

225 (6 cases) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:004620-DB



LPA-376-2021 (O&M)

Gurpiar Singh and others ...Appellants

Vs.

State of Punjab and others ...Respondents

LPA-607-2021 (O&M)

Aditya Marwaha and others ...Appellants

Vs.

State of Punjab and others ...Respondents

LPA-781-2021 (O&M)

Sandeep Singh and others ...Appellants

Vs.

State of Punjab and others ...Respondents

LPA-1083-2021 (O&M)

Satnam Singh ...Appellant

Vs.

State of Punjab and others ...Respondents

LPA-432-2021 (O&M)

Raj Kumar and others ...Appellants

Vs.

State of Punjab and others ...Respondents

LPA-961-2022 (O&M)
Date of Decision: 13.01.2025

Manoj Kumar

...Appellant

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Harmeet Singh, Advocate
for the appellants in LPA-376-2021.

Mr. Balram Singh, Advocate
for the appellants in LPA-607-2021.

Mr. K.G. Chaudhary, Advocate
for the appellants in LPA-781-2021.

Ms. Navjot Kaur, Advocate for
Mr. Avtar S. Khinda, Advocate for the appellant in LPA-1083-
2021.

Dr. Rau P.S. Girwar, Advocate
for the appellants in LPA-432-2021.

Mr. Baljeet Singh Sidhu, Advocate
for the appellant in LPA-961-2022.

Mr. Fateh Singh Dhillon, Advocate
for the private respondents in LPA-376-2021.

Mr. G.P.S. Bal, Advocate for the respondents.

Mr. Gagneshwar Walia, Advocate for respondents No.121 to
131 in LPA-376-2021 and respondents No.4 to 11 in LPA-607-
2021.

Ms. Sunaina, Advocate for
Mr. H.C. Arora, Advocate for respondents No.5, 7 to 21, 23 to
27, 29, 30, 32 to 41, 43 to 57, 61, 62, 65, 67, 68, 70 to 80, 83 to
85, 91, 94, 95, 97 to 101, 105 to 109, 111, 112, 114 to 118 and
120 in LPA-376-2021.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. By way of this judgment, we shall decide six appeals as the issue raised in all the appeals is same. The facts of the case are being taken from LPA-376-2021.

2, The present appeal assails the order dated 22.01.2021, passed by the learned Single Bench, whereby the learned Single Bench decided bunch of the writ petitions and passed directions to the respondents – department to consider the writ petitioners in the waiting list for their appointment on the post of Male Constable (Drivers).

3. Learned senior counsel appearing for the appellants has strenuously argued and submitted that the judgment passed by the learned Single Bench is contrary to the law laid down by the Hon'ble Supreme Court in the case of **Tej Prakash Pathak vs. Rajasthan High Court 2024 INSC 847**. It is his submission that the original advertisement was issued by the Punjab Police inviting applications for filling up '750' posts of Male Constable (Drivers) in the District Police Cadre of Punjab Police.

As per the advertisement, the candidates were required to undergo a selection process which included the substance abuse (drug addiction) test, physical screening test, physical measurement test, where after a written test was to be conducted and those who qualified the physical trials and the written test were further required to appear for a driving proficiency test (for short 'DPT') and where after the select list was to be prepared. However the Punjab Police issued a public notice dated 24.12.2016, whereby it has done away with the requirement of clearing of DPT and thereby the rules of the game were changed midway. He submits that the merit list which was prepared of the candidates without conducting DPT was thus vitiated and the selection conducted accordingly was bad in

law. Learned senior counsel submitted that the learned Single Bench has failed to take notice that as per the standing order dated 24.12.2016, the Director General of Police, Punjab had made such a requirement of passing the DPT as essential qualification for appointment as a Driver and the select list could not have been prepared only after those candidates had cleared the DPT.

Learned senior counsel submits that the standing order remained in force during the selection process and the same were only amended later on in the year 2021 i.e. on 21.01.2021 and the recruitment board could not have amended the qualification by issuing the so called corrigendum on 24.12.2016. Learned senior counsel further submitted that the contention taken by the DGP in its reply stating that it had already given his consent in 2016, cannot be accepted as the standing orders very specifically state that the same shall be in force till the same are amended. In view thereof, doing away with the DPT has resulted in the entire selection process being vitiated in law and the selections conducted on the said basis deserve to be set aside.

Learned senior counsel, therefore, prays for setting aside the order passed by the learned Single Bench. The other appellants support the contentions and adopt the arguments raised by learned senior counsel.

4. Per contra, learned counsel appearing for the respondents/writ petitioners submit that they had preferred the writ petitions before the Court as they were in the waiting list and their cases were not being considered for appointment. The issue before the learned Single Bench was different from what has been raised before the Division Bench and it was the case of the writ petitioners that although they possessed the driving licenses which mentioned the same to be for motorcar, tractor and jeep and not for LMVs, they ought to have been taken into consideration for the purpose of

appointment as Drivers. So far as the appellants who had challenged the issuance of the corrigendum are concerned, they were not placed even in the select list and they could not clear the written examination insomuch so they were not within the cut off list for the purpose of appointment. The condition of DPT was not part of the test as such but was only to see whether the candidates were proficient in driving. The respondents had after considering the fact that all the candidates possessed driving licenses decided to do away with the DPT, which was applicable for all and, therefore, there was no disparity amongst the candidates who had applied under the said advertisement.

In view thereto, it is their submission that the said removal of participating in DPT does not create any discrimination amongst the candidates. Learned counsel appearing for the persons who had already been selected and appointed, submitted that almost all the posts stood filled apart from the persons who were in the waiting list. They have already been working for more than eight years and the selection process, therefore, ought not to be interfered by this Court at this stage.

It is his submission that all the candidates who have been appointed, possessed the driving licenses and are performing their duties to the best of their capability and dispensing with DPT would not in any manner affect the selection process.

So far as the respondents-State and Police Department are concerned, it is stated that the DPT was only of a qualifying nature and the candidates were not given any marks for the DPT. Even in the original advertisement such a condition was mentioned and, therefore, no right is created or taken away if the said DPT was done away by the recruiting agency. It is further stated that a proposal was sent by the recruitment board

on 20.12.2016 to the DGP stating that all the candidates who have applied and cleared physical trial will be appearing in written examination possessed the valid driving license issued by the competent authority. The driving license is issued only after conducting DPT by the competent authority and once the same has already been undertaken, it would be mere duplicacy to take the DPT again. The proposal of the recruitment board was accepted by the DGP on 20.12.2016 and accordingly public notice was issued on 24.12.2016 which mentioned that final result of the recruitment of Male Constable (Drivers) in district cadre will be prepared on the basis of marks obtained by the candidates in the written test alone.

It is their submission that since the merit list would not have changed on account of participation or non-participation in DPT, it cannot be said that the rules of the game were changed midway.

5. We have considered the submissions.

6. The Constitutional Bench in **Tej Prakash Pathak's (supra)**, was considering the reference made to it with regard to law as laid down in **K. Manjusree vs. State of A.P. and another 2008 (3) SCC 512** and followed thereafter. However, as in **K. Manjusree's** case (supra) the judgment passed earlier by the Hon'ble Apex Court in **State of Haryana vs. Subash Chander Marwaha (1974) 3 SCC 220**, had not been taken into consideration, the following reference was made to the Apex Court as under:-

“No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned as was done in C. Channabasavaih v. State of Mysore [AIR 1965 SC 1293], etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an

authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.”

7. Having noticed the reference and after considering at length, the principles of fairness, in action requiring the public authorities to be accountable for their representations and for good administration, the Constitutional Bench, concluded as under:-

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

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

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

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(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.”

8. From the perusal of para No.2 of the aforesaid, it is, thus, apparent that while it cannot be permissible to change the legibility criteria which has been placed for being in the select list if the rules so permit or the advertisement which does not go contrary to the extant rules change would be permissible subject to the condition that the change would meet the requirement on the anvil of Article 14 of the Constitution of India.

9. Taking into consideration the observations and the principle as laid down by the Hon'ble Apex Court, if we examine the action taken by the State Government in dispensing with the condition of requiring the candidates to undergo DPT, we find that the DPT was a qualification required for being placed in the select list. However, the entire selection process is based on the standing orders issued by the DGP as the DGP gave its sanction to do away with the DPT considering it to be a case of duplicacy of the test. It also took into consideration that there was no marks assigned for the DPT.

10. We also find that no candidate participating in the selection was asked to appear for DPT. Thus, action of dispensing with the DPT has been applied to all the candidates who were placed in the select list or in the

reserved list or those who were even below the cut off list like the appellants. Thus, once it has been applied uniformly to all the candidates, the principle of Article 14 of the Constitution of India of applying the provisions 'equally to one and all', stands satisfied.

11. In view thereto and keeping in view the principle No.2 (supra), the deletion of the said requirement cannot be said to be unjustified, illegal or arbitrary. The selection process has been conducted uniformly on the basis of the same pattern adopted for all. No prejudice can be said to have been caused by dispensing with the condition of DPT. It is also not the case of the appellants/writ petitioners that anyone who did not possess driving license, has been appointed.

12. In the circumstances, we do not find any reason to entertain the plea taken by the appellants of there being a change in the rule when the game was on. The principles as laid down in K. Manjusree's (supra) which have been approved by the Hon'ble Supreme Court in Tej Prakash Pathak's (supra) have been followed by the appointing authority and therefore no interference is warranted in the order passed by the learned Single Bench. The appeals are accordingly dismissed.

13. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

13.01.2025
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No