



THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16904-2021 (O&M)
Reserved on 5th of March, 2025
Date of Decision: 22nd of May, 2025

NEERAJ Petitioner(s)
V/S
STATE OF HARYANA AND ANOTHERRespondent(s)

2. CWP-6731-2021 (O&M)

DEEPAK Petitioner(s)
V/S
STATE OF HARYANA AND OTHERSRespondent(s)

3. CWP-17818-2024(O&M)

SANDEEP KUMAR AND OTHERS Petitioner(s)
V/S
STATE OF HARYANA AND OTHERSRespondent(s)

4. CWP-19247-2024 (O&M)

NAVEEN KUMAR Petitioner(s)
V/S
STATE OF HARYANA AND ORSRespondent(s)

5. CWP-23138-2024 (O&M)

RAJBIR Petitioner(s)
V/S
STATE OF HARYANA AND ORSRespondent(s)

6. CWP-27686-2024(O&M)

DEEPTI HOODA Petitioner(s)
V/S
STATE OF HARYANA AND ORSRespondent(s)

7. CWP-10323-2021(O&M)

MONIKA RAMAN Petitioner(s)
V/S
STATE OF HARYANA AND ORSRespondent(s)

8. CWP-1319-2022 (O&M)

DEEPAK DAHIYA AND ANOTHER Petitioner(s)
V/S
STATE OF HARYANA AND ORSRespondent(s)

CWP-16904-2021 (O&M) and connected matters

2025:PHHC:069447-DB

Page 2 of 25

9. CWP-140-2022 (O&M)

NAMARTA Petitioner(s)

V/S

STATE OF HARYANA AND ORSRespondent(s)

10. CWP-1846-2022 (O&M)

PARDEEP KUMAR Petitioner(s)

V/S

STATE OF HARYANA AND ANOTHERRespondent(s)

11. CWP-475-2022 (O&M)

ASHISH KUMAR Petitioner(s)

V/S

STATE OF HARYANA AND OTHERSRespondent(s)

12. CWP-13291-2022 (O&M)

NEHA Petitioner(s)

V/S

STATE OF HARYANA AND OTHERSRespondent(s)

13. CWP-3681-2023 (O&M)

ABHIMANYU MALIK Petitioner(s)

V/S

STATE OF HARYANA AND OTHERSRespondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**Present: Mr. Rahul Makkar, Advocate
for the petitioner(s) in CWP-16904-2021.Mr. Sarthak Gupta, Advocate
for the petitioner(s) in CWP-6731-2024.Mr. R.S. Malik, Advocate for the petitioner(s)
in CWP-17818-2024, CWP-10323-2021 and CWP-1319-2022.Mr. S.S. Nain, Advocate
for the petitioner(s) in CWP-19247-2024.



Mr. Chirag Kundu, Advocate for the petitioner(s)
in CWP-23138-2024 and CWP-475-2022.

Mr. Wazir Singh, Advocate
for the petitioner(s) in CWP-27686-2024.

Mr. Suresh Kumar Kaushik, Advocate
for the petitioner(s) in CWP-140-2022.

Mr. Mazlish Khan, Advocate
for the petitioner(s) in CWP-1846-2022.

Mr. R.S. Saroha, Advocate
for the petitioner(s) in CWP-13291-2022.

Mr. Mandeep Singh Kundu, Advocate
for the petitioner(s) in CWP-3681-2023.

Mr. Pankaj Middha, Addl. A.G., Haryana with
Ms. Shruti Jain Goyal, Sr. DAG, Haryana.

Ms. Niktia Goel, Advocate for the respondents-UHBVNL
in CWP-6731-2024.

Mr. Vivek Chauhan, Advocate
for respondent No.3-UHBVNL in CWP-19247-2024 and
for respondent No.3-DHBVNL in CWP-23138-2024.

SANJEEV PRAKASH SHARMA, J.

1. All these connected Writ Petitions are being decided by this common order as the challenge in all the Writ Petitions is to the notification dated 11.06.2019 whereby the State of Haryana has issued a socio economic criteria granting bonus marks to certain class of persons. Further challenge, in some of the Writ Petitions, is to the result dated 30.04.2021 complied by granting marks in terms of socio economic criteria.

2. The facts are being noticed from the Writ Petition bearing CWP No.16904 of 2021 titled as Neeraj Vs. State of Haryana and Another.



3. An advertisement was being released on 11.06.2019 by the respondent-Haryana Staff Selection Commission (hereinafter referred to as the "Commission") for filling up several posts for the Dakshin Haryana Bijli Vitran Nigam (DHBVN) including 146 posts of Junior System Engineer. The qualifications required for the said posts were B.E./B.Tech (IT/Computer Science/Electronics and Communications) or MCA or M.Sc. (IT Computer Science/Application/Electronics and Communications) from a recognized University or Institution with minimum 60% marks and Hindi/Sanskrit as one of the subject in Matriculation or Higher class with relaxation to the incumbents who have been engaged on consulting basis. The criteria of selection, examination and syllabus was mentioned in the advertisement with written exam of 90 marks and granting of upto 10 marks for socio economic criteria and experience.

4. As per the reply filed by the respondent-Commission, the result of the written examination for the post in question was declared on 06.11.2020 and the petitioner was called for scrutiny of documents on 11.11.2020 and 12.11.2020. He had applied for the concerned post under the General (DESM) category. He was found eligible in the scrutiny of documents. Although he has scored 89 marks out of 90 marks, as per the Commission while the petitioner claim that he has scored 90 out of 90 marks. He was kept in the waiting list of Ex-serviceman (General) as no post of Ex-serviceman was found vacant and cut off for Ex-serviceman @ 53 filled up all the posts. In the General category, the petitioner was considered, but the last selected candidate, under the General category in the main list, secured 93 marks and in waiting list secured 92



marks respectively and the petitioner, therefore, could found place in merit. Thereafter, he has challenged the notification dated 11.06.2019 whereby 10 bonus marks were assigned for the socio economic criteria and experience.

5. Since the petitioner did not come within the ambit of socio economic criteria and experience, he failed to receive any bonus marks, while candidates getting benefit of socio economic criteria and experience marched over him although they secured lesser marks in the written examination than him. The contention was raised by the petitioner that the basis of providing socio economic criteria and experience are arbitrary and unjustified and would not come within the ambit of norms of equality clause under Articles 14 and 16 of the Constitution of India.

6. This Court while issuing notice of motion in *CWP-16904-2021* on 01.09.2021 directed that “selection, if any, be made meanwhile shall be subject to decision of this writ petition”.

7. A reply was filed to the Writ Petition by the Commission stating that socio economic criteria benefit work on the principle of *salus populi est suprema lex* meaning welfare of the people in the supreme law. It is further submitted in the reply that the socio economic criteria is followed for greater good of society as a whole. Individual interest cannot be considered more important than interest of the society. Further, our society is a diversified society and socio economic criteria is adopted so that there is equitable distribution of benefit and opportunities among all the sections of the society.

8. The respondents also relied on earlier judgment passed by the Division Bench of this Court in *Deepak Kumar and Others* Vs. *State of*



Haryana and Another; CWP-10792-2018 decided on 07.12.2018 which appreciated the wisdom of the State of Haryana in granting bonus marks for the post of constable holding that such a benefit is not being provided anywhere else by any State in India.

9. Learned counsel appearing on behalf of the petitioners has relied upon the judgment of this Court passed in CWP No.1563 of 2024 titled as **Sukriti Malik** Vs. **State of Haryana and others** and connected matters decided on 31.05.2024 where socio economic criteria notified by the State Government vide notification dated 05.05.2022 was quashed and set aside and granting of bonus marks granted on the basis of socio economic criteria was held violative of Articles 14, 15 and 16 of the Constitution of India.

10. Learned counsel for the petitioners submit that the respondent-State itself has accepted the judgment passed in the **Sukriti Malik (Supra)** and in cases relating to the present advertisement dated 11.06.2019, candidates were deprived of benefit of socio economic criteria and where the learned Single Bench allowed to give them the benefit of socio economic criteria, the same were contested in Appeals and interim order has been passed in favour of the State in the said Appeals. The argument, thus, is being advanced that the criteria issued by the respondents of granting 10 bonus marks for socio-economic criteria and experience deserves to be declared *ultra vires* to the Constitution of India and the notification dated 11.06.2019 to the said extent deserves to be quashed.

11. Learned counsel for the petitioners submit that the illegality cannot allowed to be perpetuated and persons who have granted the benefit of



socio-economic criteria cannot be allowed to be placed over and above the petitioners, who have secured higher merit in the written examination and independent of socio-economic criteria, they alone would have been appointed.

12. The principles laid down in **Sukriti Malik (Supra)** would apply to the earlier selection process too as the Writ Petitions were pending and the ratio of a judgment has a retrospective effect. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Kanishk Sinha and Another Vs. The State of West Bengal and Another**; 2025 INSC 278

13. On behalf of the respondents, it is submitted that the criteria which was examined by this Court in **Sukriti Malik (Supra)** was different from the criteria in the present cases. It is submitted that the present Writ Petitions deserve to be dismissed as the petitioners have challenged the criteria process after they had participated in the selection process. Reference to the judgments in support thereof would be considered in the later part of our order.

14. It is also urged that as the socio-economic criteria has been applied to the entire selection process and several candidates have already been appointed on the basis of the merit prepared while including the bonus marks, the same ought not be disturbed.

15. We have considered the submissions.

16. In **Manish Kumar Shahi Vs. State of Bihar and Others** ; (2010) 12 SCC 576., Hon'ble the Supreme Court has held that once the candidate had participated in the selection process and remained unsuccessful, he/she could



not turn-around and challenge the selection criteria subsequently, while observing as under:-

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

17. In **Ramesh Chandra Shah &Ors** Vs. **Anil Joshi &Ors** ;2013 (11) SCC 309, applying the principles of waiver and estoppel with regard to the challenge to the process of selection and advertisement, by candidates who had participated in the selection process, Hon’ble the Supreme Court has held as under:-

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

18. In **Ashok Kumar Sharma &Ors.** Vs. **The State Of Bihar &Ors.** ; (2017) 4 SCC 357, the Apex Court was of the view that once the candidate is put to notice regarding the method and manner of the selection process, and



willingly participates, he cannot turn around and challenge the said selection process and the Writ Petition would not be maintainable. The relevant extract of the said judgment is reproduced as under:-

*13. The law on the subject has been crystallised in several decisions of this Court. In **Chandra Prakash Tiwari v. Shakuntala Shukla**; (2002) 6 SCC 127, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In **Union of India v. S. Vinodh Kumar**; (2007) 8 SCC 100, this Court held that:*

*"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See **Munindra Kumar v. Rajiv Govil** (1991) 3 SCC 368 and **Rashmi Mishra v. M.P. Public Service Commission** (2006) 12 SCC 724.)"*

19. The law in this regard is well settled and no further judgments are required to be noticed. However, as we have already noticed, the selections and appointment made in the advertisement are subject to the decision of the Writ Petition (CWP-16904-2021), therefore, the aforesaid principle of estoppel would have no application and we, therefore, would not accept the contention of the State to dismissed these Writ Petitions on the ground that the petitioners have participated in the selection process, since their participation is subject to the final outcome. Moreover, if the process adopted by the State does not fall



within four corners of the ethos of the Constitution and equality clause, on technical grounds, the Writ Petitions cannot be dismissed.

20. In a recent judgment passed by the Apex Court in **Kanishk Sinha and Another** Vs. **The State of West Bengal and Another**; 2025 INSC 278, it has been held that ordinarily, all the judgments passed by the Courts laying down a law, will have a retrospective effect unless declared otherwise specifically by the Court.

21. With regard to the Statute, once it is declared *ultra vires*, the provision would be treated to have been deleted *ab-initio*, i.e. from its inception.

22. It is noticed that the socio-economic criteria which we have considered in the case of **Sukriti Malik (Supra)** was quashed and we have held as under:-

“79. Keeping in view our aforementioned findings, we conclude as under:-

- A) The socio economic criteria introduced vide amendment notification dated 05.05.2022 is quashed and set aside. The bonus marks granted on the basis of socio economic criteria held to be violative of Articles 14, 15 and 16 of the Constitution of India.
- B) CET result declared on 10.01.2023 as well as subsequent result dated 25.07.2023 are quashed. It is directed that the fresh merit shall be now prepared solely on the basis of the CET marks of the candidates who have appeared in the same. Making it as a basis, the State/Commission shall now issue a fresh advertisement for filling up various posts and each candidate shall be allowed to apply strictly in accordance with the Rules for the posts and if more than four times applicants are available for



the posts, the respondents may lay down a cut-off of the CET for the purpose of participation. The Rules for examination shall accordingly follow. The result shall be declared accordingly.

- C) Those candidates, who have been appointed on various posts on the basis of the earlier result, shall be allowed to participate in the fresh selection process if they fall in the new merit list of the CET. Till fresh selection is prepared they shall be allowed to continue to perform their duties on the posts to which they have appointed. However, if they are not selected ultimately in the fresh process, they shall have to leave the posts and their appointments shall stand terminated forthwith. No right shall be created in their favour on account of continuing on the posts nor will they be entitled to claim any benefit on account of the same except the salary for the period during which they perform their duties.*
- D) Keeping in view our findings relating to conducting of examination without declaring the result of CET finally by the Commission, we direct the Chief Secretary, Haryana to take steps to appoint a suitable candidate having experience of conducting examinations as Secretary of the Haryana Staff Selection like the Controller of Examinations of any State Universities.*
- E) In order to maintain transparency and consistency, the Commission is henceforth directed to frame Rules of the Commission for conducting of its examinations without leaving any discretion for its officials or Members to take decisions on their whims and fancies which has resulted in the present litigation.*
- F) The exercise shall be completed afresh positively within a period of **six months**.*

80. All the Writ Petitions are accordingly allowed and all the LPAs are dismissed.”



23. The order passed by this Court in the case of **Sukriti Malik** (**Supra**) has been upheld by the Apex Court in *SLP(C) No.13275-13277 of 2024*.

24. The State of Haryana vide notification dated 11.06.2019 added following clause in place of existing Clause (d) in para 6 of the notification dated 28.01.2017 as under :-

*“HARYANA GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT
(GENERALSERVICES)*

Notification

The 11th June, 2019

No. G.S.R. 25/Const./Art.309/2019.- In exercise of the powers conferred by the provide to article 309 of the Constitution of India, the Governor of Haryana hereby makes the following amendment in the Haryana Government, General Administration Department (General Services), Notification No. 523-3GS-70/2068, dated the 28th January, 1970, namely:

AMENDMENT

In the Haryana Government, General Administration Department, General Services, Notification No.523-3GS-70/2068, dated the 28th January, 1970, in para 6, for clause (d), the following clauses hall be substituted, namely

“(d) (i) The selection and recommendation of the names of the candidates belonging to Group B posts viz. Teacher, Educational supervisor, Teacher Educator in School Education Department and Group C posts in all departments shall be done on the basis of written exam, socio-economic criteria and experience.

(ii) The Commission shall be at liberty to set the number of questions, marks per question and duration of written examination. The scheme of marks in respect of selection to the post shall comprise of total 100 marks, as detailed below, namely:-

Sr.No.	Subject	Marks
1	Written exam	90
2	Soci-economic criteria and experience	10



(iii) The 90 marks for written exam shall be divided into two parts comprising

(a) 75% weightage for General Awareness, Reasoning, Maths, Science, Computer, English, Hindi and concerned or relevant subject, as applicable;

(b) 25% weightage for History, Current Affairs, Literature, Geography, Civics, Environment, Culture etc. of Haryana.

(iv) The 10 marks for socio-economic criteria and experience shall be allocated as follows,-

(a) if neither the applicant nor any person from among the applicant's family viz father, mother, spouse, brothers and sons is, was or has been a regular employee in any Department Board Corporation/ Company/ Statutory Body Commission/ Authority of Government of Haryana or any other State Government or the Government of India;

(05 marks)

(b) if the applicant is,-

(i) a Widow; or

(ii) the first or the second child and his father had died before attaining the age of forty two years; or

(iii) the first or the second child and his father had died before the applicant had attained the age of fifteen years,

(05 marks)

(c) if the applicant belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State of Haryana which is neither a Scheduled Caste nor a Backward Class:

(05 marks)

(d) Experience: One-half (=0.5) mark for each year or part thereof exceeding six months of experience, out of a maximum of sixteen years, on the same or a higher post in any Department/Board Corporation/ Company/ Statutory Body/Commission/Authority of Government of Haryana. No marks shall be awarded for any period less than six months.

(maximum 8 marks)



Note: No applicant shall be given more than a total of 10 marks for socio-economic criteria and experience under any circumstances."

*D. S. DHESI,
Chief Secretary to Government, Haryana."*

25. As per the above notification, while 90 marks have been awarded for the written examination, 10 marks are allotted for socio economic criteria and experience. Out of total 10 marks, maximum 05 marks would be awarded to an applicant who has no one in family a regular employee with the State Government/Department/Board/Corporation/Company as mentioned in category (a) of the Clause (iv). Similarly, maximum 05 marks would be allotted to an applicant who falls under category (b) of clause (iv) namely widow or the first or second child, whose father died either before he attained the age of 42 years or where the applicant attained the age of 15 years. 05 marks have been allotted to the applicant belonging to the nomadic tribes as mentioned in category (c) of Clause (iv) and 8 marks have been allotted for experience, one-half (=0.5 mark) for each year to an applicant who has been an employee as mentioned in Category (d). In the note thereof, a rider was also mentioned that under any circumstances, maximum 10 marks would be awarded to an applicant for both experience and socio economic criteria.

26. The concept of granting special bonus marks on criteria other than as laid down in the Constitution of India, has been examined at length in **Kailash Chand Sharma Vs. State of Rajasthan and Others; 2002 (6) SCC 562**, the apex Court. The Apex Court has considered the question whether the domiciles of the particular districts of the State of Rajasthan could be given extra bonus marks in the selection process only on the basis of residence and



whether the said exercise was constitutionally valid when tested on the touchstone of Articles 14 and 16 of the Constitution of India, and held as under

“We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself— be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district on a preferential basis.”

27. In **Pardeep Jain Vs. Union of India** ; 1984 AIR (SC)1420, the Supreme Court has observed as under:-

22. So much for admission to the M.B.B.S. course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to post graduate courses, such as, M.D., M.S. and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Saran's case, and we wholly endorse what he has said:

"The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality here the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph. D.,



M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss the considerations we have expended upon as important loss their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs no disciplines of social in consequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporize with the country's development in the vital areas of professional expertise. In science and technology and other specialized fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels



where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialized subjects. There is no substitute for sheer flair, for creative talent, for fine-tune performance at the difficult highest of some disciplines where the best alone is likely to blossom as the best. To sympathize mawkishly with the weaker sections by selecting substandard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by over ruling equality and quality all together, is a social risk where the stage is post graduate or post-doctoral."

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

"Student for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."



The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all India basis and there should be no restriction regarding domicile in the State/UT in which the institution is located." So also in the policy statement filed by the learned Attorney General, the Government of India has categorically expressed the view that:

"So far as admissions to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."

We are, therefore, of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to border considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post- graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard, to admissions to the post-graduate course, we would direct that so



far as super specialties such as neurosurgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.”

28. We further find that the respondents-State has conducted the entire selection in a wholly slipshod manner. The notification of granting the 10 bonus marks for socio economic criteria and experience is not based on any Rules framed under the proviso to Article 309 of the Constitution of India. It is also noticed that no data was collected before laying down such a socio economic criteria. We further find that once the reservations have already been provided statutorily under the EWS category, as well as on account of social backwardness by providing reservation for backward class, further granting benefit under socio economic criteria would lead to breach of 50% ceiling limit as laid down in Indira Sawhney Vs Union Of India And Ors ; AIR 2000 Supreme Court 498 and recognized by the Constitution framers while making amendment in Article 16 (4) (b). This Court finds that what cannot be done directly cannot be done indirectly.

29. In the case of Sukriti Malik (Supra), this Court has held as under:-

“31. This Court finds that the socio economic criteria which has been introduced by the respondents is clearly an act of arbitrariness and discrimination created to the similarly situated persons and no person ought to be given benefits. The notification dated 05.05.2022, whereby marks have been granted on the basis socio economic criteria, is clearly unjustified. It is submitted that the granting of 10 marks on the basis of socio economic criteria experience completely changes the result of a competitive



examination. Marks have been allotted to those applicants whose father died or who is a widow or who is from Vimukt Jaati and Teprivas Jaati. It is only available to a person who is having a Haryana domicile and place of residence which is completely against the provisions of the Constitution. We find that the law has been well settled by the Hon'ble Supreme Court that weightage on the basis of residence cannot be allowed to be granted. The Right to Equality, as enshrined in the Constitution, has been violated and a class has been created based on the family background simplicitor which does not have any intangible differentia. The candidates whose parents are in Government job, would be denied 5% weightage while the ward of a shop keeper or a private job holder would be entitled for 5% weightage and ward of a nurse or peon doctor employed in the State Government would be denied the said benefit.

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40. While principally we agree that the State has to follow the provisions which are for the welfare of the people, but they cannot create an artificial classification which results in discrimination between similarly placed persons. All the candidates who apply for the post are equally entitled to selection based on the common examination conducted for all. Granting additional marks to persons who are locally placed and who have Haryana Parivar Pehchan Patar in their possession, reflects that while the State has deleted the words "who is bonafide residents of Haryana" by making an amendment on 20.02.2023, the requirement continues under the socio economic criteria for grant of marks."

30. In **Krishna Rai (Dead) Through Lrs & Ors. Versus Banaras Hindu University Through Registrar & Ors.** ; 2022 Live Law (SC) 553, the apex Court examined the principle of estoppel and acquiescence and held as under:-



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

31. Thus, we find that the selection process has been “tainted” on account of the granting of bonus marks. If the bonus marks are deleted from the selection process, the meritorious candidates would have been selected. Such a selection which is solely based on acquiring bonus marks would be in violation of the principles of equality as enshrined under Article 14 of the Constitution of India. By carving out artificial class of applicants, who would be entitled to 05 bonus marks, as above, the principles enshrined under Article 16 would stand violated. No other reservation, except the one as available under Article 15 and 16 of the Constitution, can be laid down by any State. Any process of appeasing the people on the principle of *salus populi est suprema lex* stands vitiated on the anvil of Article 14. No exercise was done before adopting such a criteria and in terms of judgment rendered by the Hon’ble Supreme Court in **M. Nagraj Vs. Union of India** ; 2006 (8) SCC 212.



32. However, we find that the advertisement was issued in terms of the notification in 2019 and the selection process was over in 2022, it is submitted by the learned State counsel that the appointments of the candidates who have selected earlier, should be saved. We, however, find that once the criteria is found to be in violation of the Articles 14 and 15 of the Constitution of India, such selection process cannot be saved more so, as the same was continued by the State at their own risk, since the Court itself directed the selections to be subject to the decision of these cases. Any appointment made thereto, would therefore, held to be temporary and no right can be said to have accrued to any of the candidate, who has been appointed earlier.

33. However, it would be apposite to notice the judgment of the Apex Court in the case of Ran Vijay Singh and Others Vs. State of Uttar Pradesh and Others ;(2018) 2 Supreme Court Cases 357 wherein this Court has held as under:-

“35. Having weighed the options before us, we are of opinion that the middle path is perhaps the best path to be taken under the circumstances of the case. The middle path is to declare the third set of results since the Board has undertaken a massive exercise under the directions of the High Court and yet protect those candidates may now be declared unsuccessful but are working as Trained Graduate Teachers a result of the first or the second declaration of results. It is also possible that consequent upon the third declaration of results some new candidates might get selected and should that happen, they will need to be accommodated since they were erroneously not selected on earlier occasions.

36. Learned counsel for the appellants contended before us that in case her clients are not selected after the third declaration of results, they will be seriously prejudiced having



worked as Trained Graduate Teachers for several years. However, with the middle path that we have chosen their services will be protected and, therefore, there is no cause for any grievance by any of the appellants. Similarly, those who have not been selected but unfortunately left out they will be accommodated.”

34. Taking into consideration the aforesaid law, we apply the theory of “no fault” with regard to the candidates who would be ousted from the merit list although they had cleared the written examination and have been working for quite a long time now. We also notice that the candidates, who would have been appointed, went under a cumbersome selection process and their appointments were made in terms of the method and manner of selection as laid down in the advertisement. Although, we have not approved the socio economic criteria adopted vide notification dated 11.06.2019, such appointees ought not be made to suffer.

35. We also notice that after 2019, vacancies may be available with the State Government. We, therefore, save their appointments with a condition that they would have no claim for seniority in terms of the advertisement of 2019.

36. We, therefore, find that notification dated 11.06.2019 to be in violation of Articles of 14, 15 and 16 of the Constitution of India and the same is accordingly declared *ultra vires* and liable to be quashed and set aside.

37. Since, we have set aside the criteria of adding up to 10 bonus marks on the basis of socio-economic criteria and experience, we issue following directions:-



- A. The State would be required to publish a revised result and on the basis of the revised result, the candidates who are found to be meritorious, would be entitled to be considered for appointment for the concerned posts which were advertised in the year 2019.
- B. Those candidates, who have already been appointed, if they fall in the said merit would continue to perform their duties.
- C. Those appointees, who are going to be ousted on account of the revised merit list, shall be allowed to continue against future posts and in this regard, the State Government may conduct an exercise of finding out vacancies for them. If no vacancies are available, they will be allowed to continue on *ad hoc* basis till vacancies are made available. Their appointments would be treated from the date the vacancies are so made available and would have no claim on the posts which were advertised vide advertisement in 2019. The power is being exercised to save such appointments as there was no fault of such persons, who have already appointed and have been working for years now.
- D. The candidates, who are placed in the revised merit, will be treated as senior to those whose appointments have been saved although not falling in the merit.
- E. The new incumbents, who would be selected on account of the revised merit list, would be entitled to claim their



appointments from the date the similarly situated other candidates were appointed with all consequential benefits of seniority and pay parity. However, their salary would be fixed notionally from the date others were appointed till the date they join the post.

F. The exercise shall be conducted within the period of three months.

38. In view of the above, all these Writ Petitions stand disposed of in the aforesaid terms.

39. All pending applications in these cases shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[MEENAKSHI I. MEHTA]
JUDGE

May 22, 2024
Ess Kay

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No