

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20966 of 2023**

With
CIVIL APPLICATION (FOR MODIFICATION OF ORDER) NO. 1 of 2024
 In R/SPECIAL CIVIL APPLICATION NO. 20966 of 2023

With
R/SPECIAL CIVIL APPLICATION NO. 21657 of 2023
 With
CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2024
 In R/SPECIAL CIVIL APPLICATION NO. 21657 of 2023

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

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Approved for Reporting	Yes	No
	YES	----
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KUSH RASHMIKANTBHAI DAVE & ORS.

Versus
STATE OF GUJARAT & ORS.

Appearance:

MS MEGHA JANI(1028) for the Petitioner(s) No. 1,10,11,12,2,3,4,5,6,7,8,9

MR SIMRANJITSINGH H VIRK(11607) for the Respondent(s) No. 3

MR. JAY M THAKKAR(6677) for the Respondent(s) No. 10,4,5,6,7,8,9

MR GURUSHARAN VIRK GP and MS DHARITRI PANCHOLI AGP for the Respondent No.1

NOTICE SERVED BY DS for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 04/09/2025****ORAL JUDGMENT**

1. Heard learned advocate Ms. Megha Jani and learned advocate Mr. Dhruv Toliya for the petitioners of Special Civil Application No.20966 of 2023 and 11655 of 2023 respectively, learned Government Pleader Mr. Gurusharan Virk with learned AGP Ms. Dharitri Pancholi for the respondent State and learned advocate Mr. Jay S. Thakker for the respondent Nos. 5 to 10.

2. Since both the petitions are questioning the result declared pursuant to a common selection process and since the submissions and questions of law are also identical, therefore, both the petitions are taken up for final hearing jointly.

3. Issue Rule returnable forthwith. Learned AGP / learned advocate waives service of Rule on behalf of the respective respondents.

4. As observed hereinabove, since a common issue has been raised, the facts of Special Civil Application No.20966 of 2023 are being referred to.

5. The facts leading to filing of the present petition in brief being that the petitioners had applied for selection, to the post of Sub-Inspector / Instructor, Grade III, under the Director, General Home Guards, Department of Home, Government of Gujarat, conducted by the Gujarat Subordinate Selection Board, the respondent No.3 hereinafter as referred to be as Selection Board initiated vide advertisement No.187/2021 dated 09.01.2021.

6. The selection process initiated vide the advertisement, was based upon the Recruitment Rules being 'the Sub-Inspector / Instructor, Class III (Competitive Examination for Direct Recruitment) Rules, 2016, issued by the State Government vide Notification dated 28.10.2016. As per the Recruitment Rules, the examination was to be conducted in three successive stages namely; (1) preliminary examination, (2) physical examination and (3) main examination. The bone of contention being the declaration of result based upon the main examination, the same would be addressed in the present petition. It appears that the main examination was consisting of four different papers namely; (1) Gujarati, (2) English, (3) Psychological test and (4) Legal matters; each question paper consisted of 100 marks and whereas

the Recruitment Rules specified that the Selection Board would fix the qualifying standard for main examination and whereas it was clarified that minimum qualifying standard determined by the Board shall not in any case be less than 40% of marks in the written test. It appears that the petitioners had applied for selection and had cleared the preliminary examination and the physical test and whereas the petitioners were thus, entitled for appearing in the main examination. It is the case of the petitioners that the main examination was held in the month of May, 2023, in which 44 candidates had appeared and whereas while initially the Board had declared a result of 10 successful candidates, the petitioners had not been informed about their result qua the said selection and later on, the Selection Board had published a list of 10 successful candidates and 31 unsuccessful candidates, which included the petitioners. The case of the petitioners being more particularly based upon the list, which also contained marks secured by the successful as well as unsuccessful candidates that the respondent Selection Board had wrongly applied the passing standard, which has resulted in the petitioners being declared unsuccessful. It is the case of the petitioners that the petitioners, while they had secured more than 40% marks in aggregate, on an erroneous interpretation of the Rules, the petitioners were declared unsuccessful, since the petitioners did not obtain 40% marks in each of the subjects. The petitioners have preferred these petitions inter alia seeking to set aside the list of unsuccessful candidates and to treat the petitioners as successful and to prepare a fresh merit lists on the bases of final marks.

6.1 The petitioners further seek to question the process adopted by the Selection Board of requiring 40% marks as the passing standard for each subjects as being an action taken by the respondent Selection Board after the selection process had commenced.

7. Heard learned advocate Ms. Megha Jani for the petitioners, who would take this Court elaborately through to the Recruitment Rules for the post in question. Learned advocate would refer to Rule 11 of the Rules and would submit that while the Rules envisage that the Selection Board was empowered to fix the minimum qualifying standard and whereas the Rules prescribed that minimum qualifying standard should not in any case, be less than 40%. Learned advocate would further refer to the advertisement, more particularly Rule 10 thereof, and would submit that Rule 10 states about the examination procedure and whereas Rule 10(3) states about the minimum qualifying marks.

8. It is submitted that the Selection Board was empowered to fix the minimum criteria, yet as per the Recruitment Rules, it could not be less than 40% aggregate. Learned advocate would further submit that as such, the Recruitment Rules and the advertisement inter alia do not prescribe that the candidates would have to secure 40% marks for each subjects and whereas such a decision on part of the respondent Selection Board, would almost amount to the Board not following the mandate of the Recruitment Rules. Learned advocate would submit that since the Recruitment Rules as well as the advertisement specified that the candidates would have to score 40% marks in the written test, the same could only be considered as scoring 40% marks in aggregate. It is further submitted that the decision of the Board of holding that the candidates have to secure 40% marks in each question paper is completely devoid of any sanctity and whereas under such circumstances, interference of this Court is requested for.

8.1 Learned advocate would further submit that while the Rules empower the selection board to fix a minimum qualifying standard, it is further clarified that the minimum qualifying standard should not be less than 40% of marks in the written test. Learned advocate would submit that

since the board did not fix and publish the minimum qualifying standard, the minimum qualifying standard as prescribed in the Rules would come into play inasmuch as a candidate would be required to obtain a minimum of 40% of marks in the main examination. Learned advocate would further submit since the Rules do not envisage candidate being required to secure 40% marks subject-wise, a fair reading of the Recruitment Rules could only lead to a conclusion that the requirement is of securing 40% marks in written test in aggregate.

8.2 Learned advocate would further submit that since the Recruitment Rules have empowered the selection board to determine minimum qualifying standard and whereas since such minimum qualifying standard has not been prescribed by the board before or at the time of advertisement, seeking to fix and declare a minimum qualifying standard after the advertisement and after the selection process has commenced, would amount to the Rules of the game being changed after game has commenced. Learned advocate Ms. Megha Jani would rely upon the decision of the Constitutional Bench of the Hon'ble Supreme Court in case of *Tejprakash Pathak & Ors. Vs. Rajasthan High Court and Ors.* reported in 2024 SCC online SC 3184.

9. On the other hand, the petitions have been vehemently opposed by the learned GP Mr. Virk on behalf of the State. Learned GP would submit that accepting the interpretation as sought to be canvassed by the learned advocate for the present petitioner, would result in an incongruous position inasmuch as a candidate, who may not have secured the minimum qualifying marks in one subject but has secured the minimum aggregate marks, would be entitled for selection. It is submitted by learned GP that the intent of the selection body is to ensure that a candidate, who has secured minimum passing marks in all subjects, would be considered for selection whereas if a

candidate, who has secured high marks in one or more subjects, but has not cleared the minimum threshold in all subjects, would not be considered for selection.

10. Learned GP would submit that the petitioners are attempting to misread / misinterpret the Rules since the Rules always required that a candidate has to secure minimum 40% marks in the written test and whereas in absence of the word 'aggregate', while prescribing the minimum qualifying marks, the requirement of 40% has to be treated as minimum 40% marks to be achieved in each subject. Learned GP would draw the attention of this Court to the Recruitment Rules and the advertisement and would emphasize that since the term used is 'written test' as against the word 'written tests', the former term meaning that the candidate has to secure 40% in each subject, the later term could be interpreted to mean the requirement was for achieving 40% marks in aggregate. Learned GP would submit that the use of the term 'written test' denotes the intent of the framers of the Rules, the same had been adhered to by the Selection Body.

10.1 Learned GP would submit that the argument that Rules of the game have not been changed after game has started i.e. the procedure for selection has been modified after the selection process has commenced would be an incorrect submission inasmuch as the clarification issued on 20.02.2024 is required to be treated as such i.e. as a clarification only since the said communication / notification merely clarifies the position that the candidate should acquire 40% marks in each subject. Learned GP would submit that the clarification was for better understanding of the candidate and such clarification could not be termed as the Rules of the game having been changed after the game has commenced. Learned GP would in support of his submission relied upon the decision of the Hon'ble Supreme Court in case of Chief Justice of AP and others Vs. L.V.A. Dikshitulu and Ors.

reported in (1979) 2 SCC 34. Learned GP would also rely upon the decision of the Hon'ble Supreme Court in case of Director General, Telecommunication and Anr. Vs. T.N. Peethambaram reported in (1986) 4 SCC 348 and the decision of the Patna High Court in case of Suresh Yadav & Anr. Vs. State of Bihar reported in 2014 SCC online PAT 4686.

11. Heard learned advocates for the respective parties and perused the documents on record as well as judgments cited by the learned advocates for both the sides. Having given my thoughtful consideration to the issue on hand, it would appear to this Court that the petitioners are raising a contention that evaluation has to be as per 40% aggregate marks to be achieved by the candidate upon a cumulative assessment of the marks obtained by the candidates in all the four subjects and not as required by the respondent i.e. obtaining 40% marks in each subject. Furthermore, it is the case of the petitioners that since the Recruitment Rules and advertisement having specifically stated as regards candidate requiring to obtain 40% of marks in the written test, which could only mean 40% aggregate marks, therefore, the clarification dated 20.02.2024 would be a case of the selection procedure being changed after the selection process has commenced i.e. changing the Rules of the game after the game has commenced.

12. Learned advocate Mr. Jay M. Thakkar on behalf of the selected candidates would reiterate and rely upon the submissions made by the learned GP on behalf of the respondent State.

13. On the other hand, it is submitted on the part of the learned GP that in absence of word 'aggregate' being mentioned in the Recruitment Rules or the advertisement when the minimum passing standard is mentioned and furthermore, since the term used in the Recruitment Rules is 'written test', the candidate would require to obtain minimum 40% marks in each test as against 40% aggregate. It is the case of the learned GP that the clarification

being relied upon is not in the nature of changing the Rules of the game after the game has commenced rather it is only a clarification for better understanding of the candidates.

14. Having considered the submissions made by learned advocates for both the parties, the following questions arise for consideration of this Court:

- (1) Whether reading of the Recruitment Rules as regards the minimum passing standard, make out a case for considering the passing standard as the aggregate marks to be achieved or marks to be achieved subject-wise.
- (2) Whether the clarification dated 20.02.2024 is in the nature of changing the Rules of the game midway, after the game has commenced i.e. to say whether the said Notification modifying the procedure for selection after the selection process has commenced?

15. Now, this Court will proceed to answer the questions formulated as above.

16. In so far as question No.1 is concerned, before delving into the same, it would be apposite to refer to Rule 11 of the Recruitment Rules. Rule 11 is reproduced herein below for benefit:

“11. Qualifying Standard and Marks:

The Board shall fix the qualifying standard for main examination from time to time, and of physical test for the non-reserved categories candidates and separately for reserved categories of candidates. However, minimum qualifying standard that may be determined by the Board shall not in any case be less than 40% of marks in written test.”

17. A bare perusal of the Rules makes it clear that the Rule envisages that

the board is empowered to fix the qualifying standard for the main examination as well as physical test. In so far as the main examination is concerned, it is further clarified that the board would be empowered to fix minimum qualifying standard subject to the bar that the minimum qualifying standard shall not be less than 40%. The main examination being referred in the Rules as written test. To this Court, it would appear that read as a whole the Rule inter alia envisages that while the board is empowered to fix minimum qualifying standard for the main examination, the same under no circumstances could be below 40% of the marks. The crucial question being whether 40% has to be understood as the marks required to be obtained in aggregate or subject-wise.

18. Before proceeding further, it would be apposite to refer to the decision of the Hon'ble Supreme Court relied upon by the board in the case of Chief Justice of A.P. (Supra), where the Hon'ble Supreme Court has laid down the principle of interpretation when the provision is imprecise or can reasonably bear more than one meaning. Para 66 and 67 being relevant for the present purpose, are relied upon for benefit:

“66. The primary principle of interpretation is that a Constitutional or statutory provision should be construed “according to the intent of they that made it” (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the Rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative/history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

67. Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud, J. as he then was) put it in Kesavananda Bharati case: [(1973) 4 SCC 225, 969 (para 2017)]”

“While interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in ‘a single complex instrument in which one part may throw light on the other’ so that the construction must hold a balance between all its parts.”

19. A perusal of the law laid down by the Hon’ble Supreme Court clearly reveals that the first principle of interpretation of a statutory provision would be that the provision has to be construed, according to the intent for which the provision has been promulgated. Such intent has to be gathered from the language of the provision itself. It has been further laid down by the Hon’ble Supreme Court that if the language or the phraseology, which is found in the statute is precise and clear i.e. from which the legislative intent is unequivocally clear then the same has to be followed and given effect to irrespective of the consequences, which would follow.

20. On the other hand, the Hon’ble Supreme Court lays down that in case the words used in the provision are imprecise or ambiguous or could reasonably carry more than one meaning, then the above proposition i.e. of relying upon the Rule of strict grammatical construction cannot be resorted to and whereas under such circumstances, it would be legally permissible for

a Court to rely upon other well recognized Rules of construction inter alia including the Rules of purposive interpretation i.e. to ascertain the purpose of the Rules, the object sought to be achieved by Rules and the consequences that would arise from the possible interpretation. The Hon'ble Supreme Court has further laid down that in case, two different constructions of the statutory Rules are possible, then the Court is under an obligation to choose one which would act in harmony with the other part of the statute rather than one which lead to absurdity confusion, friction etc. i.e. in nature of undermining the purpose of the Legislature.

20. Considered from the above perspective, it would appear that the Rule in question could be looked at from two methods of interpretation i.e. the literal method of interpretation and the purposive method of interpretation. Interpreting the Rule as per literal meaning, it would appear to this Court that the Rule envisages that the selection board is empowered to fix the minimum qualifying standard required for passing of the main examination and the minimum qualifying standard shall in no case be below 40% marks to be obtained in each subject. The interpretation being on the basis that the Rule in the first part states about the power of the board to fix the minimum qualifying standard in the 'main examination'. In the second and the more important part in the present context, the Rules use the phrase 'written test'. The difference of phraseology used in very selfsame Rule, is too obvious and stark to ignore. The literal meaning that could be gathered by the usage of two separate phrases for the same thing, would lead a very clear conclusion that the later portion of the Rule is the 'default provision' which would come into play, if the 'principal power' is not resorted to. To clarify, the later portion conveys two different and distinct meanings i.e. to state that while the selection board could fix the minimum qualifying standard for the main examination as well as the physical test, yet the power of the board is circumscribed in so far as the main examination is concerned, inasmuch as

the minimum qualifying standard could not be below 40% marks and furthermore, in case, the board does not fix a minimum qualifying standard then the minimum qualifying standard would be 40% of marks to be obtained in each subject of the main examination.

21. To, this Court, it would appear that above interpretation would be the only interpretation available, if one interprets the Rule literally i.e. as per the Rule of strict grammatical construction. The above on the basis that the Legislature, if it intended the later part to either mean that the candidate could obtain 40% marks for qualifying in aggregate, then the phrase used in later part would also be 'main examination'. The usage of term 'written test' (i.e. singular as against 'written tests' i.e. plural which may have meant aggregate of marks) indicates the intent of Legislature that the board is not empowered even while prescribing the minimum qualifying standard to breach the bottom line of 40% marks to be obtained in each subject.

22. On the other hand, the phrase 'written test' would mean that a written test of each subject individually as against cumulatively. Again, it would be profitable to note that the word 'tests' is not the word, which is referred to, rather the word 'test' has been used, signifying the meaning attached to the term is to be considered singularly and not cumulatively or plurally. Thus, if the intent of Legislature was that the board would not be empowered to fix the minimum qualifying standard cumulatively or in aggregate, then the phrase used would have been 'main examination' or 'written tests' as against which the word 'written test' used. The meaning that is sought to be conveyed very clearly based upon strict grammatical interpretation would be that the minimum qualifying standard as could be fixed by the board could not be below 40% marks to be obtained in each of the subjects in main examination.

23. Again as noticed hereinabove, the usage of phrase 'written test' also indicates that in case, the board does not fix a minimum qualifying standard then also a candidate would have to secure 40% of marks in each subject to qualify.

24. On the other hand, if the literal method of interpretation is not resorted to and if one, taking into consideration the diametrically opposing submissions made by the learned counsels for all sides and resorts to the purposive method of interpretation, then also, to this Court, it would appear that the intent of the Legislature was to ensure that a candidate, has to secure minimum 40% of marks in each subject in the main examination. As noticed, for understanding the purpose, one has to appreciate that a recruitment rule is framed to ensure that in a selection either by way of promotion or by direct selection, for a particular post, a set criteria of qualification are put in place by the State as the employer keeping in view the functions and duties of the post in question. The Rules would generally prescribe a preset minimum qualification, a preset minimum age, a preset examination procedure, etc. While the above pre-decided set of qualifications ensure that the Recruitment Rules does not fall-foul of Articles 14 and 16 of the Constitution of India, on the other hand, from the perspective of employer i.e. the State the pre-decided criteria are declared to ensure that only such candidate fulfilling the minimum requirement applies. The selection process also ensures that the employer can narrow down to the best possible talent amongst the candidates who have applied. To this Court, it would appear that when the employer requires candidate to undergo a selection process, which consists of a written test in four different subjects, the purpose is to measure the knowledge and ability of the candidate in all the subjects individually. When the Recruitment Rules

specify that the candidate will have to appear in four different subjects, which subjects are also as diverse as two languages i.e. Gujarati and English and two other subjects namely; Psychology and Legal Matters, then the purpose is to measure the knowledge and understanding of the candidate in all four subjects separately. If one appreciates the intent of the State as appearing from the submissions and from the affidavit in reply, it could be appreciated that the requirement would be of a candidate scoring at least as much as the minimum qualifying benchmark, which has been fixed in all four subjects. To this Court, it would appear that if the argument of the learned advocate for the petitioners is accepted, then it can lead to an incongruous situation inasmuch as a candidate, who is well-versed in some of the subjects and scored very high in those subjects, yet fails to clear the minimum benchmark in one of the subject, would still be entitled for consideration of his candidature. To this Court, it would appear that such a purpose of aggregate overall marks is not made out from the Recruitment Rules.

25. To this Court, it would appear as per the submissions of the State that each subject in the written test has a definite purpose inasmuch as the examination in Gujarati language, is to ascertain the understanding of the candidate of the local language, examination in English is envisaged to ascertain the capacity of the candidate in a general language, which is used for official purposes also. Understanding of Psychology and Legal matters, is required for the post in question i.e. Sub-Inspector / Instructor, more particularly when the candidate would be discharging his duties as an Instructor as against discharging his duties as in an executive post. To this Court, it would appear that purpose of ascertaining the knowledge, understanding and capability of a candidate in each subject, cannot be

confused with the overall assessment of the candidate, the purpose of the Rules being to ensure that the best talent is available and the purpose of the selection being to ascertain the knowledge and capability of the candidate in each subject separately, the basic purpose of selection through the Recruitment Rules, would stand defeated, if the arguments of the petitioners were accepted i.e. instead of ascertaining the knowledge and capability of a candidate in each subject, the overall understanding of the candidate would be taken into consideration. Thus, to this Court, it would appear that considering the rules from the perspective of purposive interpretation of the same, then also, the intent as appearing would be to judge the knowledge, capability and understanding of the candidates subject-wise and not in aggregate.

26. At this stage, it would be beneficial to refer to observations of the Hon'ble Supreme Court in case of P.N. Peethambaram (Supra), where the Hon'ble Supreme Court was dealing with the similar issue. Paras 1 and 2 of the decision, being relevant for the present purpose, is reproduced herein below for benefit.

"1. "Fails" in one subject, but "passes" the examination! It is not a tongue-in-the-cheek remark, for, passing an examination does not mean passing or securing the minimum passing marks in each subject or item of examination provided the candidate secures the minimum passing marks in aggregate, and he is entitled to be declared as having passed the examination according to the Central Administrative Tribunal (Tribunal hereafter), Hyderabad, which has upheld the aforesaid proposition canvassed by the respondent. The validity of this view is in focus before this Court in the present appeal by special leave.

2. Rule 2 in Appendix III of the Telegraph Engineering Service (Group 'B') Recruitment Rules, 1981, for Limited Departmental Qualifying Examination, in the context of which the controversy has arisen, reads thus:

2. Limited Departmental Competitive Examination:

- | | | |
|--|----|-----------|
| (i) <i>Advanced Technical Paper — General</i> | .. | 100 marks |
| (a) | | |
| (b) <i>Advanced Technical Paper — Special</i> | .. | 100 marks |
| (c) <i>General Knowledge and Current Affairs</i> | .. | 50 marks |
| (d) <i>Assessment of Confidential Reports</i> | .. | 75 marks |
- (ii) *The minimum pass marks in the examination shall be 50 per cent for general candidates and 45 per cent for Scheduled Castes and Scheduled Tribe candidates.*

This rule was interpreted by the concerned department as requiring the candidates to secure 50 per cent minimum pass marks for the general candidates and 45 per cent minimum pass marks for Scheduled Castes and Scheduled Tribes in “each” of the four subjects or items. The Tribunal has taken the view that the department was wrong in so interpreting the Rule and has formed the opinion that on a true interpretation, the requirement as regards securing minimum pass marks in the examination by the candidates concerned is referable to “aggregate” marks and not to each of the four subjects or items of the examination. It has been overlooked by the Tribunal that the “rule” does not employ the expression “aggregate”, and that it is impossible to inject the said word in the Rule in the disguise of interpretation, as it would lead to absurd results. An illustration will make the “obvious” point “more obvious”. The illustration might be viewed in the scenario of a medical degree examination. Can one who secures zero, say in surgery, but secures high marks in the other papers, so that the minimum aggregate standard is attained, be declared to have passed the examination? Such an interpretation would result in havoc and have catastrophic consequences. Examining the examination rule in the present context, the nihilist result is equally conspicuous. Say, a candidate secures zero in the first paper of Advanced Technology (General), or second paper of Advanced Technology (Special), but secures full marks in the rest of the subjects (or items). He would be securing (0 plus 100 plus 50 plus 75) or (100 plus 0 plus 50 plus 75) (equal to 225 i.e. 56.25 per cent) minimum passing marks and would be entitled to be declared as having passed and having become entitled to the outflowing preferential treatment. Similar would be the outcome also in a case where a candidate's Confidential Record is bad and he earns no point in that item. Such an interpretation would thus be self-defeating and lead to absurd results, and accordingly, would be contrary to well established canons of construction, not to speak of a common-sense-oriented approach. Since the Rule does not specify a different passing standard for “each” subject, the prescribed

minimum passing standard must be the yardstick to apply to each of the subjects or items. Minimum must mean a minimum in each, as much as, minimum in aggregate. The Tribunal should not have therefore upset the decision of the concerned department and imposed on the department the mistaken interpretation propounded by it. In the result, the decision of the Tribunal must be reversed.”

27. Considering the observations of the Hon’ble Supreme Court, it would appear that the Recruitment Rules before the Hon’ble Supreme Court consisted of a similar Rule, which required candidate to secure 50% marks for general candidate and 45% for SC and ST candidate as minimum. The learned Tribunal, where the candidate had chosen to challenge the decision of the department of requiring candidate to obtain minimum 50% marks / 45% marks in each subject as against the stand of the candidates that they were required to obtain 50% / 45% marks overall had supported the case of the candidates. The Hon’ble Supreme Court had inter alia while setting aside the decision of the Tribunal, observed that the Rules did not employ the term ‘aggregate’ and such a term could not be injected under the garb of interpretation. The Hon’ble Supreme Court had further observed that an interpretation whereby a candidate, who has not scored minimum marks in one subject, but has secured beyond the cut-off overall, being selected would be self defeating and lead to absurdity. The Hon’ble Supreme Court had further observed that such an interpretation would be contrary to well established canons of construction and would also be contrary to a common sense orientated approach. The Hon’ble Supreme Court had further laid down that if a Rule does not specify a different passing standard for each subject, then the prescribed minimum passing standard must be yardstick to apply to each of the subject. The Hon’ble Supreme Court had further clarified that minimum marks required to be obtained in such a scenario would mean minimum in each. To this Court, it would appear that the

observations of the Hon'ble Supreme Court, apply on all fours in the facts of the present case and whereas under such circumstances, the stand taken by the petitioners that the minimum qualifying standard has to be treated as in aggregate, cannot be countenanced. The Rules not employing the term 'aggregate', the same could not be read into the Rules.

28. As discussed hereinabove, observed from the perspective of Literal Rule of interpretation and from the perspective Purposive Rule of interpretation, the Rule clearly envisages requirement of scoring minimum passing marks in each examination. Hence, to this Court, the issue No.1 is answered to mean that the Recruitment Rules envisages scoring of minimum qualifying marks subject-wise i.e. in each of the subjects. As a natural corollary, a candidate, who has to score more than the minimum qualifying marks in aggregate, but has not scored the minimum qualifying marks in one or more subject, would not be entitled to be considered for selection.

29. In so far as issue No.2 i.e. whether clarification dated 20.02.2024 is in the nature of modifying procedure for selection after that selection process has started, this Court would refer to decision of the Hon'ble Supreme Court in case of Tejprakash Pathak (Supra) incidentally referred to by the learned advocate for the petitioners. Paras 5, 6 and 7 are reproduced herein below for benefit:

"5. In various judicial pronouncements, the law governing recruitment to public services has been colloquially termed as "the rules of the game". The "game" is the process of selection and appointment. Courts have consistently frowned upon tinkering with the rules of the game once the recruitment process commences. This has crystallised into an oft-quoted legal phrase that "the rules of the game must not be changed midway, or after the game has been played". Broadly speaking these rules fall in two categories. One which prescribes the eligibility criteria (i.e. essential qualifications) of the candidates seeking employment; and the other which stipulates the method and manner of making the selection from amongst the eligible candidates.

6. *Cut-off date with reference to which eligibility has to be determined is the date appointed by the relevant service rules; where no such cut-off date is provided in the rules, then it will be the date appointed in the advertisement inviting applications; and if there is no such date appointed, then eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received. [Shankar K. Mandal v. State of Bihar, (2003) 9 SCC 519 : 2003 SCC (L&S) 1145]*

7. *The law is settled that after commencement of the recruitment process the eligibility criteria is not to be altered because candidates even if eligible under the altered criteria might not apply by the last date under the belief that they are not eligible as per the advertised criteria. [Mohd. Sobrab Khan v. Aligarh Muslim University, (2009) 4 SCC 555 : (2009) 1 SCC (L&S) 917] Such alteration/change, therefore, deprives a person of the guarantee of equal opportunity in matters of public employment provided by Article 16 of the Constitution. The reference order [Tej Prakash Pathak v. High Court of Rajasthan, (2013) 4 SCC 540 : (2013) 2 SCC (L&S) 353] therefore acknowledges this legal position and in clear terms accepts that “the rules of the game” cannot be changed after commencement of the recruitment process insofar as the eligibility criteria is concerned.”*

30. The above paras have been quoted to have a better appreciation of the term ‘changing Rules of the game after the game has commenced’. It would appear that the law has been clarified to mean that the eligibility criteria could not be altered after commencement of recruitment process. Paras 29 and 30 also being relevant for the present purpose, are reproduced herein below for benefit.

“29. The ultimate object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services. [Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159, para 4 : 1981 SCC (L&S) 588] It is now well settled that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness,

resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. [See Lila Dhar case, (1981) 4 SCC 159, para 5] Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. [See Lila Dhar case, (1981) 4 SCC 159, para 6]

30. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the rules/statute governing service and reservation. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise. The decision in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list."

31. While the former paras state about object of process of selection and in the later paras, the Hon'ble Supreme Court inter alia lays down that if the Rules empower the competent authority to set benchmark at different stages of the recruitment process, then such benchmark may be set at any time before the stage is reached so that neither the candidate nor the evaluator /

examiner / interviewer is taken by surprise. Furthermore, it is profitable to refer to paras 42.1, 2, 4 and 5 being relevant for the present purpose are reproduced herein below for benefit.

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

- (1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;*
- (2) Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;*
- (4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;*
- (5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;”*

32. The Hon’ble Supreme Court inter alia lays down that the recruitment process has laid down that a recruitment process commences from issuance of advertisement and to the filling up of vacancies.

33. The Hon’ble Supreme Court further observed that the eligibility criteria for being placed in select list cannot be changed midway of the recruitment process, unless extant Rule so permit or the advertisement, which is not contrary to the extant Rules so permit. The recruiting body are empowered, if the extant Rule so permit to devise procedure for completing the recruitment procedure, which is transparent, non-discriminatory / non-arbitrary and which has a rational nexus to the object to be achieved. The Rules having statutory force are binding on recruiting body in terms of procedure and eligibility and where Rules are non-existent / silent, then

administrative instructions can fill up the gap.

34. Having considered the law on the subject as reiterated by the Hon'ble Supreme Court, to this Court, it would appear that clarification dated 20.02.2024 does not in any manner seem to be falling foul of the law as enunciated and reiterated as above by the Hon'ble Supreme Court since it does not appear to be in the nature of changing the Rules of the game after game has commenced. As observed by this Court in the discussion as relevant to issue No.1, it would be clear that the Rules, while it envisaged that the selection body is empowered to fix the minimum qualifying standard, yet there is an embargo upon the selection body that such minimum standard should not be below 40% of marks obtained in each subject of the written tests. That being the case, the clarificatory note dated 20.02.2024 appears to be reiterating that position and nothing more and to this Court, therefore, it would clearly appear that by no stretch of imagination is in the nature of changing the eligibility criteria or qualifying criteria after the selection process has commenced and hence, issue No.2 is answered accordingly.

35. In view of the discussions, observations and conclusions arrived at, it would appear that no case for interference being made out, hence, the petition stands disposed of as rejected. Consequently connected Civil Applications are disposed of.

Y.N. VYAS

(NIKHIL S. KARIEL,J)