The State Of Uttar Pradesh vs Karunesh Kumar on 12 December, 2022

Author: M.M. Sundresh

Bench: M.M. Sundresh, M. R. Shah

REPORTABL

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8822-8823 OF 2022
[Arising out of SLP (C) Nos. 10386-10387 of 2020]

THE STATE OF UTTAR PRADESH …APPELLANT

VERSUS

KARUNESH KUMAR & ORS. …RESPONDENT(S)

JUDGMENT

M.M. SUNDRESH, J.

1. The decision of the Division Bench of the High Court of Judicature at Allahabad in allowing the writ petition filed by the private Respondents, setting aside the order passed by the learned Single Judge is assailed before us. Candidates who waited in the wings, observing the legal journey, filed applications for impleadment seeking extended benefit of the impugned Judgment and Order.

2. The present appeals are filed by the State of Uttar Pradesh inter alia contending that the candidates who are not part of the list forwarded by the Uttar Pradesh Subordinate Services Selection Commission (hereinafter referred to as 'the Commission') were also directed to be considered in the vacancies arising pursuant to the selected candidates approved by the appointing authority, not taking up the jobs offered to the post of Gram Panchayat Adhikari, Single Cadre, Group (C). The learned Single Judge dismissed the Writ Petition filed by the private Respondents, which was overturned by the Division Bench on the premise that Rule 15 of the Uttar Pradesh Gram Panchayat Adhikari Service Rules, 1978 (hereinafter referred to as "1978 Rules"), if given due interpretation, would facilitate consideration of persons waiting in the queue based upon their performance. An application for review was filed by the appellant inter alia stating that the relevant rule to be applied is the Uttar Pradesh Direct Recruitment to Group 'C' Posts (Mode and Procedure) Rules, 2015 (hereinafter referred to as "2015 Rules"). The said application was dismissed without taking note of the aforesaid contentions. The State seeks to assail both the aforesaid orders in the

present proceedings.

3. Heard Ms. Ruchira Goel, learned counsel for the Appellant and Mr. V.K. Shukla, learned senior counsel for the Respondent Nos. 1 to 3 and Mr. M.R. Shamshad for the Respondent No. 4.

ON FACTS:

4. An advertisement was made for the purpose of filling up of 3587 Group 'C' Posts of Gram Panchayat Adhikari on 22.06.2015. The selection process was completed in accordance with the 2015 Rules, by duly conducting a written examination followed by an interview. By way of abundant caution, though not necessitated, the 1978 Rules were also amended on 22.11.2016. The final result was declared on 24.12.2016 and appointment letters were issued during the months of April and May, 2017. During the pendency of the writ petition, the process for the next selection was commenced by taking note of the carry-forward vacancies. At that point of time, the impugned orders were passed by the Division Bench of the High Court of Allahabad.

5. The private respondents and the impleading applicants willingly took part in the selection process. Obviously, they were not disqualified but along with others made to go through the recruitment process of written examination and the interview. It is to their misfortune that they did not find a place in the list sent by the Commission to the appointing authority. Though, the entire process was done in tune with the 2015 Rules and in exercise of the power conferred under the Uttar Pradesh Subordinate Services Selection Commission Act, 2014 (hereinafter referred to as the "2014 Act"), the reliance was made on the 1978 Rules which has found favour with the High Court.

RELEVANT RULES:

6. We shall first consider all the relevant rules and definitions, with specific reference to the provisions governing the recruitment process, to have a correct understanding of the issue involved.

A. Uttar Pradesh Gram Panchayat Adhikari Service Rules, 1978:

7. These rules exclusively dealt with the appointment to the post of Gram Panchayat Adhikari, introduced by the powers conferred under the proviso to Article 309 of the Constitution of India. It has undergone amendment in the year 1989. We are concerned with two amendments by which the earlier Group 'D' posts were converted into Group 'C' posts, with the change in the constitution of the committee. The first amendment is to the rule providing for the aforesaid change and the second one is with respect to Rule 15(1).

8. Rule 15(1) changes the composition of the Selection Committee while the appointing authority remains the same. Rule 15(4), which was left untouched by the subsequent amendment, enabled the Selection Committee to prepare the list of candidates in order of merit as disclosed by the marks obtained in the interview. It further provides for the list to be enlarged by not more than 25% of the number of total vacancies.

9. Under the aforesaid rules, there was no written examination contemplated as against a mere interview by the Selection Committee. No waiting list as such has been provided expressly, though the list shall contain a larger number of names in comparison to the vacancies. We shall now place on record the aforesaid provision to have a better understanding.

"Rule 15 (4) The Selection Committee shall prepare a list of candidates in order to merit as disclosed by the marks obtained in the interview. The number of the names in the list shall be larger (but no larger by more than 25 per cent) than the number of the vacancies." B. Government Order dated 15.11.1999:

10.The Government Order was passed by the Appellant to dispense with any concept of waiting list except in case of a selection to a single post, meaning thereby that if a selected candidate to a single particular post is not filled up by reason of the candidate not joining, the next in line would get a re-look on the premise that the entire exercise done shall not go down the drain. Therefore, the object is rather clear. Consequently, the said order hands over the selection and recruitment process to the Public Service Commission to be applied to all the posts spanning over the State. It was also passed in supersession of all the earlier orders. C. Uttar Pradesh Subordinate Services Selection Commission Act, 2014:

11. By the 2014 Act, the need for an independent specialized agency for the timely selection of Group (C) posts was felt, as could be seen from the Statement of Objects and Reasons furnished hereunder:

> "...In near past, selection on Group 'C' posts was being done under the direct supervision of the State Government but Head of Departments had to devote much time for the above selections which is severely affecting the Government works as well as the works of public interest. Due to all these reasons, it is quite necessary to establish an independent Subordinate Services Selection Commission consisting of the Chairperson and Members similar to that of the Uttar Pradesh Public Service Commission for timely selection on certain Group 'C' posts. It has therefore, been decided to make a law to provide for the establishment of a Commission by the name of the Uttar Pradesh Subordinate Services Selection Commission for the selection on certain Group 'C' posts in the State..."

12. This being an Act passed by the legislature, shall certainly override all the prevailing rules in conflict. The powers and duties of the Commission are defined with clarity under the 2014 Act. Suffice it is to state that the entire process of recruitment to the Group 'C' posts is entrusted to the Commission, as could be seen under Section 15 which enables the conduct of examinations, holding interviews leading to the selection of candidates.

D. The Uttar Pradesh Direct Recruitment to Group 'C' Posts (Mode and Procedure) Rules, 2015

13.The 2015 Rules are brought into the statute with effect from 11.05.2015. Rule (1) speaks of the application to Group 'C' posts, while Rule (2) highlights the fact that it will have an overriding effect, notwithstanding anything to the contrary contained in any other service rules made under the

proviso to Article 309 of the Constitution of India. Under Rule 8(2), it is made clear that all Group 'C' posts would come under its purview, except those specifically excluded by the Government by way of a notification, and laid down the procedure of direct recruitment by way of a written examination followed by an interview. Thereafter, the Commission shall prepare a list of candidates on the basis of merit and forward it to the appointing authority. Thus, these rules do not provide for any waiting list. The only list required to be sent is based upon merit, subject to the rule of reservation.

ARGUMENTS OF THE PARTIES:

Arguments of the Appellant:

14.In view of the existence of a specific non-obstante clause, the 2015 Rules, being the later one, and despite being a general law would take precedence over the 1978 Rules, being the special service rules. Since the two sets of rules are completely inconsistent, in light of the fact that the authority who is to conduct the recruitment process is different in the two rules, so also the process of recruitment, as such, there is no possibility of any harmonious reading of the two sets of rules.

15.The amendment made to the special rules in the year 2016 would not change the position as it was done by way of abundant caution, being clarificatory in nature. There is no right vested with the private respondents and the impleading applicants to the post, and the waiting-list cannot be seen as a perennial source of recruitment. Having participated in the process of recruitment, they are estopped, having acquiesced themselves. Even otherwise, in light of the 1999 GO, the Respondents or the impleadment applicants will not be entitled to appointment.

16.It is the sole prerogative of the Appellant and the Commission to prescribe any mode of selection. Despite the 2015 Rules having been brought to its notice, the High Court failed to duly consider the same. The impleadment applicants are fence-sitters and as such are even otherwise not entitled to any relief. Seeking to strengthen the aforesaid arguments, reliance has been made on the decisions of this Court in the following cases:

Ajoy Kumar Banerjee v. Union of India (1984) 3 SCC 127, Mohan Karan v. State of U.P. (1998) 3 SCC 444, Surinder Singh v. State of Punjab (1997) 8 SCC 488, Anupal Singh v. State of U.P. (2020) 2 SCC 173, Union of India v. G.R. Prabhavalkar (1973) 4 SCC 183.

S.S. Balu v. State of Kerala (2009) 2 SCC 479 Arguments of the Respondents

17.The 1978 Rules deal with a specified post, and therefore, the 2015 Rules, despite being a subsequent one will have to yield to it, the former being the special law governing the field. Rule 15(4) of the 1978 Rules clearly provides for a waiting list. A general rule will not have precedence over a special one, notwithstanding a non-obstante clause, unless there is a clear inconsistency between the two, in which case the two sets of rules will have to be harmoniously construed.

18.The 1978 Rules, governed the field until the 2016 amendment, which only came into force after the interviews in the impugned selection process, and as such, the rules of the game cannot be changed once the game has started. Even otherwise, there is a vested right of appointment against an advertised post which has remained unfilled due to non-joining of the more meritorious candidate.

19. It is not a case of mere operation of the waiting list to fill up the vacancies created due to the failure of the selected candidate to join. The arguments aforesaid are sought to be strengthened by the decisions of this Court in the following cases:

> Maya Mathew v. State of Kerala (2010) 4 SCC 498, V. K. Girija v. Reshma Parayil (2019) 2 SCC 347, Chief Information Commissioner v. High Court of Gujarat (2020) 4 SCC 702.
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> State of U.P. & Anr. v. Rajiv Kumar Srivastava & Anr. SLP (C) CC No. 10604 of 2013 dated 26.07.2013 K. Manjusree v. State of A.P. & Anr. (2008) 3 SCC 512 Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Others (2019) 12 SCC 798 DISCUSSION:

20.We have already placed the relevant rules and considered their import. Clause 15(1) of the 1978 Rules deals with a Selection Committee, while we are concerned with the recruitment made by the Selection Commission statutorily created by an enactment, the 2014 Act. Under the 1978 Rules, no written examination was contemplated as against a mere interview. This was consciously given a go-by, to the knowledge of the candidates who willingly participated in the selection process by taking the written examination, and thereafter, the interview. This process was adopted in tune with the 2015 Rules, and in terms of the powers conferred to the Commission under the 2014 Act. Therefore, the 1978 Rules are put into cold storage qua a selection even at the time of conducting the written examination.

21.A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

> "55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10- 2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9) "9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

57. In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was held as under : (SCC p. 426, para 73) "73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper."

58. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], it was held as under : (SCC p. 107, para 19) "19. In Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127 : 2002 SCC (L&S) 830] ....

xxx xxx xxx It was further observed : (SCC p. 149, para 34) '34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

59. Same principle was reiterated in Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9] wherein, it was held as under

: (SCC pp. 645-46, para 59) "59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] .... The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination

would not arise."

22.In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in Union of India v. N Murugesan (2022) 2 SCC 25:

> "Approbate and reprobate
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> 26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.
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> xxx xxx xxx 27.2.State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144] : (SCC pp.

153-54, paras 22-23 & 25-26) "22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar [AIR 1965 SC 1216].)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground.

(Vide Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329].) In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] this Court has observed as under : (R.N. Gosain case [(1992) 4 SCC 683], SCC pp. 687-88, para 10) '10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.' xxx xxx xxx

25. The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn.

Ltd. [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

23.The aforesaid principle of law applies to the present case. It is not open to the candidate to contend to the contrary so that he can have the best of both sets of rules. Not only is there a difference in the mode of selection, but also in the constitution of recruiting authority as well. It is pertinent to note, that under the 2015 Rules, there is no such procedure for preparing a waiting-list, as the Respondents seek to contend.

24.We have considered the aforesaid submissions to appreciate the arguments made. Even under the 1978 Rules, we do not find the existence of any waiting-list in operation to be filled up at a later point of time, when a certain candidate does not join. Such a list has been provided under Rule 15(4) of the 1978 Rules only to facilitate the appointing authority to fill up the vacancies. Thus, after the vacancies are filled up, the door for the other candidates gets closed.

25.The same is the position under the 2015 Rules by which the Commission is required to send the merit list alone to the appointing authority which it actually did and in case of non-joining, the vacancies are carried forward to the next process of selection, as has been rightly done by the authority in the present case. An employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when a selection is arbitrary or contrary to law, which we do not find to be the case in the present matter. The approach of the High Court is like a visually impaired person looking for a black cat in a dark room when the cat itself is not there.

26.Now we shall come to the question of repugnancy between the two Rules, namely, the 1978 Rules, being a special Rule, and the general Rule introduced in the year 2015. The 1978 Rules do not exist in the statute once the 2015 Rules came into being. By the introduction of the 2014 Act, the legislature in its wisdom assigned the role of filling up the Class 'C' posts to the Commission. We have no difficulty in appreciating the legal contentions raised by the Respondents, however, the decisions rendered do not have any application, considering the inconsistency between the two sets of rules. As we have already held the two sets of rules to be inconsistent with each other, it is clear

that the later rules, even though general in nature, will govern the field. On this aspect, we wish to quote with profit the decision of this Court in the case of Ajoy Kumar Banerjee (supra), "38....As mentioned hereinbefore if the scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle "Generalia specialibus non derogant". The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

39. From the text and the decisions, four tests are deducible and these are: (i) The Legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provisions, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the Interpretation of Statutes, Twelfth Edition, pages 196-198."

27.Merely because the Appellant sought to amend the 1978 Rules subsequently in 2016, it cannot be presumed that the 1978 Rules particularly with respect to Rule 15 continue to exist in the statute book, considering the fact that the 2016 amendment was only clarificatory in nature. We may hasten to add that both the Rules were made in the exercise of power conferred under Article 309 of the Constitution of India.

28.Much reliance has been made on the Government Order passed on 15.11.1999. The said order is very clear on two counts. It speaks of the role being played by the Public Service Commission, and dispensing with the waiting-list except in case of selection to a single post. What is important to be noted is the selection and that too for a single post. It would only mean that selection of an individual to a post, which cannot be interpreted to mean a particular category of post or a single cadre post, as contended by the counsel for the Respondents. The object is very clear that the exercise done in selecting a suitable candidate shall not go waste if that person is not actually selected for any reason, in which case the next in line would get in. Otherwise, the entire process would go to waste, making the recruiting agency to redo it all over for a single post.

29.The learned counsel appearing for the respondents made a specific reference to the decision rendered in the case of Rajiv Kumar Srivastava (supra) to press home the contention that, when a post is not filled due to non-joining of a candidate, another one waiting in the wings merits consideration, as a vested right inures in his benefit.

30.The aforesaid decision, in our considered view, may not have any application to the case on hand. The effect of the relevant rules is not considered therein, as the select list shuts the door to everyone other than the selected candidates. The aforesaid decision was in the context of the 1999 GO, however, as we have held that the 1978 Rules do not apply to the present recruitment, the aforesaid decision would not be of any service. Further, it is settled law that there is no vested right of the unsuccessful candidate to insist upon their consideration, in the absence of any such rule requiring for the preparation of a waiting-list. This Court in the recent decision in Vallampati Sathish Babu v. State of A.P. (Civil Appeal No. 2473 of 2022) has held that:

> "7.4 In the present case, the final selection list of 33 candidates was prepared. Thereafter all the selected candidates were called for counselling, but one of the candidates did not report for counselling. The aforesaid event took place after the final selection list was prepared and published. As there was no requirement of preparation of a waiting list, the appellant claiming to be the next in the merit cannot claim any appointment as his name neither figured in the list of the selected candidates nor in any waiting list as there was no provision at all for preparation of the waiting list. Sub-rule (5) of Rule 16 is very clear. Therefore, the post remained unfilled due to one of the candidates in the final list did not appear for counselling and/or accepted the employment. Hence, that post has to be carried forward for the next recruitment.
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> 7.5 The appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for waiting list as per the statutory provision. In absence of any specific provision for waiting list and on the contrary, there being a specific provision that there shall not be any waiting list and that the post remaining unfilled on any ground shall have to be carried forward for the next recruitment. The appellant herein, thus, had no right to claim any appointment to the post which remained unfilled.
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> xxx xxx xxx 8.1 An identical question came to be considered by this Court in the case of Suresh Prasad and Ors. (supra). In the said decision, it is specifically observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in the case of Samiula Shareef and Ors. (supra)"

31.We do not wish to reiterate the situation when two Rules are sought to be pitted against each other, as we find no such repugnancy that has arisen. A court of law is expected to reconcile the rules, and therefore, not to foresee or presume conflicts, if any.

32.The respondents have also placed reliance on the decision of this Court in the case of K. Manjusree (supra). However, in our considered view, the facts of the aforesaid decision are quite different from the present case. A change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were non- suited from participating in the recruitment process. The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job.

33.On a perusal of the judgment rendered by the High Court, as found earlier, the impugned decisions are made without considering the appropriate provisions despite an endeavour being made drawing its attention to the same. The High Court in our considered view did not take note of the grounds raised in the Review Petition. In a proceeding initiated under Article 226 of the Constitution of India, the scope of review has to be looked at differently, facilitating an enlarged view. We have already discussed the scope of Rule 15 and the non-availability of any provision for a waiting list in the 2015 Rules.

34.Accordingly, the appeal stands allowed and the impugned judgments dated 09.08.2018 and 30.10.2019 are set aside and consequently the order passed by the learned Single Judge stands restored. No costs.

……J. (M. R. SHAH) ……J. (M.M. SUNDRESH) New Delhi, December 12, 2022