

Ranvijay Singh And 7 Others vs State Of U.P. And 3 Others on 29 March, 2018

Author: Dilip B Bhosale

Bench: Dilip B. Bhosale, Suneet Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

Chief Justice's Court

Case :- WRIT - C No. - 3336 of 2016

Petitioner :- Ranvijay Singh And 7 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Madhukar Ojha, Sanjeev Singh

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4845 of 2016

Petitioner :- Mr. Julio F. Ribeiro And 8 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Satish Chaturvedi

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - A No. - 20043 of 2016

Petitioner :- Ashok Singh Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Santosh Kumar Rai

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 19512 of 2016

Petitioner :- Satyendra Kumar Rai And 4 Ors.

Respondent :- State Of U.P. And 2 Ors.

Counsel for Petitioner :- Ram Sheel Sharma,Girish Chandra Maurya,Gyan

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 20504 of 2016

Petitioner :- Manoj Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Dinesh Kumar Pandey

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 20909 of 2016

Petitioner :- Kamal Kumar

Respondent :- State Of U.P. & 3 Others

Counsel for Petitioner :- Arvind Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 38595 of 2016

Petitioner :- Km. Krishma Sharma, Gen,Roll No. 00760

Respondent :- State Of U.P. And 4 Ors.

Counsel for Petitioner :- Vijay Gautam,Ambarish Chatterji

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 42187 of 2016

Petitioner :- Mudit Tyagi And 5 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pradeep Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 6022 of 2016

Petitioner :- Vivekanand Yadav And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 6775 of 2016

Petitioner :- Shiv Shankar Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Santosh Kumar Upadhyay, Shyam Sunder Upadhyay

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 9819 of 2016

Petitioner :- Jitendra

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sukrampal

Counsel for Respondent :- C.S.C.

Hon'ble Dilip B. Bhosale, Chief Justice

Hon'ble Suneet Kumar, J.

Heard Mr. Ashok Khare, learned Senior Counsel, with Mr. Seemant Singh, Advocate on record, for the petitioners, Mr. Manish Goyal, learned Additional Advocate General with Ms. Archana Singh, learned Additional Chief Standing Counsel, Mr. Madhukar Ojha and Mr. Sanjeev Singh, Advocates, for the respondents.

2. The question, what is the ideal mode of selection to the post of Police Constable, by written examinations, as provided for under Rule 15 of the Uttar Pradesh (Civil Police) Constable and Head Constable Service Rules, 2008 (for short 'Rules, 2008') or on the basis of marks awarded in 10th and 12th standard Board examination results, as provided for in the new rules, notified on 2.12.2015, namely, the Uttar Pradesh Police Constable and Head Constable Service Rules, 2015 (for short 'Rules, 2015') falls for our consideration in these writ petitions. The primary challenge raised in these petitions, under Article 226 of the Constitution of India, is to Rules 15(b), 15(c) and 15(e) of the Rules, 2015, whereby Preliminary Written Test and Main Written Examination that was provided for in Rules, 2008, has been done away with by providing selection on the basis of marks awarded in 10th and 12th standard Board examination results or qualification equivalent thereto, as provided under clause (8) of Rules, 2015.

3. The factual matrix that is relevant for considering the challenge raised and deciding the question that falls for our consideration in all the writ petitions is common. A notification was issued on 29.12.2015 by the respondent-State, notifying recruitment of Constables (Civil Police) and Provincial Armed Constabulary (for short 'PAC') under Rules, 2015. They notified 23200 posts of Constable (Civil Police) and 5716 posts for PAC, totalling 28916, prescribing 17.2.2016 as last date for registration of online application and 22.2.2016 for submission of the application. The respondent-State in their counter affidavit have stated that for the posts of 28916 male vacancies, 15,63,674 applications and for 5800 female vacancies, 56338 applications were received. This Court vide order dated 27.5.2016 had directed the State Government to continue with the recruitment process, but restrained them from declaring results till the next date of hearing. This interim order, we are informed, was continued from time to time and it operates even today. As a result thereof, though the recruitment process continued, the results have not been declared so far.

4. In order to understand the challenge better, we would like to have a glance at Rule 15 in Rules, 2008 and Rules, 2015. Rules, 2008 provide for Preliminary Written Test, followed by Physical Efficiency Test and then Main Written Examination under clauses (c), (d) and (e) of Rule 15 of Rules, 2008. The basic academic qualification for direct recruitment to the post of constable remained same i.e. one must possess the qualification of 12th standard by a Board established by law in India or a qualification recognized by the Government equivalent thereto. The procedure for direct recruitment of constable, as provided for under Rule 15 of Rules, 2008, consisting of the impugned clauses (c), (d) and (e), read thus:

"[15. Procedure for direct recruitment of Constable.--(a) Application. -

(i) A candidate shall fill the application form from one District only. Regarding

allocation of Examination Center, the candidate may give more than one option. However, Board may allocate center other than those indicated by the candidate.

(ii) The details of the information regarding educational qualification, age, minimum qualifying standards for each category of examination, including physical, written, medical etc., minimum qualifying marks for Written Examination subject wise, copy of O.M.R. sheet for practice and other important guidelines as may be determined by the Board from time to time shall be provided by the Board on its web-site or any other method as it deems necessary.

(iii) The applications shall be invited by the Board giving the applicants adequate time for application. The candidate shall be personally and solely responsible for its accuracy and completeness, if Form of any candidate found incomplete, wrong or having inaccurate information, this Form shall be cancelled.

(iv) An applicant shall certify himself all his certificates and documents and be responsible for their genuineness and correctness.

(v) The application form may also include identification details like Unique Identity Number, thumb and finger impressions, photograph or bio metries in appropriate manner as prescribed by the Board from time to time.

(vi) The head of the department may fix an application fee for any recruitment.

(vii) The Board shall have the right to summarily reject the candidature of an applicant for any incompleteness or inaccuracy or variation or conflict with any previous or subsequent information submitted by the candidate.

(viii) The Government may change the number of vacancies for any recruitment at any time before the first examination and may also cancel any recruitment at any time or stage of recruitment without assigning any reason thereof.] [(b) Call Letter. - Call letters for candidate shall be made available at least ten days before the examination.

(c) Preliminary Written Test. - Candidates whose applications are found to be correct may be required to appear in an objective type preliminary written test of qualifying nature. The test shall be of one paper of 300 marks and contain questions on general knowledge, current affairs, reasoning ability and numeric ability of appropriate level, the detailed syllabus for which shall be notified by the Board from time to time. The candidate who fails to obtain 35% marks shall not be eligible for recruitment. From the candidates who pass the preliminary written test, a number equal to ten times the number of vacancies shall be eligible for the physical Efficiency Test.

(d) Physical Efficiency Test. - The eligible candidates shall be required to appear in a Physical Efficiency Test which shall be of 100 marks. The procedure for conducting the Physical Efficiency Test shall be such as prescribed in Appendix-2.

(e) Main Written Examination. - The eligible candidates who qualify Physical Efficiency Test shall be required to appear in the main written examination which will be of objective type shall carry 300 marks. The written paper will consist of questions covering, general awareness, mental ability, reasoning and comprehension. The detailed syllabus for the examination shall be notified by the Board. The procedure for conducting written examination shall be such as mentioned in Appendix-3. Candidates who fail to obtain 35% marks in the main written examination shall not be eligible for recruitment.

(f) Scrutiny of Documents and Medical Examination. - The Board shall prepare a merit list for each category of candidates on the basis of total marks obtained by the candidates according to the orders of the State Government and the provisions of enactments for the time being in force.

The scrutiny of documents of the above candidates shall be carried out as per Appendix-4. In case any document is found to be manipulated, inaccurate or forged during the scrutiny or at any time after the scrutiny, the candidature of the applicant will be cancelled at the discretion of the Board and Head of the Department. Those candidates whose documents are found in order will undergo for Medical Examination as per Appendix-5.

Note. - The Medical Board shall examine the candidate and deficiencies thereof such as knock knee, bow-legs, flat feet, varicose veins, distant and near vision, colour blindness, hearing test comprising of Rinne's test, Webber's test and shall also tests for vertigo, speech defects etc. of the candidates as may be notified from time to time by the State Government.

(g) Selection and Merit List. - The Board shall prepare a final select list of candidates in order of their merit, keeping in view the reservation policy of the State.

If two or more candidates obtain equal marks, preference will be given to the candidates who have obtained higher marks in the main written examination. If two or more candidates secure the same marks in main written examination then the candidate who are older will be placed higher in the merit list. In case two or more candidates have the same date of birth, the candidates possessing preferential qualification as mentioned in Rule 9 will be placed higher in the merit list.

The final list shall be published in Website/Notice Board. This list shall be forwarded to the Head of Department, who will forward it to the Appointing Authority for further action.] Note. - If two or more candidates obtain equal marks then the merit list would be finalized, according to the following procedure: -

(i) Such candidate will be given preference, having Preferential qualification if any. A candidate having more than one preferential qualification will get benefit of only one preferential qualification.

(ii) If despite the above, two or more candidates have the same rank then such candidate will be given preference who secures higher marks in the main written examination.

(iii) If despite the above two or more candidates have equal marks then such candidate will be given preference who is older in age.

(iv) If in spite of above consideration still the marks are equal, and date of birth is same and marks in the main written examination are also the same then such candidate will be given preference in order of the first letter of the English alphabet of the first name as mentioned in High School Certificates.

The merit-list shall be published in website/Notice Board.

(ii) The Board shall prepare a select list of candidates in order of the merit, keeping in view the reservation policy guidelines and the total number of vacancies notified to the Board which will be subject to character verification by the Appointing Authority. The select list shall be forwarded to the Head of Department who will after approval forward it to the Appointing Authority for further action.]"

5. By Rules, 2015, procedure laid down under Rules, 2008, in particular, clauses (c), (d) and (e) thereof, for recruitment has been done away with. In other words, under Rules, 2015, clauses (b), (c) and (e) thereof in particular, the Preliminary Written Test and the Main Written Examination has been done away with and now it is made on the basis of 10th and 12th standard Board examination results or qualification equivalent thereto, as provided under clause (8) of these Rules was introduced, followed by a Physical Efficiency Test. The relevant Rule 15 of Rules, 2015, reads thus :

"15. Procedure for Direct Recruitment to the post of Constable.-(a). Application Form

(i) A candidate shall fill only one application form. The Board will accept only online applications. The application of candidates, who fill more than one Forms, may be rejected by the Board.

(ii) The details of the information regarding educational qualification, age, minimum qualifying standards for each category of examination, including physical, medical examination etc., other important guidelines as determined by the Board from time to time shall be made available by the Board on its own website and or by other means as it deems necessary.

(iii) The applications shall be invited by the Board giving the applicants adequate time for making application, the candidate shall be personally and solely responsible for its accuracy and completeness, if the Form of any candidate is found incomplete, wrong or having inaccurate information, it may be cancelled and the decision of the Board in this regard shall be final.

(iv) An applicant shall certify himself his certificates and documents and be responsible for their genuineness and correctness.

(v) In the Application Form the detail of the identity, specific identity card number, thumb and finger impression, photographs or bio-matrix details will be so included as determined by the Board from time to time.

(vi) The Head of the Department may fix an application fee for any recruitment in consultation with the Recruitment Board.

(vii) The Board shall have the right to summarily reject the candidature of an applicant for any incompleteness or inaccuracy or variation or conflict with any previous or subsequent information submitted by the candidate.

(viii) The Government may change the number of vacancies for any recruitment at any time before the first examination and may also cancel any recruitment at any time or stage of recruitment without assigning any reason thereof.

(b) Merit List on the basis of 10th and 12th examination results.

All such candidates whose application forms are found correct, shall be awarded marks on the basis of their 10th and 12th standard Board examination results, or qualification equivalent thereto, as provided under clause (8) of these rules. For awarding these marks, maximum of 100 marks will be awarded on the basis of 10th standard Board examination and maximum 200 marks will be awarded on the basis of 12th standard Board examination. The marks such awarded to them will be counted upto second digit after decimal point and will be awarded as per following procedure:-

(1) Marks awarded on the basis of 10th examination result = percentage of marks obtained by the candidate in 10th standard Board or examination equivalent thereto.

(2) Marks awarded on the basis of 12th examination result = 2 x Percentage of marks obtained by the candidate in 12th standard Board or examination equivalent thereto.

If any examination Board, awards grades in place of marks to the candidates, in above mentioned 10th and 12th examination, then Board shall proceed only after taking information from concerned examination Board, regarding marks to be awarded equivalent to corresponding grades. Candidates shall be awarded total marks on the basis of sum total of marks awarded to them on the basis of 10th class examination results and marks awarded to them on the basis of 12th class examination results,

as above. All candidates will be awarded total marks as per sum total of marks awarded as above, out of a maximum of 300 marks and a list in the order of merit will be prepared on the basis of these total awarded marks. Out of the merit list such prepared, candidates equal to 15 times the number of total vacancies, on the basis of merit shall be called for Physical Efficiency Test. If more than one candidates are found on the marks obtained by the last candidate in the merit list then all such candidates shall be considered eligible for Physical Efficiency Test.

(c) Physical Efficiency Test-

All Candidates declared eligible in the merit list under clause (b) shall be required to participate in Physical Efficiency Test which shall be of 200 marks. The procedure for conducting the Physical Efficiency Test shall be as prescribed in Appendix-1.

(d) Scrutiny of Documents and Physical Standard Test The scrutiny of documents & Physical Standard Test of candidates selected under clause (c) mentioned above shall be done according to Appendix-2. In case any document is found to be manipulated, inaccurate or forged during the scrutiny or at anytime after the scrutiny, the candidature of the applicant will be cancelled at the discretion of the Board or the Appointing Authority as the case may be.

(e) Selection and Final Merit List:-

From amongst the candidates found successful after Physical Standards Test and scrutiny of documents under clause (d), the Board shall prepare, as per the vacancies, a select list of each category of candidates, on the basis of sum total of, marks awarded to each candidate on the basis of 10th and 12th examination results as per clause (b) and marks obtained by him in physical efficiency test as per clause (c), keeping in view the reservation policy and send it with recommendation to the head of the department subject to character verification, medical examination and 10th and 12th examination mark sheet verification. No waiting list shall be prepared by the Board. List of all candidates with marks obtained by each candidate shall be uploaded on its website by the Board. The Head of the Department shall after his approval forward the list sent by the Board to the concerned Authority for further action.

Note:- If two or more than two candidates obtain equal marks then the merit list shall be decided according to the following procedure:-

(1) If marks of two or more candidates are equal then candidate obtaining higher marks, as per total marks awarded in clause (b), will be given preference.

(2) If two or more candidates are equal even after this the candidates who have the preferential qualification (in the same order as stated in rule 9) will be given preference. Candidate having more than one preferential qualification shall get the benefit of only one preferential qualification.

(3) Even then if two or more candidates have equal marks then candidate older in age shall be given preference.

(4) If despite the aforementioned more than one candidates are equal, then preference to such candidate shall be determined according to the order in English Alphabets of their names mentioned in High School Certificate.

(f) Verification of 10th and 12th examination marks sheets While preparing the final select list, the Board will send for verifications to the concerned Education Board, the 10th and 12th class mark sheets of all candidates, included in the select list. As and when their verification reports from concerned Education Boards are received, the Board will send them separately to Police Headquarter later on, who will subsequently send it to the Appointing Authority for necessary action. If as per report sent by concerned Education Board, the 10th or 12th examination marks sheets of any candidate, is not verified, then such candidate shall be declared unfit by the Appointing Authority and such vacancies shall be carried forward for new selection.

(g) Medical Examination The candidates whose name are in the select list sent as per clause (e), will be required to appear for Medical Examination by the Appointing authority. Medical Examination will be conducted in the Police Line of the concerned District or at the place mentioned by the Appointing Authority. Medical Examination will be conducted as per Appendix-3. The candidates found unsuccessful in Medical Examination shall be declared unfit by the Appointing authority and such vacancies shall be carried forward for next selection."

6. From bare perusal of Rule 15 in Rules, 2008 and Rules, 2015, it appears to us, Rules, 2008 specified the basis of selection as comprising of a Preliminary Written Test followed by Physical Efficiency Test and then Main Written Examination. This procedure, according to the respondent-State, was cumbersome/complicated and used to take long time to conclude recruitment process. In support of this contention, the State in its counter affidavit dated 6.4.2016 have demonstrated on the basis of the recruitment process commenced in 2013 under Rules, 2008. The relevant averments in their counter affidavit find place in paragraph 5 thereof, which reads thus:

"5.

The procedure for recruitment of Constables provided under the Service Rules of 2008 was extremely complicated and time taking. Direct recruitment was notified for 41,610 posts of Constables of Civil Police, P.A.C. and Fireman in 2013 and 22,24,693 applications were received. The preliminary examination was held on 15.12.2013 in 4,236 examination centers spread over 75 districts of the State. In this preliminary examination 17,89,985 candidates participated and after the examination, the answer key was uploaded on the Board's website and objections were invited in between 20.06.2014 to 05.07.2014.

27,000 applications were received by the Board and each of these objections were dealt with individually by the Board. In the meantime the Lok Sabha Elections were notified and therefore all concerned officials could not coordinate and complete the process of declaration of result of preliminary examination in time, which was later declared on 28.07.2014. Because of the "Monsoons" intervening the availability of grounds for conducting of physical efficiency test was jeopardized and 3,25,000 candidates took the physical efficiency test in between 07.10.2014 to 16.11.2014.

The main written examination was held on 14.12.2014 and its answer key was also uploaded on the website of the Board and objections were invited in the same manner as for preliminary examination in between 25.12.2014 to 31.12.2014. The objections were dealt with individually and the main written examination result was thereafter declared on 12.01.2015. Thereafter all testimonials of the eligible candidates were verified and their medical examinations were conducted after which alone the results could be declared finally on 16.07.2015.

It is evident that the whole procedure took more than 2 years time. Even after conduct of the selection the documents relating to the said selection had to be kept under safe custody so that in case of any challenge to the said selection, the records preserved may be produced in court, in case need for the same arose."

7. It is in this backdrop, Rules, 2015 were introduced whereunder Preliminary Written Test and Final Written Examination have been done away with and merit list of candidates now would be prepared on the basis of the marks obtained by them in 10th and 12th standard Board examination results. 300 marks has been awarded for class 10th (100 marks) and class 12th (200 marks) and out of the merit list prepared, candidates equal to 15 times the number of total vacancies, on the basis of merit shall be called for Physical Efficiency Test. 200 marks has been assigned to Physical Efficiency Test, the procedure for conducting the Physical Efficiency Test is prescribed in Appendix-1 to the Rules. From amongst the candidates found successful after Physical Efficiency Test and scrutiny of documents, the Board shall prepare, as per vacancies, a select list of each category of candidates, on the basis of sum total of, marks awarded to each candidate on the basis of 10th and 12th Board examination results and marks obtained by him in Physical Efficiency Test, keeping in view the reservation policy, the recommendation of selected candidates shall be made to the Head of the Department, subject to character verification, medical examination and examination of educational documents. The petitioners, in this backdrop, have taken exception to clauses (b), (c) and (e) of Rule 15 of Rules, 2015.

8. We have heard counsel for the parties at considerable length and with their assistance gone through the pleadings, relevant rules and judgments relied upon by them in support of their contentions. Mr. Khare, learned Senior Counsel, who made leading arguments, after drawing our attention to Rules, 2008 and Rules, 2015 submitted that selections on the post of constable made on the basis of marks obtained by a candidate in 10th and 12th Board examination and upon having qualified the Physical Efficiency Test is arbitrary and unwarranted and not fair method of selection. He submitted, the procedure of selection by a Preliminary Written Test, comprising of questions

pertaining to General Knowledge, Current Affairs, Reasoning Ability and Numeric Ability, followed by a Physical Efficiency Test and a Main Written Examination, again comprising of questions covering General Awareness, Mental Ability Test, Reasoning and Comprehension was a fair, transparent and appropriate method of selection. By Rules 2015, all parameters of personality test, he submitted, have been completely done away with. In other words, he submitted that the procedure prescribed under Rules, 2015, does not ensure the selection of the best and the most suitable person for the job. The procedure prescribed under Rules, 2015, is not fair and competitive, as contemplated by Rules, 2008, which is not only time tested, merit based, but has been accepted almost universally as the gateway to public services. He submitted to do away with such examinations, would not be fair and equitable to every competitor. The 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 favoritism. In short, he submitted that Rules, 2015, specifying selection process on the basis of 10th and 12th standard marks, is wholly irrational, arbitrary, discriminatory and violative of Article 14 of the Constitution. The procedure contemplated under Rules, 2015, is not only irrational but also fails to take into account other factors that are necessary for selecting the best candidate to the post of constable. The object of any process of selection for entering into a public service is to secure the most suitable person in the job based on merits, through an open written competitive examination. With reference to judgments of the Supreme Court, he submitted that it is well recognized that a written examination assesses a candidate's knowledge and intellectual ability and his alertness, resourcefulness, dependableness, cooperativeness etc. can be evaluated as observed in several judgments. Lastly, he submitted, clauses (b), (c) and (e) deserve to be declared ultra vires the Constitution and inoperative in law being wholly irrational and arbitrary. Mr. Khare, did not raise any other contention.

8.1 On the other hand, Mr. Manish Goyal, learned Additional Advocate General for the State after inviting our attention to Rules, 2015 submitted that the procedure contemplated by Rule 15 for recruitment, discloses sufficient safeguards and it does not suffer from vice of arbitrariness. He submitted that Rules, 2008 were less stringent than the Physical Efficiency Test prescribed under Rules, 2015, whereby an attempt is made to select the best candidate on the post of constable. He submitted that laying down of relevant criteria for recruitment is within the exclusive domain of the employer. In cases of public employment such criteria must meet the standard of Articles 14 and 16 of the Constitution of India. He submitted that it is not mandatory to prescribe written examination for every recruitment. In any case, written examination having been done away with under Rules, 2015, cannot have the consequence of making the rules arbitrary. He submitted, the procedure for recruitment under Rules, 2015, has not only done away with written tests, but even the possibility of manipulation or any malpractice, which often is seen in written examinations for recruitment to such posts. Written examinations for medical, engineering or, for that matter, law cannot be equated with recruitment process for the posts of constables. Insofar as the mental and physical aptitude is concerned, he submitted that for appointment in civil police, mental and physical aptitude cannot be adjudged through a written examination at the level of Police Recruitment. Physical aptitude is to be adjudged through the Physical Efficiency Test and mental aptitude is evaluated for by short listing, on the basis of the marks obtained in 10th and 12th standard which stands rationalized after consultation with the respective Boards. The procedure under Rules, 2015 does not deprive or discriminate any eligible person from fair and transparent selection based on

merits. Having regard to the post for which selection is being made, emphasis has been given to Physical Efficiency Test without diluting the academic performance, that is, a candidate must have passed 12th standard. Lastly, he submitted that the recruitment process under Rules, 2008, apart from it was complicated and cumbersome, it used to take long time and there was a possibility of the very purpose of selection being frustrated.

9. Before we proceed further, let us have a close look at the relevant rules in Rules, 2015. Rules, 2015 were notified by the U.P. Government, Home (Police) in exercise of the powers under clause (c) of sub-section (2) of Section 46 read with sub-section (3) of the said Section and Section 2 of the Police Act, 1861 (Act No. 5 of 1861) (for short 'the Police Act') and all other powers enabling him, in this behalf and in supersession of all existing rules or orders issued in this behalf, the Governor made the Rules, 2015, with a view to regulate the selection, promotion, training, appointment, determination of seniority and confirmation etc. of constables and head constables of the police in Uttar Pradesh Police Force. The Rules were brought into force on 2.12.2015.

9.1 Rule 5 of Rules, 2015, provides that 100% posts of police constables are to be filled by direct recruitment. Rule 8 provides for academic qualifications. Under this rule, a candidate for direct recruitment to the post of constable must possess the qualification of 12th standard by a Board established by law in India or a qualification recognized by the Government as equivalent thereto. Rule 9 provides for preferential qualification. Rule 10 provides for age. Under this rule a male candidate requires to be 18 years and must not have attained the age of 22 years and for female candidates, she must have attained the age of 18 years and must not have attained the age of 25 years on the first day of July of the calendar year in which the vacancies for direct recruitment are advertised. The proviso to the Rule states that the upper age limit in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and such other categories may be greater by such number of years as may be specified in the Act and Government Orders applicable at the time of notification of the vacancies by the Board. Further reference to this Rule is not necessary having due regard to controversy raised and the question that falls for our consideration in this group of writ petitions. Rule 13 provides for physical fitness. It states that no candidate shall be appointed to a post in the service unless he is in good mental and bodily health and free from any physical defect. It would be relevant to reproduce the said rule. Rule 13 reads thus:

"13 - Physical fitness. - No candidate shall be appointed to a post in the service unless he is in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties. Before a candidate is finally approved for appointment, he shall be required to pass an examination by a Medical Board.

Note:- The Medical Board shall examine the candidate for any physical standards prescribed for height, chest and weight measurement as the case may be and deficiencies such as Knock Knee, bow-legs, flat feet, varicose veins, distant and near vision, colour blindness (total or partial), hearing test comprising of Rinne's Test, Webber's Test and tests for vertigo, speech defects etc., and such other deficiencies as may be notified by the State Government from time to time."

9.2 This rule provides for physical fitness of a candidate who participates in the selection process of constable so as to avoid selection of a person having physical defect which is likely to interfere with the efficient performance of his duties. Every candidates, who is in good mental and bodily health, require to be approved for appointment by a medical Board.

9.3 Rule 15 is relevant for our purpose. Clause (b) thereof provides for preparation of merit list on the basis of 10th and 12th examination results followed by Physical Efficiency Test and then Scrutiny of Documents and Medical Examination. It provides the pattern of awarding marks on the basis of 10th and 12th standard Board examination results, as is seen from bare perusal of the aforequoted clause (b) of Rule 15 of Rules, 2015. Clause (b) further provides that out of the merit list such prepared, candidates equal to 15 times the number of total vacancies, on the basis of merit shall be called for Physical Efficiency Test. The Physical Efficiency Test envisaged under this rule is required to be conducted by a team formed by the Board. The said team may take help of any expert for taking examination. All candidates declared eligible in the merit list under clause (b), as provided for in clause (c) of Rule 15, shall be required to participate in Physical Efficiency Test which shall be of 200 marks. The procedure for conducting the Physical Efficiency Test is prescribed under Appendix - 1 to Rules, 2015, the relevant portion of which reads thus:

"1. In the physical efficiency test for direct recruitment of constables, the male candidates will have to complete 4.8 Km. (Kilometre). run. in 27 minutes and female candidates will have to complete 2.4 Km. (Kilometre). run in 16 minutes. Those candidates who fail to complete the run in stipulated time will not be eligible for next stage.

The allotment of the marks will be according to time taken by the candidates within the above stipulated time, for which there shall be a maximum of 200 marks and minimum of 120 marks.

For male candidates maximum of 200 marks will be awarded to those, who complete the 4.8 Km. run in 17 minutes or time less than that. After that male candidates completing the run in more than 17 minutes and upto 17 minutes 15 seconds, will be awarded 198 marks, male candidates completing the run in more than 17 minutes 15 seconds and upto 17 minutes 30 seconds will be awarded 196 marks. Likewise in the increasing order of time as above, 2 marks shall be deducted every time from the marks to be awarded to male candidates for every 15 second increase in time interval. Likewise, serially as per above prescribed norms, all male candidates completing the run in more than 26 minutes 30 second and upto 26 minutes 45 second shall be awarded 122 marks and all male candidates completing the run in more than 26 minutes 45 seconds and upto 27 minutes will be awarded 120 marks, minimum prescribed for this run, and all those male candidates who complete the 4.8 Km. run in more than 27 minutes shall be declared unfit for selection."

9.4 Maximum 200 marks and minimum of 120 marks is awarded for Physical Efficiency Test. The male candidate will have to run 4.8 Km. in 27 minutes, and female candidate will have to complete

2.4 Km run in 16 minutes. On comparing the Physical Efficiency Test provided under the earlier Rules, 2008, it transpires that the Physical Efficiency Test has been made more stringent under the Rules, 2015. The comparative timing range and marks to be awarded is as under:

Rules 2008

(i) 4.8 Km Run for Males (Qualifying 30 minutes) Timing range in minutes (') and seconds (") Timing Range Marks Up to 20' minutes 20' 01" to 25 minutes 25' 01" to 30 minutes

(ii) 2.4 Km Run for Females (Qualifying 18 minutes) Timing range in minutes (') and seconds (") Timing Range Marks Up to 14 minutes 14' 01" to 16 minutes 16' 01" to 18 minutes Rules 2015

(i) 4.8 Kms. Run for Males (Qualifying 27 minutes) Timing range in minutes (') and seconds (") Timing Range Marks Up to 17' minutes 17' 01" to 17 minute 15 seconds 17' 16" to 17 minute 30 seconds 26' 30" to 26 minute 45 seconds 26' 45" to 27 minutes

(ii) 2.4 Kms Run for Females (Qualifying 16 minutes) Timing range in minutes (') and seconds (") Timing Range Marks Up to 11 minutes 11' 01" to 11 minutes 15 seconds 11' 16" to 11 minute 30 seconds 15' 30" to 15 minute 45 seconds 15' 45" to 16 minutes

Note.- The timing shall be reckoned to the nearest second.

9.5 It is evident from the Rules that the marks for Physical Efficiency Test have been made at a difference of every two seconds and maximum marks are awarded to male candidate completing the run in 17 minute and a minimum 120 marks are awarded who completes the run in 27 minutes, Whereas, for female candidates maximum marks are awarded to the candidate who completes 2.4 Km. run in 11 minutes or less time and minimum marks who completes the run in 16 minutes. Further all the candidates who complete the run in more than the maximum stipulated time shall be declared unfit for selections.

9.6 From bare perusal of the procedure for conducting Physical Efficiency Test, as prescribed under Appendix (1), it is clear that it is made more stringent than what was provided in Rules, 2008. Making the Physical Efficiency Test stringent, is not under challenge. Even otherwise, in our opinion, physical efficiency and mental fitness/health is more important for the posts of police constable than his general knowledge and intellectual ability.

9.7 Clause (d) of Rule 15 provides for scrutiny of documents and physical standard test. Under clause (e), the Board shall prepare, as per vacancies, a select list of each category of candidates, on the basis of sum total of marks awarded to each candidate on the basis of 10th and 12th examination results as per clause (b) and marks obtained by him in Physical Efficiency Test as per clause (c), keeping in view the reservation policy and send it with recommendation to the head of the department subject to character verification, medical examination and 10th and 12th examination mark-sheet verification. Clause (e) provides for selection of preparation of final merit list. Though in

the prayer clause a challenge is raised to this clause, Mr. Khare, learned Senior Counsel, appearing for the petitioners did not advance any arguments based thereon and only submitted that clause (e) is a consequence of the procedure laid down under clauses (b) and (c) and if clauses (b) and (c) are struck down, clause (e) as a consequence thereof, will also have to be struck down.

10. It is not in dispute that Rules, 2015 supersede all existing rules, i.e. the Rules, 2008 and orders issued in that behalf. In other words, the moment Rules, 2015 were introduced and were brought into force, Rules, 2008 ceased to operate. The writ petitions before us do not challenge Rules, 2015 as a whole and seek declaration that Rules 15(b), (c) and (e) of the Rules, 2015, as ultra vires the provisions of the Constitution of India. In the absence of challenge to Rules, 2015, as a whole, a very strange situation would arise if the challenge to Rules 15(b), (c) and (e) only is upheld. If these clauses are declared ultra vires the Constitution, the remaining rules will make the entire Rules, 2015 otiose/unworkable, which is impermissible and cannot be conceived. It is settled position of law that Courts cannot legislate or enter into the realm of executive field by substituting or altering the subordinate legislation. Despite such declaration and so also legal hurdle in the way, we have examined the challenge raised to clauses (b), (c) and (e) of Rule 15 of Rules, 2015 independently to find out whether the procedure prescribed for recruitment or the mode of selection to the post of constable vide Rules, 2015 is irrational and arbitrary, as contended by Mr. Khare, learned Senior Counsel for the petitioners. The question, therefore, arise whether the criteria of selection and evaluation is manifestly arbitrary.

11. In this connection, before we proceed further, it would be relevant to notice a judgment of the Supreme Court in Lila Dhar vs. State of Rajasthan and others, (1981) 4 SCC 159, wherein the Supreme Court while observing that the written examination assesses the man's intellect and the interview test the man himself and "the twin shall meet" for a proper selection held that there cannot be any rule of thumb regarding the precise weight to be adopted respectively to the written test and the interview and it must vary from service to service according to the requirement of the service to which recruitment is made and the source material available for recruitment, in paragraph 4, made the following observations:

"4. The 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.

The ideal in recruitment is to do away with unfairness.

Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency. . . . By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved.

Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence."

(emphasis supplied) 11.1 The Supreme Court in this case was dealing with a case arising from a competitive examination for recruitment of 'Munsifs' through Rajasthan Public Service Commission. The object of any process of selection for entry into a public service, thus, is to secure the best and most suitable person for the job. Selection based on merits, tested impartially and objectively, are the essential foundation of any useful and efficient public service. The ideal in recruitment is to do away with unfairness.

11.2 There can be no dispute or second opinion to the proposition that any process of selection for entry into public service the best and most suitable person for the job should be selected without favoritism and selection must be on merit, impartial and objective. Whether open competitive examination alone can be a mode for selection would depend upon the nature of post for which recruitment is sought to be made. Having due regard to the nature of the post (constable), the Government in its wisdom has emphasized on Physical Efficiency Test and marks obtained by the candidate in 10th and 12th standard Board examination to be an essential feature for proper selection to the post of constable. In other words, the scheme of selection emphasizes physical fitness rather than the man's intellect which can be assessed by written examination followed by interview. The 12th standard Board examination has been taken as a sufficient assessment of the candidates intellect for the post.

12. The Supreme Court in *Abhay Kumar Singh and others vs. State of Bihar and others*, (2015) 1 SCC 90, dealt with the question whether the height can be the sole criteria for the selection of a police constable. The Supreme Court, in that case, considered the question in view of the disagreement by a Bench of two Judges with earlier order of the Supreme Court on the said question. The question that was considered by the Supreme Court would not be relevant for our purpose and what is relevant, as was found by the Supreme Court, are the observations made in the order dated 17.2.2009 by a two Judge Bench, which read thus:

"1. The dispute relates to the selection of constables in the State of Bihar. The minimum height requirement was 165 cm for general candidates and 160 cm for Scheduled Castes candidates. Admittedly, the petitioners were above that minimum height. However, it seems that they were rejected because the procedure adopted by the respondents was that height was the sole criterion for selection, which, in our view, is arbitrary and violative of Article 14 of the Constitution of India.

2. In our opinion, once a candidate has the minimum height as required by the relevant Rules, height then becomes an irrelevant consideration and other criteria

should be taken into consideration, like intelligence, physical strength, etc. In this case, the selection amongst those who had the minimum height was done by only selecting the tallest candidates for the available vacancies. We are of the opinion that this was wholly arbitrary, and police constables must also have intelligence and other requirements, apart from height. To give an example, supposing there are twenty vacancies and 100 candidates have the minimum height as required by the Rules, in such a situation, the selection authority, in our opinion, cannot validly select the tallest twenty among these 100 candidates.

3. The learned counsel for the respondents, however, invited our attention to a judgment passed by a Division Bench of this Court in *State of Bihar v. Mal Babu Sharma* in which the contention of the State of Bihar has been accepted. We respectfully cannot agree with the view taken by the Division Bench and hence, we refer this matter to a larger Bench to be nominated by the Hon'ble the Chief Justice."

(emphasis supplied)

13. In this backdrop, when we look at the procedure for recruitment laid down under Rules, 2015, we find that these Rules provide a mechanism for selection of the most suitable person for the job of constable on merits, impartially and objectively. The procedure would definitely avoid patronage and favoritism and also would do away with unfairness. We would also like to examine the case from another angle and to record further reason to say so. It is well settled that the power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any Constitution or statutory provision or is patently arbitrary or is vitiated due to mala fides. It is settled legal position that matters relating to creation and abolition of posts formation or structuring and restructuring of cadres, prescribing mode of recruitment and qualifications, criteria of selection, evaluation of candidates/employees falls within the exclusive domain of the employer. Reference may be made to the judgment of the Supreme Court in *Union of India vs. Pushpa Rani and others*, (2008) 9 SCC 242. In this case, the Supreme Court while dealing with the question whether the policy of reservation of posts for Scheduled Castes/Scheduled Tribes can be applied at the stage of giving effect to cadre restructuring exercise undertaken pursuant to letter issued by the Railway Board, observed thus:

"37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in

determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

(emphasis supplied) (Also see V.K. Sood Vs. Secretary, Civil Aviation and others, AIR 1993 SC 2285)

14. In Asif Hameed and others vs. State of Jammu and Kashmir and others, 1989 Supp (2) SCC 364, the Supreme Court, in paragraph 19, observed thus:

"19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The Court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

(emphasis supplied)

15. Prescription of qualifications and other conditions of service pertains to the field of policy and is within the exclusive discretion and jurisdiction of the State. It is not open to the Courts to direct the Government to have a particular method of recruitment or eligibility criteria. The observation of the Supreme Court made in paragraph 10 of the judgment in P.U. Joshi and Others vs. Accountant General, Ahmedabad and others, (2003) 2 SCC 632, read thus:

"10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate." (Refer: V.K. Sood vs. Secretary, Civil Aviation AIR 1993 SC 2285)

(emphasis supplied)

16. In *Vijay Singh and others vs. State of Uttar Pradesh and others*, 2005 (6) SLR 378, the Full Bench of this Court considered the question that is relevant for our purpose, whether change in criterion and age may made by executive order without any authority of law and or reason can be upheld on the anvil of Article 14 of the Constitution of India or are mala fide and whether the fundamental right of a citizen to equal opportunity in the matter of appointment guaranteed under Article 61 of the Constitution of India has been denied to the appellants by lowering the upper age limit. The Supreme Court, while dealing this question in paragraph 93, observed thus:

"93. Thus, keeping in mind the interest of the society and the nature of services for which the appointments are to be made, we do not think that by reducing the maximum age to 28 years as eligibility for applying or the post has not by any means infringed the fundamental rights guaranteed under Arts. 14 and 16 of the Constitution of India. Moreso, if earlier, a higher age has been fixed that does not become a ground for holding that it could be fixed for ever, as it may be a mistake and by that the Government might have learnt a lesson."

17. In *Chandigarh Administration vs. Usha Kheterpal Waie and others*, (2011) 9 SCC 645, the Supreme Court, in paragraph 22, observed thus:

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. [See *J. Rangaswamy vs. Govt. of A.P.* (1990) 1 SCC 288 and *P.U. Joshi vs. Accountant General* (2003) 2 SCC 632]. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."

(emphasis supplied)

18. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who challenges it to show that it is ultra vires/invalid. It is also well recognized that subordinate legislation can be challenged under any of the following grounds:

"(a) Lack of legislative competence to make the sub-ordinate legislation.

(b) Violation of Fundamental Rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the Court might well say that the legislature never intended to give authority to make such rules)."

(Refer: State of T.N. vs. P. Krishnamurthy, (2006) 4 SCC 517 & Cellular Operators Association of India and others vs Telecom Regulatory Authority Of India and others, (2016) 7 SCC 703) 18.1 One of the tests for challenging the constitutionality of subordinate legislation is that the subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. (Refer: Indian Express Newspapers (Bombay) (P) Ltd. vs. Union of India, (1985) 1 SCC 641).

19. That takes us to consider the test of 'manifest arbitrariness'. It is well explained in Khoday Distilleries Ltd. and others vs. State of Karnataka and others, (1996) 10 SCC 304, which reads thus:

"13. . . . The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In the case of Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary" . . . In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

(emphasis supplied)

20. Also in Sharma Transport vs. Government of A.P. and others, (2002) 2 SCC 188, the Supreme Court held as follows:

"25. . . . The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly

arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. . . ."

(emphasis supplied)

21. Rules 2008, provided 100 marks to Physical Efficiency Test, whereas, under the Rules 2015, maximum 200 marks have been allotted which is 40% of the total marks as compared to 25% under Rules, 2008. Physical Efficiency Test has been made more stringent, 4.8 km run was to be completed in 30 minutes under the earlier Rules, presently 27 minutes has been prescribed for male candidates and 16 minutes for female candidates for 2.4 kms run as against 18 minutes. The process of marking has been rationalized and made more accurate in the sense that every candidate completing run shall be awarded marks proportionally to the time taken by him and such time slots have been fixed at 15 seconds interval. If a candidate is slow by 15 seconds then he will be likely to loose only two marks, whereas, in the earlier Rules a candidate delayed by even 1 second from the notified slot was likely to lose 20 marks. The minimum qualification for the post of constables is intermediate and in the earlier selections large number of candidates with qualification of graduation/post graduation applied for the post of constable, and in the written examination conducted by Board the candidates with qualification higher than the intermediate qualification were likely have an edge while answering the written examinations with questions of intermediate level, thereby, creating a situation of disadvantage for candidates with only intermediate qualification.

22. In the opinion of the rule making authority a person having 12th Board examination is knowledgeable enough to perform duty of prevention of crime and maintenance of law and order, therefore, the Government has taken a policy decision to do away with preliminary examination and written examination and confined to the marks obtained by the candidates in the 10th and 12th Board examinations as a sufficient measure to assess their intelligence and knowledge required for the post. That apart, under the earlier Rules the time frame for completing the entire selections from preliminary examination to main examinations, scrutinizing the forms, objections of the candidates was a huge exercise taking more than two years. More than 22 lakh candidates had appeared in the selections. Therefore, as a consequence and due to the inordinate delay in completing the selections the State, which is having 1,40,000 vacancies of constable, a policy decision was taken by the Government to fill up the posts in a fair and transparent manner in a relatively shorter time span by doing away with written examinations.

23. Learned Senior Counsel appearing for the petitioners does not dispute that Physical Efficiency Test can be a mode of selection but submitted that while eliminating written competitive examination, meritorious candidates would not be selected. On specific query, it is not being disputed by the learned counsel for the petitioners that for different posts different parameters can be prescribed by the rule making authority for selections on posts exclusively, either by written examination, interview or based on Physical Efficiency Tests depending upon the nature of the post. He was unable to point out or explain that upon elimination of written examinations, as to how the

selection for the post would render manifestly arbitrary. All the petitioners fulfill the minimum educational qualification i.e. 12th examination and in any case they would have to qualify the Physical Eligibility Test which is mandatorily required under the rule. The mechanism of short listing has been provided based on the 10th and 12th Board examination i.e. fifteen times of the vacancy candidates shall be eligible for taking the Physical Eligibility Test.

24. Having due regard to the primary duty of police constables, namely to ensure enforcement of law and keep the criminals under control, what is required most is that they should be well-built, strong and must be possessing of sound health. A constable should also be the most accessible person for public, is expected to protect the needy, rescue the people from danger, apprehend offenders and assist in securing prompt health and justice. Constables, in their dealing with public, should inspire confidence in the efficiency of police to protect them. They are expected to prevent commission of crimes and catch the criminals and produce them before courts for prosecution. For performing their duties more effectively, they are supposed to be well equipped with all kinds of weapons and means of fast transport. Their duties are very strenuous and may be, in a given case, round the clock. They are not expected to perform office duties sitting on table but required to operate in the fields, and therefore, they should be well-built, strong and must be possessing of sound health.

25. Having so observed, we are of the opinion that the object of any process of recruitment for the post of constable is to secure best and most suitable person for the job, obviously avoiding patronage and favoritism and, therefore, the selection should be based on merits and should be fair. Therefore, giving paramount importance to physical efficiency test, for the post of constable, in our opinion, is most fair and ideal way of recruitment, coupled with their merit based on the marks obtained by them in 10th and 12th standard examinations conducted by a Board. It is common knowledge that in the process of recruitment for the posts, such as constables, lot of manipulation and unfair tactics are adopted, particularly if independent written examination and interviews are made as part of the process of selection. In fact, this is all done away with by the impugned Rules, which provide for selection solely on the basis of the marks obtained by candidates in 10th and 12th standard examinations and their physical efficiency test and physical fitness. Having regard to the fact that the procedure for recruitment introduced and prescribed by the impugned Rules, we are satisfied that it will avoid patronage and favoritism and the selection would be absolutely transparent and it would not be possible for any one to either manipulate or show any favour in the process of recruitment. Therefore, it cannot be stated that it is either arbitrary or irrational and violative of Article 14 of the Constitution of India. As a matter of fact, the procedure contemplated by the impugned Rules for recruitment, discloses sufficient safeguards. It does not deprive or discriminate any eligible person from fair and transparent selection based on merits. Insofar as physical fitness is concerned, by Rules, 2015, as observed earlier, the physical efficiency test is made more stringent, commensurate with the post for which the recruitment drive under these Rules is undertaken without diluting the academic performance.

26. It is now well settled, as observed by the Supreme Court in Chandigarh Administration (supra), that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts can neither prescribe the qualification

nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the appointing authority/employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provisions of the Constitution, Statute and Rules. It is equally well settled that laying down of relevant criteria for recruitment is within the exclusive domain of the employer. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations and restrictions envisaged in the Constitution of India and it is not for the courts, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or impose itself by substituting its views for that of the State [See P.U. Joshi (supra)]. Similarly, it is well open and within the competence of the State to change the rules relating to a service and alter or amend or vary by addition/subtraction of qualifications, the eligibility criteria and other conditions of service, from time to time, as the administrative exigencies may need or necessitate. There is no right in any person to claim that the rules for recruitment should be forever the same as the one which is more suited to him. Merely because written test has been restored by the State once again by further amending the Rules in 2017 would not render the impugned Rules in Rules, 2015 arbitrary and irrational. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is arbitrary or is vitiated due to mala fides. We have applied all these tests while examining the challenge and we are satisfied that the impugned Rules are neither arbitrary nor irrational nor contrary to any constitutional or statutory provision or are vitiated due to mala fides.

27. In the circumstances, we find no merit in the challenge raised in these writ petitions. The petitions are accordingly dismissed and we hold that the mode of selection to the post of police constable on the basis of the marks awarded in 10th and 12th standard Board examination results deserves no interference by this Court or the impugned Rules cannot be declared ultra vires the Constitution of India.

Order Date :- 29.3.2018 VMA/AHA (Dilip B Bhosale, CJ) (Suneet Kumar, J)