in time by the candidate will not be accepted as an excuse for late submission of the application forms. Meaning thereby, that any application for the post to be submitted before 30-9-2006, should be complete in all respects furnishing whatever details which were required to be furnished and also satisfy the various conditions such as, age restriction, years of practice, character certificate, citizenship, etc. If such conditions are not fulfilled, by exercise of such power contained under Rule 9(i), the High Court would be fully entitled to exclude the consideration of such candidates for participating in the written examinations.

37.3. In Para 9(iii), it has been sufficiently indicated that each paper of the written examination will be for a duration of 3 hours, with a maximum of 100 marks to be scored. The object in holding the written examination in both the first and second papers, have also been specifically highlighted in Para 9(iii).

37.4. Once the written examination part is fulfilled, the High Court 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. Therefore, in Para 9(iv) it has been specified that before calling any of the candidates for interview who appeared for the written examination, an evaluation will have to be made and based on the evaluation and performance, the High Court will decide as to who should be called for the interview.

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 equalise 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.

38. In a situation like this, where nearly 3000 candidates appeared for the written examination and the answer papers were evaluated by several District Judges, it cannot be held that there was every scope for variation in the assessment of the answers and the award of marks valued by different valuers. The High Court in exercise of its authority under Rule 7, read along with Para 9(iv) adopted a fair procedure to normalise the marks of the candidates in order to assess their respective merits. Therefore, the expression “evaluation” used in Para 9(iv), should be held to fully empower the High

Court to even resort to such a step in a case like this, where more number of District Judges evaluated the answer sheets and thereby, it required the intervention of the High Court on its administrative side, to find a fair method by which the normalisation of the marks could be worked out.”

The action on part of the High Court in adopting the process of normalization was thus, accepted by this Court and the challenge raised against such process was rejected.

36. It is important to note that **Subhash Chandra Dixit**¹² was decided by a Bench of two Judges of this Court while **Sanjay Singh**⁵ and **Mahinder Kumar**¹³ were decided by Benches of three Judges. Further, the decision in **Sanjay Singh**⁵ was noticed in paragraph 7 of the decision in **Mahinder Kumar**¹³ but Rule 7 and Para 9 (iv) of the advertisement were found sufficiently wide enough to admit adoption of a procedure by which normalization of marks could be worked out.

37. In **Sunil Kumar and others v. Bihar Public Service Commission and others**¹⁴, a Bench of two Judges of this Court, among other questions, considered the applicability of the decision in **Sanjay Singh**⁵ to cases where the candidates were tested in different subjects as against an examination where the question papers were compulsory and common to all the candidates. The discussion was:-

¹⁴ (2016) 2 SCC 495

“**11.** Having considered the rival submissions advanced before us, we are of the view that the question that calls for an answer in the present case is whether this Court in **Sanjay Singh**⁵ had 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 specifically 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 is the extent of the power of judicial review to scrutinise the decisions taken by another constitutional authority i.e. the Public Service Commission in the facts of the present case.

... ..

13. We have read and considered the judgment in **Sanjay Singh**⁵. In the said case, this 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 (5) papers all of which were compulsory for all the candidates. There is no dispute that the U.P. Public Service Commission in the aforesaid case had scaled down the marks awarded to the candidates by following the scaling method. This Court, after holding that the Judicial Service Rules which governed the selection did not permit the scaled down marks to be taken into consideration, went into the further question of the correctness of the adoption of scaling method to an examination where the papers were compulsory and common to all the candidates. In doing so, it was observed as follows: (SCC p. 742, para 24)

“**24.** The moderation procedure referred to in the earlier paragraph 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, normalised equipercentile method are some of the recognised methods for scaling.”

It was furthermore observed: (SCC p. 742, para 25)

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

14. After holding as above, this Court, on due consideration of several published works on the subject, took note of the preconditions, the existence or fulfilment of which, alone, could ensure an acceptable result if the scaling method is to be adopted. As in *Sanjay Singh*⁵, the U.P. Public Service Commission had not ensured the existence of the said preconditions the consequential effects in the declaration of the result were found to be unacceptable. It was repeatedly pointed out by this Court (paras 36 and 37) that the adoption of the scaling method had resulted in treating unequals as equals. Thereafter, in para 45 this Court held as follows: (SCC p. 751)

“45. We may now summarise the position regarding scaling thus:

(i) Only certain situations warrant adoption of scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the ‘hawk-dove’ effect (strict/liberal valuation).”

15. Moreover, in para 46, this Court observed that the materials placed before it did not disclose that the Commission or any expert body had kept the above factors in mind for deciding to introduce the system of scaling. In fact, in the said paragraph this Court had observed as follows: (*Sanjay Singh*⁵, SCC p. 751)

“46. ... We have already demonstrated the anomalies/absurdities arising from the scaling system used. The Commission will have to identify a suitable system of evaluation, if necessary by appointing another Committee of Experts. Till such new system is in place, the Commission may follow the moderation system set out in para 23 above with appropriate modifications.”

16. In *Sanjay Singh*⁵, an earlier decision of this Court approving the scaling method i.e. *U.P. Public Service Commission v. Subhash Chandra Dixit*¹² to a similar examination was also noticed. In para

48 of the judgment in *Sanjay Singh*⁵ it was held that the scaling system adopted in *Subhash Chandra Dixit*¹² received this Court's approval as the same was adopted by the Commission after an in-depth expert study and that the approval of the scaling method by this Court in *Subhash Chandra Dixit*¹² has to be confined to the facts of that case.

17. Finally, in para 51 of the Report in *Sanjay Singh*⁵ the Court took note of the submission made on behalf of the Commission that it is not committed to any particular system and "will adopt a different or better system if the present system is found to be defective" (SCC p. 754).

18. In *Sanjay Singh*⁵ the Court was considering the validity of the declaration of the results of the examination conducted by the Public Service Commission under the U.P. Judicial Service Rules by adoption of the scaling method. This, according to this Court, ought not to have been done inasmuch as the scaling system is more appropriate to an examination in which the candidates are required to write the papers in different subjects whereas in the examination in question all the papers were common and compulsory. To come to the aforesaid conclusion, this Court had necessarily to analyse the detailed parameters inherent in the scaling method and then to reach its conclusions with regard to the impact of the adoption of the method in the examination in question before recording the consequences that had resulted on application of the scaling method. The details in this regard have already been noticed (*Sanjay Singh* case⁵, paras 45 and 46) (in paras 14 and 15 herein).

19. The entirety of the discussion and conclusions in *Sanjay Singh*⁵ 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*⁵ 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*⁵ 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*⁵ 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*⁵ to the above effect as has been 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.

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 straitjacket 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*⁵. 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 mala fide exercise of power.”

38. In *Uttar Pradesh Public Service Commission vs. Manoj Kumar Yadav and another*¹⁵, the process of selection comprised of preliminary examination in General Studies and one optional subject, whereas, the main written examination was to consist of four compulsory papers i.e. two in General Studies and one paper each in Hindi and English essay. The Public Service Commission had adopted “Scaling of Marks” at the preliminary as well as the main written examination. A Bench of two Judges of this Court applied the law laid down by this Court in *Sanjay Singh*⁵ and found that scaling method could not have been adopted for compulsory subjects. However, considering the fact that the directions issued by the High Court would result in displacement of a number selected candidates and alteration of merit list causing serious prejudice to those appointed and working for last few years, the relief was not granted. The relevant discussion is to be found in paragraphs 13 and 15:-

¹⁵ (2018) 3 SCC 706

“**13.** In the PCS Examination, 2004 and the Backlog Examination, 2004 the candidates had to take part in the main written examinations which consisted of four compulsory subjects and two optional subjects. The compulsory subjects were common to all candidates and the two optional subjects were to be chosen from the available 33 subjects as mentioned in the advertisements. As per the judgment of this Court in *Sanjay Singh case*⁵, the Commission could have followed the scaling method only for the optional subjects and not for the compulsory subjects. However, it is clear from the submissions made on behalf of the appellant in the High Court that scaling method was followed even for compulsory subjects. We approve the findings of the High Court that the evaluation of the PCS and Backlog Recruitment Examinations, 2004 was contrary to the judgment of this Court in *Sanjay Singh case*⁵.”

15. It is settled law that in certain situations, on account of subsequent events, the final relief granted by this Court may not be the natural consequence of the ratio decidendi of its judgment. In such situations, the relief can be moulded by the Court in order to do complete justice in the matter. It is relevant to note the fact that *Sanjay Singh case*⁵ was also made prospective in operation and this Court declined to interfere with the selections already made in that case on the basis that relief can be moulded. In the instant case, the examinations were conducted by the appellant on the basis of the pattern being followed by them since 1996. At the time when the examinations were conducted, a judgment of this Court in *U.P. Public Service Commission v. Subhash Chandra Dixit*¹² approving the scaling method adopted by the Commission held the field. Moreover, the selected candidates were appointed on the basis of an interim order passed by this Court in 2007 and they have been working continuously since then. There are no allegations of any irregularities or malpractices in the conduct of the said examinations. The candidates who participated in the examinations cannot be

found fault with for the error committed by the appellant in adopting the scaling method. In view of the above, we do not deem it fit to disturb the appointments made pursuant to the selections in the examinations conducted in 2004.”

39. In the backdrop of these decisions, what is of importance in the instant matters is the fact that more than 6.3 lakh applicants had submitted online application forms whose candidature was tested in written examinations held in 29 different batches over 12 days. The cases dealt with by this Court did not deal with the fact situation akin to that which arises in the instant matters. In the aforesaid decisions the number of candidates was not quite large (4270 in **Subhash Chandra Dixit**¹², 51524 and 5748 in preliminary and main examinations respectively in **Sanjay Singh**⁵ and about 3000 in **Mahinder Kumar**¹³). Further, these decisions dealt with “single examination” for the concerned papers or subjects and the variability was either with regard to the examiners or in the circumstances arising from different optional subjects.

40. Cases of single examination where there are multiple number of examiners may call for moderation to be adopted by the examiner-in-chief or such body constituted for the purposes. On the contrary, scaling of marks has been accepted to be an appropriate method where candidates are tested in different subjects. As noticed by this Court in **Sanjay Singh**⁵, a candidate having secured 70% marks in “Mathematics” cannot be said to be on an equal footing as against the candidate who had secured 70% marks in “English”. As against examiner variability in the same or compulsory examination, the subject variability was thus found to be a good ground to adopt “Scaling of Marks” as a method to put all the candidates on an even keel.

41. In the instant cases, we are however concerned with a dimension which had not been considered earlier, namely variability on account of the fact that the candidates were tested on different dates over 12 days through different sets of question papers. The Board could not possibly have gone ahead with examination for 29 different batches with the same type of questions as the subsequent batches would then have had advantage of having seen the pattern of questions put to the earlier batches. Thus, though the subjects were same, the question papers would necessarily be different in terms of quality and approach. In a situation such as that the “Scaling of Marks” had to be adopted and that would always be the correct approach.

42. As found by this Court in **Sunil Kumar**¹⁴, the decision in **Sanjay Singh**⁵ cannot be said to have laid down an inflexible rule that Scaling of Marks can never be adopted. As a matter of fact, though, a Bench of three Judges of this Court noticed the earlier decision in **Sanjay Singh**⁵, it found the approach of the High Court in “Scaling of Marks” even in the same examination to be appropriate in **Mahinder Kumar**¹³ so as to eliminate every scope for variation in the assessment of answers and award of marks valued by different valuers. The concerned provisions namely, clause (iv) of

Para 9 of the advertisement and last paragraph of amended Rule 7, were construed to be adequate to empower and permit the High Court to adopt “scaling of marks”.

43. On lines similar to Rule 7 considered in *Mahinder Kumar*¹³, the clause “Detailed procedure for written examination shall be determined by the Board and will be displayed on its own website” as appearing in Rule 15(b), specifically empowered the Board to devise or determine the procedure. With deletion of Appendix-3 and specific empowerment in Rule 15(b), the Board could have multiple examinations instead of one single examination. By very nature of such empowerment and in the backdrop of conducting an examination for more than 6 lakh candidates, the Board was entitled to adopt the process of ‘scaling of marks’ or ‘normalization’. Given the facts and circumstances, the process of ‘scaling of marks’ or normalization was inevitable in the instant matter and was necessarily required to be undertaken. This aspect of the matter is accepted by the learned counsel for the respondents but in their submission the appropriate stage for application of normalization would be at Rule 15(e) level.

44. According to the learned Additional Advocate General and the learned counsel appearing for the candidates whose names figured in the select list prepared by the Board, the stage at which normalization was required to be applied was at Rule 15 (b) level. In their submission, if the basic idea was to put all candidates on an even and equal parameter through the process of normalization and, if the scoring in the written examination was to be the main determining criteria for selection, the normalization had to be applied at the initial stage itself.

On the other hand, according to the learned counsel for the original writ petitioners, who found themselves to be disqualified for having secured less than 50% marks after normalization, the application of normalization had to be at the stage of preparation of the final merit list. It was submitted that regardless whether the candidate had obtained less than 50% “normalized score” in a subject or subjects, he would still be part of the final merit list as he had already secured 50% “raw marks” in each of the subjects.

45. It is true that the written examination, subject to the qualifying facets such as Scrutiny of Documents, Physical Standard Test and Physical Efficiency Test, is now the determining criteria. Going by the plain language of the concerned provisions, what is clear is both provisions i.e. Rule 15(b) and 15(e) refer to the expression ‘marks’. Rule 15(b) of Recruitment Rules requires every candidate to obtain minimum 50% marks in each of the subjects and states, “candidates failing to obtain 50% marks in each of the above subjects shall not be eligible for recruitment”. Rule 15(e) requires the Board to prepare a select list of each category of candidates, “on the basis of marks obtained by each candidate in written examination under clause (b)”. The provisions do not, on the plain language employed, demand different yardstick or principle to be adopted.

46. If we construe the expression ‘marks’ in Rules 15(b) and 15(e) to be ‘raw marks’ at both the stages that will go against the very basic idea which calls for applicability of ‘scaling of marks’ or ‘normalization’ because of the variability arising from multiple examinations. Thus, if ‘raw marks’ is to be the basis at both the stages, the candidates would never be tested on an equal footing or basis. This would, therefore, call for either of the following two alternatives:-

Either to consider expressions ‘marks’ in both these provisions to be marks after the adoption of normalization, or ‘normalized score’, or to accept the course suggested by the learned counsel for the respondents and construe expression ‘marks’ in Rule 15(b) to be ‘raw marks’ and apply normalization at Rule 15(e) stage only to consider *inter se* merit position.

47. However, if the submission advanced by the learned counsel for respondents is accepted, it will lead to incongruities on three counts.

It may, as well, lead to a situation where a person, in the final analysis *i.e.* after the ‘scaling of marks’ or ‘normalization’ is adopted, may have failed to secure more than 50% “normalized score” in a subject or subjects and yet he will be part of the Select List.

Secondly, those who may have secured more than 50% ‘normalized score’ but less than 50% ‘raw marks’ will be out of reckoning as they would not be allowed to go beyond Rule 15(b) stage.

Lastly, such a course will necessarily imply that the expression “Candidates failing to obtain 50% marks in each of the above subject shall not be eligible for recruitment” [as appearing in Rule 15(b)] will have to be treated differently as against the preparation of a select list [in terms of Rule 15(e)] “on the basis of marks obtained by each candidate in written examination under clause (b)”.

48. It is relevant to note that the ineligibility referred to in Rule 15(b) is as against ‘recruitment’. The criteria for eligibility is not just confined to the stages upto 15(c) and 15(d) but must be fulfilled all through *i.e.* upto recruitment. Rule 15(e) makes specific and clear reference to - marks obtained by each candidate in written examination under clause (b). The verb used is ‘obtain’ at both the places *i.e.* in Rule 15(b) and in Rule 15(e). At both the stages the marks ‘obtained’ in written examinations referable to clause (b), are the relevant criteria for (i) being eligible for recruitment in terms of Rule 15(b) and for (ii) preparing the select list under Rule 15(e). Adopting a different yardstick as suggested by the learned counsel for the respondents will certainly lead to incongruent situations as stated above.

49. It is true that the same expression appearing at different places in a statute has, on some occasions, been construed by this Court differently, depending upon the context in which such expressions appear. For instance, in **Commissioner of Income**

Tax, Bangalore v. Venkateswara Hatcheries (P) Ltd.¹⁶, this Court relied upon the earlier decision of this Court in ***Shamrao Vishnu Parulekar v. The District Magistrate, Thana***¹⁷ and found the expression “Articles of things” could not be assigned the same meaning as was used in Fifth Schedule to Sections 32A and 80J of the Income Tax Act. The discussion on the point was:

¹⁶(1999) 3 SCC 632 ¹⁷(1956) SCR 644

“**18.** It was then urged by the learned counsel for the assessee that the Act uses the words “articles or things” at several places and the meaning assigned to them in other places of the Act should also be assigned under Section 32-A and Section 80-J of the Act. The Fifth Schedule of the Act sets out a list of items which are treated as articles or things manufactured or produced for the purpose of Section 33(1)(b) of the Act. In this Schedule we find that processed seeds which are products of plants have been shown as “articles or things”. Similarly, Item (30) of the said Schedule is “fish”, which is an animate object, but it has been shown under the heading “articles or things”. On the strength of the meaning assigned to articles and things in the Fifth Schedule of the Act, it was urged that hatching of chicks is also production of “articles or things”. It is, no doubt, true that processed seeds and fish have been described under the heading “articles or things” in the Fifth Schedule. Generally, the same words in a statute have the same meaning whenever used in that statute, but they may also have a different meaning in different provisions of the same statute. In *Shamrao Vishnu Parulekar v. Distt. Magistrate, Thana*¹⁷:

“But it is contended by Mr Chatterjee that the expression ‘grounds on which the order has been made’ occurring in Section 3(3) is, word for word, the same as in Section 7, that the same expression occurring in the same statute must receive the same construction, that what Section 3 requires is that on the making of an order for detention, the authority is to formulate the grounds for that order, and send the same to the State Government under Section 3(3) and to the detenu under Section 7, and that therefore it was not sufficient merely to send to the State Government a report of the materials on which the order was made. Reliance was placed on the following passage in *Maxwell's Interpretation of Statutes*, Edn. 10, p. 522:

‘It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.’

The rule of construction contended for by the petitioners is well settled, but that is only one element in deciding what the true import of the enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute. ‘The presumption’, says Craies, ‘that the same words are used in the same meaning is however very slight, and it is proper “if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act”’. (*Statute Law*, Edn. 5, p. 159) And Maxwell, on whose statement of the law the petitioners rely, observes further on:

‘But the presumption is not of much weight. The same word may be used in different senses in the same statute, and even in the same section.’ ”

19. The same word, if read in the context of one provision of the Act, may mean or convey one meaning and another in a different context. The legislature in its wisdom had chosen to place processed seeds and fish under the heading articles or things in the Fifth Schedule as the legislature is competent to give artificial meaning to any word. We are, therefore, of the opinion that the meaning

assigned to the words “articles or things” in the Fifth Schedule cannot be assigned to the words “articles or things” used in Sections 32-A and 80-J of the Act.

20. Learned counsel for the assessee relied upon several decisions under the Sales Tax Acts, Central Excise Act and the provisions of other statutes for the contention that “article” includes goods and goods could be an animate object and, viewed in this light, the hatching of eggs would come within the meaning of the word “produce” which is of a wider import than the word “manufacture”. No doubt, several Sales Tax Acts have included animate things for the purpose of levying tax on sales. But the meaning assigned to a particular word in a particular statute cannot be imported to a word used in a different statute.

21. We, therefore, reject the submissions of the learned counsel for the assessee. For the aforesaid reasons, we hold that the decision by the Andhra Pradesh High Court in the case of *CIT v. Sri Venkateswara Hatcheries (P) Ltd.*¹⁸ does not lay down the correct view of law, whereas we approve the decision of the Bombay High Court in the case of *CIT v. DeeJay Hatcheries*¹⁹.

22. The result of the aforesaid discussion is that the assessee is neither an industrial undertaking nor is it engaged in the business of producing “articles or things”. Consequently, the assessee is not entitled to investment allowance under Section 32-A of the Act and deductions under Sections 80-HH, 80-HHA, 80-I and 80-J of the Act.”

¹⁸(1988) 174 ITR 231 (AP) ¹⁹(1995) 211 ITR 652 (Bom)

50. Thus, it is the context which must determine whether the same expression occurring at two different places must be considered differently or in the same light.

51. If we accept the interpretation sought to be placed by the learned counsel for the respondents it would result in a situation where a person having ‘normalized score’ of 50% marks or above may be out of reckoning because his raw marks were less than 50%; and, there are sizable number of such persons. At the same time, someone whose ‘normalized score’ was well below 50% may still be part of the Select List because his “raw marks” were above 50%.

52. If the intent is to see that every candidate must have obtained minimum 50% marks and those ‘candidates failing to obtain 50% marks in each of the above subjects shall not be eligible for recruitment’ as mandated by Rule 15(b) of Recruitment Rules or by paragraph 9 of the notification dated 28.6.2017, even going by the context and purposive interpretation, the expression ‘marks’ must be given the same meaning at both the stages; and the only possible meaning that can be ascribed is ‘normalized score’. Adopting different standards as suggested by the learned counsel for the respondents would result in anomalous situations. Such anomaly will however stand removed if the expression ‘marks’ appearing in Rules 15(b) and 15(e) stages is construed in the same light and as ‘normalized score’. The submissions advanced by the learned Additional Advocate General and other learned counsel for the appellants, therefore, merit acceptance.

53. In conclusion, the exercise undertaken by the Board in adopting the process of normalization at the initial stage, that is to say, at the level of Rule 15(b) of Recruitment

Rules was quite consistent with the requirements of law. The power exercised by the Board was well within its jurisdiction and as emphasized by the High Court there were no allegations of mala fides or absence of bona fides at any juncture of the process. One more facet of the matter is the note of caution expressed by this Court in paragraph 20 of its decision in ***Sunil Kumar and others v. Bihar Public Service Commission and others***.¹⁴ As observed by this Court, the decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out.

54. We have, therefore, no hesitation in accepting the challenge raised on behalf of the State and allowing these appeals and setting aside the judgment and order passed by the High Court presently under challenge. The results declared by the Board on 28th February 2019 shall now be given effect as early as possible.

55. It must, however, be observed that the State and the Board had permitted candidates from both the categories i.e. who had secured more than 50% 'raw marks' as well as those who had secured more than 50% 'normalized score', as detailed in paragraph 5 hereinabove. Such candidates had participated in all the further stages, namely, in physical standard test, physical efficiency test, though some of them from the first category were finally disqualified on the ground that they had secured less than 50% 'normalized score'. The State may consider making some allowance in favor of such subsequently disqualified candidates either by granting some weightage and/or age relaxation in the next selection.

56. Before parting, we must acknowledge the valuable assistance provided by all the learned counsel who appeared for the parties in the instant matters.

The appeals are allowed in aforesaid terms without any order as to costs.