

Sunil Kumar And Others vs State Of Haryana And Others on 18 February, 2025

Neutral Citation No:=2025:PHHC:023823

CWP-26561-2021 & 1
connected cases.

138+321+139+322

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26561-2021 (O&M)
Date of Decision:18.02.2025

SUNIL KUMAR AND OTHERSPETITIONERS
V/S
STATE OF HARYANA AND OTHERSRESPONDENTS

Sr. No.	Case Nos.	Name of parties
2.	CWP-15399-2020 (O&M)	ANAND V/S STATE OF HARYANA AND OTHERS
3.	CWP-15816-2022	SURENDER KUMAR V/S STATE OF HARYANA AND OTHERS
4.	CWP-1722-2022	HANS RAJ AND OTHERS V/S STATE OF HARYANA AND OTHERS
5.	CWP-19131-2021	HARMENDER V/S STATE OF HARYANA AND OTHERS
6.	CWP-21548-2021	ASHOK KUMAR AND OTHERS V/S HARYANA STAFF SELECTION COMMISSION AND OTHERS
7.	CWP-21902-2022	ANIL KUMAR AND OTHERS V/S STATE OF HARYANA AND OTHERS
8.	CWP-22814-2021	NARENDER V/S STATE OF HARYANA AND OTHERS
9.	CWP-23605-2021	ANIL UTTAM AND ANOTHER V/S STATE OF HARYANA AND OTHERS
10.	CWP-14581-2022	GURUMEET SINGH AND ORS V/S STATE OF HARYANA AND OTHERS
11.	CWP-12734-2019	SUBHASH CHANDER V/S STATE OF HARYANA AND ANOTHER

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| 12. | CWP-8821-2019
(O&M) | MANOJ KUMAR AND OTHERS V/S STATE
OF HARYANA AND ANOTHER |
| 13. | CWP-26413-2024 | PARDEEP SHARMA AND ANR V/S STATE
OF HARYANA AND ORS |
| 14. | CWP-3807-2025 | SUNIL KUMAR V/S STATE OF HARYANA
AND OTHERS |
| 15. | CWP-8151-2024 | DINESH KUMAR V/S STATE OF HARYANA
AND OTHERS |

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CWP-26561-2021 & 2
connected cases.

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present Mr. Kamal Sehgal, Advocate,
Mr. Charanji Lal, Advocate and
Mr. Ravinder Pankaj, Advocate
for the petitioners in CWP-26561 of 2021.

Mr. Vikram Sheoran, Advocate
for the petitioner in CWP-15399-2020, CWP-3807-2025 &
CWP-23605-2021.

Mr. Aman Pal, Advocate,
Ms. Anu Pal, Advocate and
Mr. Rajender Kumar, Advocate
for the petitioner in CWP-15816-2022.

Mr. G.S. Gopera, Advocate
for the petitioners in CWP-8821-2019.

Mr. U.K. Agnihotri, Advocate with
Mr. S.S. Momi, Advocate
for the petitioner in CWP-21548-2021.

Mr. Rajesh Hooda, Advocate
for the petitioner in CWP-19131-2021, CWP-1722-2022,
CWP-14581-2022 & CWP-21902-2022.

Mr. S.S. Momi, Advocate
for the petitioner in CWP-26413-2024,
and CWP-22814-2021.

Mr. G.S. Dhot, Advocate and
Mr. G.S. Mehra, Advocate
for the petitioner in CWP-8151 of 2024.

Mr. P.S. Chauhan, Advocate General, Haryana,
Ms. Shruti Jain Goyal, Senior DAG, Haryana and
Ms. Dimple Jain, DAG, Haryana.

Mr. B.R. Mahajan, Sr. Advocate with
Ms. Nikita Goel, Advocate,
Mr. Hitesh Pandit, Advocate and
Mr. Divyansh Shukla, Advocate
for the respondents-UHBVNL, DHBVNL, HVPNL.

Mr. Jayant Puneet Bamal, Advocate for
Mr. H.S. Gill, Advocate
for the respondent in CWP-15399-2020.

Mr. Jagdish Manchanda, Advocate
for respondent No.3 in CWP-15399-2020,

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CWP-26561-2021 &
connected cases.

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CWP-19131-2021, CWP-26561-2021, CWP-15816-2022,
CWP-1722-2022 and CWP-21902-2022.

Mr. Sandeep Chhabra, Advocate
for respondents No.3 to 5 in CWP-3807-2025.

Mr. Sandeep Dhull, Advocate for
Mr. Samrat Malik, Advocate
for respondents No.3, 4 & 5 in CWP-26413-2024.

Mr. Sukhdev Singh, Advocate for
Mr. Vikram Singh, Advocate
for respondents No.7, 10, 12 and 13 in CWP-26561-2022 &
CWP-14581-2022.

Mr. Ashok Bhardwaj, Advocate
for respondents No.4 to 6, 8 to 10 in CWP-15399-2020

for respondents No.7 to 14 in CWP-19131-2021
for respondents No.6, 8, 9, 16 to 18 in CWP-26561-2021
for respondents No.6, 8, 9, 16 to 18 in CWP-1722-2022
for respondents No.6, 8, 9, 16 to 18 in CWP-21902-2022
for respondents No.6, 8, 9, 16 to 18 in CWP-15816-2022
for respondents No.6, 8, 9, 16 to 18 in CWP-14581-2022.

Mr. Gourav Verma, Advocate
for respondents No.3, 5, 6, 7 and 9 in CWP-22814-2021.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayers sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-26561-2021.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to:

(i) Central Bureau of Investigation (for short, 'CBI') to conduct investigation in the selection process of the post of Shift Attendant conducted by Haryana Staff Selection

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Commission (for short 'HSSC').

(ii) Setting aside of final result dated 08.03.2019 (Annexure P-3) whereby more than 100 candidates have been selected by awarding marks of experience.

(iii) Direction to respondents No.2 to 5 to produce experience certificates of all the selected candidates who have been awarded marks of experience.

3. The petitioners pursuant to advertisement No.3/2016 dated 20.02.2016 applied for the post of Shift Attendant. The advertisement was issued by HSSC and selected candidates were to be posted with three Power Utilities of State of Haryana i.e. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Haryana Vidyut Parsaran Nigam Limited (HVPNL) and Haryana Power Generation Corporation Limited (HPGCL). Eligibility criteria was prescribed in the advertisement. It was also prescribed that there would be weightage to the contractual workers engaged by any Power Utility. The date of publication of advertisement was 20.02.2016. The opening date for filing online application was 05.03.2016 and closing date for the said purpose was 04.04.2016.

It is incorporated in the advertisement that online application can be filed by 04.04.2016 (till 11:59 P.M.) and thereafter website link will be disabled. The printed copy of the online application form with necessary certificates must be brought at the time of verification/scrutiny- cum-interview. No

offline application form or copy of downloaded application form will be accepted by the office. The qualification/eligibility conditions, age and other documents will be determined with regard to last date fixed to apply for online application 4 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

also called as closing date i.e. 04.04.2016.

The petitioners submitted their online applications alongwith requisite documents. The respondent conducted written test on 29.05.2016. Result thereof was declared on 12.08.2017. The scrutiny of documents took place from 05.05.2017 to 11.05.2017. The interview was conducted from 24.08.2017 to 26.08.2017 and 28.08.2017 to 29.08.2017. The final result was declared on 08.03.2019. It is apt to notice here that by aforesaid advertisement different posts were advertised, however, instant petitions are confined to post of Shift Attendant. The total advertised posts of Shift Attendant were 2426. The cut off in the General Category was 102 marks and in the BC-A Category 91 marks.

4. The respondent did not disclose detailed result of all the selected candidates and unselected candidates preferred Civil Writ Petition No.12234 of 2019 before this Court seeking direction to declare detailed result. Pursuant to direction of this Court in aforesaid Writ Petition as well as COCP No.1526 of 2020, the respondent declared detailed result of selected candidates. The detailed result was declared in November' 2021 and petitioners approached this Court through instant petition in December' 2021. As per detailed result, there are many candidates who have been awarded marks of experience. The petitioners are aggrieved from awarding of marks of experience to selected candidates.

5. Mr. Kamal Sehgal, learned counsel for the petitioners submits that this Court vide interim order dated 16.07.2024 ordered to seal entire record of the selection process. The Court further directed the respondents to send the record to this Court on 18.07.2024. Pursuant to 5 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

directions of this Court, record was submitted in the Court. By order dated 06.09.2024, a Local Commissioner was appointed to scrutinize the record. The Local Commissioner has submitted his report dated 11.01.2025 wherein he has pointed out that there were 260 candidates who were given benefit of past experience. Out of these 260 candidates, 107 candidates had submitted their experience certificates issued after the last date of submission of application form. From the perusal of detailed report of the Local Commissioner, it is evident that there are many candidates who did not upload their experience certificates alongwith application form still have been awarded marks of experience. There are many selected candidates who neither claimed experience in the application form nor enclosed their certificate still have been awarded marks of experience. The respondent in the reply has admitted that marks of experience have been awarded despite non-uploading of experience certificate alongwith application form. The HSSC has relied upon communication dated 05.09.2017 of Power Utilities. As per advertisement, marks could be awarded of experience of Shift Attendant with Power Utilities. The respondent has awarded marks of experience of GSA/ASSA, GSO/SSA and JE. The Shift Attendant is feeder post of GSA/ASSA and GSO/SSA is a promotional post of GSA/ASSA and JE is promotional post of all GSO/SSA. It means post of Shift Attendant is

the lowest post. The respondent has awarded marks of senior/promotional post whereas marks could be awarded of experience of lowest post i.e. Shift Attendant. The advertisement categorically provides that weightage shall be given of experience in the same capacity. The communication dated 05.09.2017 further makes it clear that for the post of Shift 6 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

Attendant, experience of same capacity means Shift Attendant. The respondent has entertained experience certificates which were not uploaded with the application form. The respondent in this way has acted beyond the terms and conditions of the advertisement. It is a settled proposition of law that no certificate which is not uploaded alongwith application form as required by advertisement can be entertained. The experience of higher post cannot be considered as eligibility.

6. Mr. G.S. Gopera, counsel for the petitioners submits that Assistant Lineman is equal to Shift Attendant. The pay scale of Assistant Lineman and Shift Attendant is same and essential qualification is also same. Both posts are inter-changeable. Both set of employees are performing same duties. The respondent in few cases has awarded marks to Assistant Lineman whereas petitioners have been denied.

7. Per contra, learned counsel for the respondents submit that weightage of experience was not part of essential qualification. A candidate having no experience was eligible to participate and he had to compete on the basis of marks obtained in the written test. In the advertisement, documents to be uploaded with application form were prescribed. There was no requirement to enclose certificate of experience, thus, certificate of experience submitted at the time of verification of documents was admissible. In the advertisement, it was further provided that there are few documents which are required to be brought at the time of interview. The experience certificate falls within those documents, thus, Recruitment Board was quite competent to consider documents submitted at the time of interview/verification of documents. The respondent has further wrongly relied upon clause 'likely causes of 7 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

rejection of application'. In the said clause, there is sub-clause which provides that in case of variation in data of online application form and original documents when brought for verification/scrutiny-cum- interview, the application would be rejected. The question of variation arises if the documents uploaded with application form are different from documents brought for verification. If a candidate has not uploaded experience certificate but brings at the time of verification/scrutiny, the said document cannot be called as variation in the data of online application form. In the opening paragraph of the advertisement, there was requirement to file online application and its printed copy was required to be brought alongwith certificates at the time of verification/scrutiny-cum-interview. The opening clause itself makes it clear that experience certificates were not required to be uploaded alongwith application.

8. Mr. Ashok Bhardwaj, learned counsel for the private respondents submits that there are few candidates who were selected under General Category though they belonged to Reserved Category. If their marks of experience are deleted, they should be considered under their own category. There are candidates belonging to General Category who had been awarded very few marks on account of

experience. Even if their marks of experience are deleted, they would remain selected because they have secured more marks than cut off.

9. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

10. From the perusal of record and arguments of both sides, the following questions arise for consideration of this Court:

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(i) Whether an experience certificate which was not uploaded alongwith application form could be considered at the time of verification/scrutiny-cum-interview?

(ii) Whether experience certificate of a candidate could be considered who has not ticked requisite option?

(iii) Whether experience of higher or lower post could be considered?

(iv) Whether experience with a Power Utility other than Haryana Power Utilities could be considered?

11. Question No.(i) and (ii) are inter-connected, thus, taken up together.

11.1 In the advertisement, it was specifically pointed out that closing date for all intent and purposes would be 07.04.2016. The said date was extended by public notice dated 04.04.2016. The extended date was 14.04.2016. Every applicant was required to upload his application form online. He was required to obtain printed copy of online application form. The printed copy of online application form was required to be submitted at the time of verification/scrutiny-cum-interview alongwith necessary certificates. There is one clause in the advertisement which prescribes documents to be uploaded with application form. There is another clause which prescribes documents required to be brought at the time of interview. Last clause prescribes causes of rejection of application. In the clause of essential qualification, it has been provided that there would be weightage of experience to the contractual workers engaged by any Power Utility. The relevant extracts of the advertisement 9 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

are reproduced as below:

"Online applications are invited for direct recruitment of under mentioned categories of posts using the website of HARYANA STAFF SELECTION COMMISSION i.e. www.hssc.gov.in. The online application can be filled up from 05.03.2016 to 04.04.2016 till 11.59 P.M., thereafter website link will be disabled. The candidates are strictly advised to apply online well in advance without waiting for last date of submission of online application form. The printed copy of the online application

form with necessary certificates must be brought at the time of verification/scrutiny-cum-interview. No offline application form or copy of downloaded application form will be accepted by the office. Qualifications/eligibility conditions, age and other documents will be determined with regard to last date fixed to apply online applications also called as closing date i.e 04.04.2016 given in the advertisement. The details of the posts are as under.

xxx	xxxx	xxxx	xxx
EQ.	i) Matric with 2 years	ITI Course in Electrician/	
Electronics/	Wireman	trade or Lineman &	Electrician

(Maintenance & Repair of Electrical and Domestic Appliances) from VEI (Vocational Educational Institute) with a minimum 60% marks in respect of General-Category Candidates and 55% marks of SC category candidates of Haryana Domicile. The percentage marks required for other categories would be same as for General category candidates.

ii) Knowledge of Hindi/Sanskrit upto Matric Standard or higher education.

iii) The weightage of experience to the Contractual workers engaged by any Power Utility would be given as under:-

Weightage of Experience One percent mark for each completed year of service in the respective category be granted subject to a maximum of eight percent with the rider that the qualifying service should have been in any Power Utility in the same capacity.

xxxx	xxxx	xxxx
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DOCUMENTS TO BE UPLOADED WITH APPLICATION FORM

- i) Scanned Copy of Essential Qualifications i.e. Matric showing Date of Birth and mark sheet of 10-2/Graduation/Diploma/Degree etc.
- ii) Scanned Copy of Sport Gradation Certificate in case of

Outstanding Sports Persons, duly issued by the Competent Authority.

iii) Scanned Copy of Haryana Domicile Certificate in case of BCA/BCB/SC/PHC/EBPG/ESM/DESM/DFP and women issued by competent authority.

iv) Copy of Challan/credit certificate issued by Treasury/e-

Challan as the case may be, in case of candidates who have applied earlier.

v) Scanned Photographs duly signed by the Candidate

vi) Scanned signatures of the Candidate.

DOCUMENTS TO BE BROUGHT AT THE TIME OF INTERVIEW/viva

i) All original certificates/documents/testimonials of educational qualifications and other documents mentioned in the online applications and one set of self attested copies of all these certificates.

ii) Printed Copy of online application form alongwith latest stamp size photograph duly attested by a gazetted officer and pasted on the application form.

) Original proof of earlier fee deposited i.e. Treasury Challan/Credit Certificate issued by concerned treasury etc. **LIKELY CAUSES OF REJECTION OF APPLICATION:-**

The following are likely causes of rejection:-

More than one application form for a particular category. Application is incomplete and not online. Full fee, if not deposited in the manner prescribed No qualification of Hindi/Sanskrit as prescribed in advertisement.

Applicant does not possess the requisite academic qualification on cut off date.

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Applicant does not indicate visible identification mark in appropriate column of application form.

Candidate is underage/overage on the cut off date/closing date.

Variation in data of online application form and in original documents when brought for verification/scrutiny-cum-interview.

Lack of essential qualification as prescribed in advertisement."

11.2 There is a specific column in the application form with respect to experience as a contractual worker in any Haryana Power Utility. The said column of the application form is reproduced as below:

S. N.	Other Details	Yes/ No
1. Is the duration of ITI course in relevant trade is 2 years?		
2. Do you have experience as a regular worker in Haryana Power Utilities?		
3. Do you have experience as a contractual worker in same capacity in any Haryana Power Utility?		

From the perusal of above column of the application form, it is lucid that applicant was required to tick yes/no with respect to his experience as a contractual worker in any Haryana Power Utility. There are few candidates who have ticked said column as 'yes' and there are many who have not ticked, however, have enclosed their experience certificate alongwith application form. There are few candidates as per report of Local Commissioner who have neither enclosed experience certificate nor ticked said column.

11.3 The respondent asked candidates to fill up a pre-printed proforma which was required to be submitted at the time of interview. Relevant extracts of the proforma are reproduced as below:

"The weightage of experience to the Contractual workers

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engaged by any power utility would be given as under.- Weightage of Experience One percent mark for each completed year of service in the respective category be granted subject to a maximum of eight percent with the rider that the qualifying service should have been in any Power Utility in the same capacity i.e -Shift Attendant.

[Emphasis Supplied]"

In column No.3 of the proforma, it has been incorporated that weightage of experience shall be given for the service in the same capacity i.e. Shift Attendant.

11.4 The respondent in its reply has conceded that marks of experience were given to GSA/GSO/JE in the light of letter dated 05.09.2017 of HVPNL, Panchkula. The said letter is reproduced as below:

"From The Managing Director, HVPNL, Panchkula To The Secretary, Haryana Staff Selection Commission, SCO No.67-70, Sector-2, Panchkula.

Memo No.Ch-8/CRA-G-131/Loose-III Dated 05.09.2017 Sub:- Recruitment of Shift Attendant in respect of Haryana Power Utilities against Advt. No.3/2016 dated 20.02.2016- Clarification regarding counting of experience.

Following provisions have been made in the service rules of the Recruitment of Shift Attendant by HVPNL as notified vide office order no.310/REG-253 dated 29.1.2016:-

i. Weightage of Experience:-

One percent mark for each completed year of service in the respective category be granted

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subject to a maximum of eight percent with the rider that the qualifying service should have been in any Power Utility in the same capacity.

ii. Relaxation in Age:-

One year of age relaxation for each completed year of service in the respective category be granted subject to a maximum of 5 years with the rider that the qualifying service should have been in any Power Utility.

2. It is to inform that the post of Shift Attendant is a feeder cadre post. The post of GSA/ASSA, GSO/SSA and JE are the promotional posts as per the hierarchy tabulated as under:-

Sr. Name of the post Feeder post/promotional No. post

1. Shift Attendant (SA) Feeder post

2. Grid Substation Attendant Promotional post from (GSA) or earlier ASSA SA

3. Grid Substation Opeator Promotional post from (GSO) or earlier SSA GSA/ASSA

4. Junior Engineer (JE)i) Promotional post from GSO/SSA

ii) Direct recruitment post

3. In pursuance to the above provisions in the service rules for the recruitment of Shift Attendant, it is further clarified as under:-

The working experience of the workers engaged by the HPU's through outsourcing against the post of Shift Attendant (SA), GSA/ASSA, GSO/ SSA and JE be considered for grant of weightage of experience/relaxation of age as per the provisions in the

service rules for the recruitment of Shift Attendant being carried out by the HSSC for HVPNL/ UHBVNL/ DHBVNL vide Advt. No. 3/2016 dated 20.2.2016. This may be considered while counting the marks of experience."

From the perusal of above quoted letter, it is evident that in the original office order dated 29.01.2016, expression 'Any Power 14 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

Utility' was used whereas in the revised paragraph, expression HPU i.e. Haryana Power Utility was used. In the original clause, expression 'same capacity' was used whereas in the revised paragraph experience of 'GSA/GSO/JE' was added in addition to experience of Shift Attendant. 11.5 This Court vide order dated 16.07.2024 sealed record of the respondent Commission. By order dated 06.09.2024, Local Commissioner was appointed and asked to submit report on following issues:

"(i) When the names and lists of those candidates who have been ultimately selected to the post of Shift Attendant were finalized and they were appointed?

(ii) Whether the benefit of experience on the post of GSA/ASSA/GSO/SSA/JE/Lineman/Wireman and Electrician was granted?

(iii) What is the date of issuance of certificates on the basis of which they have been granted the benefit of experience?

(iv) Whether the aforesaid certificates were part of their application forms and on what date and at what time the aforesaid certificates were supplied to the respondent-

commission on the basis of the record, if any?"

11.6. The Local Commissioner in his report dated 11.01.2025 has reported as below:

"Synopsis 15.04.2016: Last date of submitting Application forms. 08.03.2019: Final result was declared. 06.09.2024: Order of the Hon'ble Court for inspection by Local Commissioner to find out:-

i. Whether the benefit of past experience given? ii. What is date of issuance of experience certificate?

iii. Whether aforesaid certificate was part of 15 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

application?

iv. On what date and time, the certificate was provided to the commission?

11.01.2025: The report stand submitted, as per which there were a total of 260 candidates, who were given benefit of past experience. Out of these 260 candidates, 107 candidates had submitted the experience certificates which were issued after the last date of submission of application forms. In Annexures 1 to 3, in Column no 7, such candidates have been marked as '*'.

In column no. 6, it has been mentioned whether the candidate had mentioned he had experience or not.

Chandigarh
Dated: 11.01.2025

Tejinderbir Singh
P/566/1987
Advocate
Local Commissioner

1. xxxx

xxxx

xxxx

xxxx

2. That pursuant to the receipt of above orders, the undersigned approached the Registrar Judicial of this Hon'ble Court, to procure the record of the above cases. Accordingly the dealing clerk, Mr. Pawan Kumar was detailed by the Registrar to provide the record to the undersigned.

3. That thereafter, all the advocates in these cases were personally called by the undersigned to join in the inspection process. A dedicated whatsapp group was also created in which all the concerned advocates were included. All the concerned advocates and the officials were informed to assemble at the Inspection room of this Hon'ble Court on 19.10.2024 at 11 AM.

4. That on 19.10.2024, the Commission assembled at the designated place and time.

5. That Mr. Vikram Sheoran, Advocate for the petitioner(s) in CWP-15399-2020 and CWP-23605-2021. Mr. Rajesh Hooda, Advocate for the petitioner(s) in CWP-19131-2021, CWP-1722- 2022, CWP-14588-2022 and CWP-21902-2022 Mr. G.S. Gopera, Advocate for petitioner(s) in CWP-8821-2019 Mr. Divyansh Shukla, Advocate for self and Mr. Hitesh Pandit, Advocate Ms. Nikita Goel, Advocate for DHBVNL/ HVPNL/ UHBVNL in all cases, appeared before the Commission.

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6. That all the record, i.e. the application forms of all the selected candidates were brought by the dealing clerk, Pawan Kumar, in sealed envelopes department-wise, i.e. of DHBVNL/ HVPNL/ UHBVNL.

7. That in the presence of all the above-mentioned persons, the envelopes were opened one by one.

8. That the petitioners had submitted before the Commission, a list of 259 selected candidates, who were granted the benefit of experience. The said list was approved by the officials of the Selection Commission and also the advocates representing the selection commission, as the list of all those selected candidates, who were given the benefit of past experience for their selections.

9. That the Commission in presence of all the above, proceeded to segregate the forms of these 259 candidates, department wise. The record of forms of all the candidates was voluminous, the entire process of taking out of the applications forms of all the selected candidates, who were given benefit of experience, could not be concluded on 19.10.2024. Accordingly, keeping in view the availability of all the concerned persons, the Commission assembled on 24.10.2024, 25.10.2024, 29.10.2024 and 03.12.2024, in presence of all the above respective representatives of all the stake holders in the matter. On every adjournment, the record was duly re-sealed and handed over to the dealing clerk and on subsequent date, the seal of the record was duly opened.

10. That after segregating the applications forms of all the selected candidates, who were given benefit of experience, their applications were scrutinized carefully. The contents of the application forms of those candidates were recorded in tabular form, department wise, in which separate columns were prepared for their Merit no., Roll nos., names, marks of experience awarded, whether it was mentioned in the application form that experience certificate has been attached or not, date of issue of experience certificate, date of taking printout of the application form and in the last column of remarks, it has been mentioned the total experience of the candidate in a particular post, which has been considered for granting the benefit.

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11. That as per the record, the last date of submitting application forms was 15.04.2016 and the date of final result was 08.03.2019.

12. That the data, as required by the Hon'ble Court is attached as Annexure 1, 2 and 3 of DHBVNL/ HVPNL/ UHBVNL respectively for kind consideration of the Hon'ble Court.

13. The record, departmental-wise, after the inspection was duly signed and was returned to the dealing clerk." 11.7 From the report of Local Commissioner and submissions of both sides, it is evident that candidates who have been granted marks of experience can be categorized as below:

(i) Candidates who ticked aforesaid column as 'yes' as well as enclosed experience certificate.

(ii) Candidates who enclosed experience certificate but did not tick relevant column as 'yes'.

(iii) Candidates who neither enclosed experience certificate nor ticked requisite column as 'yes'.

12. The petitioners are claiming that act of respondent amounts to change of rules of game and it is trite law that rules of selection process after its commencement cannot be changed. The selection process commences with the advertisement and completes on the selection of candidates. The respondent relied upon letter dated 05.09.2017 of Power Utility which was issued after completion of process of verification of documents. No public notice was issued and in a stealth manner, experience certificates were entertained and marks were awarded. The respondents are claiming that certificates could be entertained at verification stage.

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13. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, a Constitution Bench elaborated and expounded the relationship between different Articles guaranteeing fundamental rights and enunciated every action of the State is violative of Article 14 which is arbitrary. The procedure established by law must be just, fair and right. Justice Bhagwati speaking for the Bench has held:

"7.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article

14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

[Emphasis Supplied] From the above referred judgment, it is evident that absence of arbitrariness is essential for the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis of a decision taken in accordance with the Rule of law. Where discretion is absolute, man has always suffered. It is in this sense 19 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

that the rule of law may be said to be the sworn enemy of caprice. Discretion must be governed by Rule. It must not be arbitrary, vague, and fanciful.

13.1 A Constitutional Bench in '*Secretary, State of Karnataka Vs. Uma Devi*', (2006) 4 SCC 1, while advertng to question of regularization of temporary, ad hoc, part-time employees has held that adherence to the rule of equality in public employment is a basic feature of our Constitution. The Court has held:-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee".

13.2 A five Judge Constitution Bench in *Sivanandan C.T. and others Vs. High Court of Kerala and others* 2023 SCC OnLine SC 994 adverted to validity of appointment of District and Sessions Judges. High Court of Kerala in 2015 invited applications for appointment as District and Sessions Judges in the Kerala State Higher Judicial Services by direct recruitment from the Bar. The notification stipulated that the selection would be on the basis of a competitive examination consisting of a written examination and viva-voce. The total marks assigned for the written examination were 300 comprising of two papers, each carrying 20 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

150 marks. Paragraph 5 of the notification stipulated that "the merit list of successful candidates will be prepared on the basis of the total marks obtained in the written examination and viva voce." After the viva-voce was conducted, the Administrative Committee of the High Court passed a resolution by which it decided to apply the same minimum cut-off marks which were prescribed for the written examination as qualifying criteria in the viva-voce. In coming to this conclusion, the Administrative Committee was of the view that since appointments were being made to the Higher Judicial Service, it was necessary to select candidates with a requisite personality and knowledge which could be ensured by prescribing a cut-off for the viva-voce in terms similar to the cut-off which was prescribed for the written examination. The Full Court of the High Court of Kerala approved the resolution of the Administrative Committee. The final merit list of the successful candidates was also published on the same day. The decision of the Full Court to apply minimum cut-off marks for the viva voce and the resultant promulgation of the list of successful candidates came to be challenged before Apex Court under Article 32 of the Constitution. On account of application of cut off marks in the viva-voce, many candidates were ousted though they secured higher marks than many of the candidates who were selected on the consideration of the aggregate of marks in the written examination and the viva-voce. Hon'ble Court while adverting to the principle of legitimate expectation concluded that consistency and predictability are part of rule of law. The Court noticed its earlier judgments including judgment in *State of Bihar v. Shyama Nandan Mishra*, 2022 SCC OnLine SC 554 wherein it was held that regularity, predictability, 21 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

certainty and fairness are important facets of governance. These are necessary concomitants of government gestures. In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision making. A decision of a public

authority taken without any basis in principle or rule is unpredictable and is therefore, arbitrary and antithetical to the rule of law. The rule of law promotes fairness by stabilizing expectation of citizens from public authorities. Since, the citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.

13.3 A three judge Bench of Apex Court in *K. Manjusree v. State of Andhra Pradesh* (2008) 3 SCC 512 while dealing with the change of recruitment criteria mid-way the selection process has held it to be impermissible. The relevant extracts of the judgment read as:-

"27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue.

The previous procedure as stated above was to apply 22 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the Interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them - □□ *Ramachandra Iyer v. Union of India*, *Umesh Chandra Shukla v. Union of India*, and *Durgacharan Misra v. State of Orissa*.

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36. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the Resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interview was impermissible"

13.4 In 'Ankita Thakur and others Vs. H.P. Staff Selection Commission and others' 2023 SCC OnLine SC 1472, different questions 23 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

including:-

(i) Relaxation in the essential eligibility qualification, post the last date fixed for receipt of application from the candidates and (ii) Validity of holding qualification other than prescribed by advertisement though allegedly higher, came up for consideration before the Court. The Court with respect to relaxation of essential eligibility qualification post last date fixed for receipt of application form held that power to relax the eligibility criteria can be exercised, if such power is reserved in the advertisement. If this power is exercised, there must be wide publicity of its exercise so that persons likely to be affected must get opportunity to apply and compete. With respect to validity of holding qualification other than prescribed by the rules or advertisement, the Court has held that in the absence of rules or advertisement, qualification may be higher or equivalent to the one specified, cannot be entertained and candidature of the applicant shall be rejected.

13.5 Constitutional Bench of Supreme Court in 'Tej Prakash Pathak v. High Court of Rajasthan', 2024 SCC OnLine SC 3184, has approved opinion in K Manjusree (supra) and held that eligibility criteria cannot be altered after commencement of the selection process. The Court has held:

65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2. Eligibility criteria for being placed in the select list, 24 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in K. Manjusree K. Manjusree v. State of A.P., (2008) 3 SCC 512 lays down good law and is not in conflict with the decision in Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220] deals with the right to be appointed from the select list whereas K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512] deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues; 65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the

recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved; 65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent or silent, administrative instructions may fill in the gaps; 65.6. Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

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14. A conspectus of the afore-cited judgments reveals that recruitment agency after commencement of selection process cannot change eligibility criteria other than immaterial terms and conditions of the advertisement unless and until rules/advertisement permit and all the affected parties are informed well in advance. The terms and conditions of advertisement cannot be contrary to applicable rules. Amendment in advertisement or change in criteria after commencement of selection process is bad in the eye of law. Qualification other than jotted down in the advertisement or rules cannot be considered irrespective of higher or equivalent. Selection made on the basis of changed criteria needs to be set aside. In case selected candidates are working for quite a long time, their selection may not be disturbed.

15. In the case in hand, the advertisement was issued on 12.02.2016. The last date for filing application was 04.04.2016 which was extended till 14.04.2016. A candidate claiming weightage of experience was required to tick particular column of the application form. The experience certificate could be enclosed with the application form. There are very few candidates who have ticked requisite column as well as uploaded experience certificate. Normally, in the advertisement, it is specifically jotted down that all the certificates shall be uploaded alongwith application form. In this case, the advertisement was ambiguous. The terms and conditions with respect to uploading of experience certificate were not cleared beyond the iota of doubt. There was little ambiguity. In the opening paragraph of the advertisement, it was mentioned that printed copy of online application form with necessary certificates must be brought at the time of verification/scrutiny-

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cum-interview. The clause requiring documents to be uploaded prescribed multiple documents, however, it was not mandated that experience certificate shall be uploaded for claiming weightage. Even clause titled as 'documents to be brought at the time of interview' was not in clear terms.

From the conjoint reading of advertisement and application form, it can be safely concluded that candidates were required to tick requisite column of the application form as 'yes'. A candidate who has not ticked requisite column of the application form as 'yes', however, had uploaded experience certificate seems to be at par with a candidate who has ticked requisite column. By uploading experience certificate, he has expressed his intention to claim weightage of experience. He must have brought original certificate at the time of interview.

The candidates who have neither ticked requisite column of the application form as 'yes' nor uploaded experience certificate cannot claim weightage of experience. The respondent to justify submission of experience certificate at the time of interview by such candidates has pleaded that as per advertisement, the documents could be submitted at the time of interview. The respondent is heavily relying upon below mentioned clause of the advertisement.

"DOCUMENTS TO BE BROUGHT AT THE TIME OF INTERVIEW/viva

i) All original certificates/documents/testimonials of educational qualifications and other documents mentioned in the online applications and one set of self attested copies of all these certificates."

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The respondent is claiming that certificates/documents/testimonial of educational qualifications though not uploaded with application form could be entertained. The reliance by respondent on the said clause is misplaced. The experience certificate does not fall within expression 'educational qualifications' whereas it falls within the ambit of 'other documents'. Other documents, only if mentioned in the online application form, could be produced at the time of interview. This clause though does not say that documents should have been uploaded alongwith application form yet requires that document must be mentioned in the online application. In the application form, there was no requirement to enclose experience certificate but there was requirement to tick 'Yes/No' column of experience.

16. From the obtained facts and legal position, it is evident that a candidate who has neither uploaded experience certificate alongwith application form nor ticked 'Yes' requisite column of the application form, could not be awarded marks of experience. Experience certificate of such a candidate could not be entertained at the time of interview.

17. Q. No. (iii) Whether experience of higher or lower post could be considered?

The respondent has awarded marks of experience of higher posts apart from posts of Shift Attendant. In the advertisement, it was specifically mentioned that experience may be in any Power Utility in the 'same capacity'. The post advertised was of Shift Attendant. As discussed hereinabove, the candidates at the time of interview were asked to submit their particulars in a pre-printed proforma. In the said proforma, it was specifically mentioned that same capacity means Shift Attendant. The 28 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

respondent-HVPNL vide communication dated 05.09.2017 informed the Selection Commission that experience of higher post i.e. GSA/GSO/JE may also be considered for weightage. The Selection Commission has awarded marks on the basis of said letter. The letter was issued on 05.09.2017 and by that date process of scrutiny of documents & interview had already completed. The HVPNL in the said letter pointed out that as per office order dated 29.01.2016 weightage may be granted for the experience in the 'same capacity', however, it should be substituted by experience of Shift Attendant,

GSA/GSO/JE. The intent and purport of letter dated 05.09.2017 was quite clear. The HVPNL wanted to expand scope of weightage of experience. The said letter was beyond the scope of advertisement and prevailing rule i.e. office order dated 29.01.2016. The said letter attempted to change rules of game not only after the commencement of game but also at the fag end of the game. Action of recruitment agency of awarding marks on the basis of said letter was beyond the scope of advertisement and contrary to the settle law.

18. Q No.(iv) Whether experience with a Power Utility other than Haryana Power Utilities could be considered?

In the advertisement, expression 'any Power Utility' was used though in the subsequent documents, expression 'Haryana Power Utilities' has been used. As in the advertisement, expression any Power Utility was used and relying upon said expression, employees of Power Utilities located outside State of Haryana applied and came to be selected, cannot be denied benefit of weightage of experience merely on the ground that few subsequent letters/documents are using expression 29 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

Haryana Power Utilities.

19. Conclusion:

In the wake of above discussion and findings, this Court hereby holds:-

(i) A candidate, who has neither ticked requisite column as 'Yes' nor uploaded his experience certificate, is not entitled to weightage of experience. If the respondent has granted marks of experience to this category of candidates, their marks need to be recalculated after deleting marks of experience.

(ii) The candidates, who either have ticked requisite column as 'Yes' or enclosed experience certificates alongwith application form, are entitled to marks of experience.

(iii) The candidates who have ticked requisite column as 'Yes' as well as enclosed experience certificate are certainly entitled to marks of experience.

(iv) Weightage of experience of lower or higher posts than Shift Attendant shall not be granted. Marks awarded for the experience of lower or higher posts shall be deleted.

(v) Experience with any Power Utility is valid. It needs not to be with Haryana Power Utilities.

(vi) If any candidate was granted marks of experience and after deletion of such marks achieves marks more than cut off either in his own category or any other

category as permissible by law shall not be removed from service e.g. if a candidate has been selected under General Category and after deletion of marks of experience, is entitled to be selected under Reserved Category, he shall be retained in service in his 30 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

own category.

(vii) If any petitioner is appointed pursuant to this order, he shall be entitled to notional service benefits from the date of appointment of his colleagues/juniors and shall not be entitled to arrears/salary of past period.

20. There may be few already selected candidates who may be affected by this order. The selection of candidates who had neither ticked requisite column in the application form nor uploaded experience certificate alongwith application form is going to be adversely affected. Their appointment was patently illegal, thus, nullity in the eye of law. In view of recent judgment of Supreme Court in 'Amrit Yadav Vs. The State of Jharkhand and others', Civil Appeal No(s). 13950-13951 of 2024 which is based upon earlier judgment of Supreme Court in 'Union of India Vs. Raghuwar Pal Singh', (2018) 15 SCC 463, this Court does not find it appropriate to defer the proceedings and grant opportunity of hearing to likely to be affected candidates.

There is another reason for not granting opportunity of hearing to candidates likely to be affected. The petitioners at the time of filing petition were unaware of candidates who had been granted weightage of experience. The report of Local Commissioner has unearthed particulars of candidates who were granted weightage of experience. The selected candidates joined in 2019 and petition before this Court was filed in 2021. Deferment of proceedings, with intent to grant opportunity to likely to be affected candidates, would defeat object of the petition because it would certainly take a long time. The appointment which was contrary to established law did not create any 31 of 32 Neutral Citation No:=2025:PHHC:023823 connected cases.

vested or fundamental right in favour of already selected candidates. Further, Selection Commission as well as Haryana Power Utilities with tooth and nail have attempted to justify their conduct. The Commission in terms of this order has to re-calculate marks of candidates who had been granted weightage of experience. If the candidates who have been granted weightage establish their claim, would continue to work.

21. The selection process was completed in 2019 and petitioners approached this Court in 2021. This order may prompt fence sitters to file petitions before this Court which would create chaos. To avoid further litigation, it is hereby made clear that the benefit of this order shall be available only to those candidates who have approached this Court by today i.e. 18.02.2025.

22. In the backdrop, let the marks of candidates who have been granted weightage be re-calculated and result be revised, within three months from today.

23. Disposed of in the above terms.

24. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL) JUDGE 18.02.2025 Ali Whether speaking/reasoned Yes/No Whether Reportable Yes/No 32 of 32