$~P-1 to P-5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Decided on: 29.08.2025***

\+ **W.P.(C) 11007/2025 & CM APPL. 45323/2025**
PRAMITI BASU .....Petitioner

versus

SECRETARY GENERAL SUPREME COURT OF INDIA .....Respondent

\+ **W.P.(C) 11008/2025 & CM APPL. 45325/2025**
ANUJ CHAUHAN .....Petitioner

versus

SECRETARY GENERAL SUPREME COURT OF INDIA .....Respondent

\+ **W.P.(C) 11043/2025 & CM APPL. 45467/2025**
SHAHID AHMED .....Petitioner

versus

SECRETARY GENERAL SUPREME COURT OF INDIA .....Respondent

\+ **W.P.(C) 11067/2025 & CM APPL. 45542/2025**
TARU PANT .....Petitioner

versus

SECRETARY GENERAL, SUPREME COURT OF INDIA .....Respondent

\+ **W.P.(C) 11115/2025 & CM APPL. 45732/2025**
SAURABH NISHAD .....Petitioner

versus

SECRETARY GENERAL SUPREME COURT OF INDIA .....Respondent

Appearance:

Dr. Amit George, Mr. Arkaneil Bhaumik, Ms. Shivalika Rudrabatla and Mr. Kartikay Puneesh, Mr. Dushyant Kaul, Ms. Rupam Jha, Ms. Medhavi Bhaila, Advocates for petitioner in W.P.(C) 110067/2025.

Mr. Shubham Prajapati, Mr. Rakesh Kumar Mandal, Mr. Akash Kumar, Mr. Phillip Massey, Mr. Mahipal Singh, Ms. Shrishti, Mr. Aditya Raj Marandi and Ms. Muskan Dulet, Advocates for petitioners in W.P.(C) 11007/2025, W.P.(C) 11008/2025, W.P.(C) 11043/2025, W.P.(C) 11115/2025.

Mr. Chetan Sharma, ASG with Ms. Pratima N. Lakra, CGSC, Mr. Amit Gupta, Mr. Chandan Prajapati, Mr. R.V. Prabhat, Mr. Vinay Yadav, Mr. Vikram Aditya, Mr. Shubham Sharma, Mr. Shailendra Kumar Mishra and Mr. Naman, Advocates, with Mr. T.I. Rajput, Registrar with Ms. Neetu Verma, Deputy Registrar, Ms. Sonika Khurana, Mr. Tarun Maurya, Court Assistant, SCI.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The petitioners in these writ petitions are all candidates for appointment to the post of Junior Court Assistant ["JCA"] in the respondent-Supreme Court of India, pursuant to an advertisement dated 04.02.2025. They are aggrieved by a notification dated 14.07.2025, by which results of the Typing Speed Test stage of the recruitment process were declared. The petitioners' grievance is that they have been excluded from the next stage of recruitment [Descriptive Test], despite having been declared as qualified in the Typing Speed Test.

2. As the petitions are predicated on virtually identical grounds, they were taken up for hearing together. W.P.(C) 11007/2025 was treated as the lead case. With the consent of learned counsel for the parties, the pleadings filed therein have been considered in respect of all the petitions.

A. FACTS:

3. The respondent advertised 241 vacancies for the post of JCA on 04.02.2025. The present dispute concerns the "*Scheme of Examination*" provided in the advertisement, which is reproduced below:

> "**Scheme of Examination**
>
> *The eligible candidates will have to appear in the tests in the following subject:-*

1.	*Objective Type Question paper with multiple choice answers containing 100 questions (consisting of 50 General English questions including comprehension, 25 General Aptitude questions and 25 General Knowledge questions).*	*2 hours*
2.	*Objective Type Computer Knowledge Test (25 questions)*	
3.	***Typing (English) test on Computer with minimum speed 35 w.p.m. (mistakes allowed upto 3% of total words to be typed)***	*10 minutes*
4.	*Descriptive Test (in English Language) consisting of Comprehension passage, Precis Writing and Essay Writing*	*2 hours*

> ***The candidates who qualify in the Objective Type Written Test and Objective Type Computer Knowledge Test will only be called for Typing Speed Test on Computer and Descriptive Test*** *and those who qualify the said tests will be required to appear for an Interview before an Interview Board and qualify the Interview by securing minimum qualifying marks. Number of candidates to be called for Interview shall not exceed the ratio of 1:3 i.e. 3 candidates against 1 vacancy subject to availability of candidates who would be qualified on the basis of above Tests. After qualifying in prescribed tests and Interview, the selected candidates will be empanelled in the order of merit for appointment as Junior Court Assistant. The candidates may note that mere placement in panel does not confer any right on the candidates to claim appointment for the post of Junior Court Assistant.*"[1]

[1] Emphasis supplied.

4. The petitioners were successful in the first two stages of the examination, which comprised of Objective Type Question Paper and the Objective Type Computer Knowledge Test. They were therefore called for a Typing Test on computer. The admit cards for the Typing Speed Test contained several "*Instructions to Candidates*", of which the following are relevant:

"***Instruction to Candidates***:
English Typing test of SCI will be conducted in following manner.

Exam	*Typing Passage*	*Exam Structure*	*Exam Duration*
English Typing	*350 Words*	*Mock Test (5 mins) + Break (10 mins) + English Typing (10 mins)*	*25 mins*

xxxx *xxxx* *xxxx*

3. 10 minutes will be given for actual Typing Test (English)
4. Candidates will be able to do a practice typing test for 5 minutes before the actual typing test
5. There will also be a break of 10 minutes between Mock / Practice and the Actual Typing Test.

xxxx *xxxx* *xxxx*

Marking Formula for Typing Speed Test on Computer

No. of mistakes	*Marks to be awarded out of maximum 50 marks*
0	*50.00*
1	*47.73*
2	*45.45*
3	*43.18*
4	*40.91*
5	*38.64*
6	*36.36*
7	*34.09*
8	*31.82*
9	*29.55*
10	*27.27*
11	*25.00*"

5. By the impugned notification dated 14.07.2025, the respondent declared the result of the Typing Speed Test held on 04.06.2025 for 10,281 candidates. The opening paragraph of the notification and first 20 rows, by way of example, are reproduced below:

> "***Result of Typing Speed Test on Computer in respect of 10281 candidates for the post of Junior Court Assistant held on June 04, 2025***
> ***The candidates who have qualified Typing Speed Test on Computer and secured 43.18 marks or more marks out of 50 marks in said test*** *along with 10 candidates of PwD category who have been exempted from the said test* ***are required to appear in Descriptive Test*** *(in English) to be conducted tentatively on 01.08.2025 in Delhi/NCR.*

Sl.No.	***Name***	***Roll No.***	***Qualified/Not Qualified***	***Marks Scored***
1	*Rahul Kumar Gupta*	*111100190100*	*Qualified*	*38.64*
2	*Shubham Saurabh*	*111100330053*	*Not Qualified*	*N/A*
3	*Amardip Kumar*	*111100170058*	*Not Qualified*	*N/A*
4	*Rishu Katiyar*	*111100190103*	*Qualified*	*43.18*
5	*Rohit Abhishek*	*111100350060*	*Not Qualified*	*N/A*
6	*Surabhi Rai*	*111100300120*	*Qualified*	*34.09*
7	*Amit Abhishek*	*111100380318*	*Not Qualified*	*N/A*
8	*Siddharth Kumar Singh*	*111100380037*	*Not Qualified*	*N/A*
9	*Arnav Raj*	*111100340132*	*Not Qualified*	*N/A*
10	*Pranjal Priyadarshi*	*111100040194*	*Not Qualified*	*N/A*
11	*Kriti Raj*	*111100010308*	*Not Qualified*	*N/A*
12	*Sujit Prakash*	*111100190185*	*Not Qualified*	*N/A*
13	*Vinay Kumar*	*111100290107*	*Not Qualified*	*N/A*
14	*Avinash Kumar*	*111100290225*	*Not Qualified*	*N/A*
15	*Md Adil Ansari*	*111100300119*	*Not Qualified*	*N/A*
16	*Piyush Kumar*	*111100370100*	*Not Qualified*	*N/A*
17	*Gaurav Kumar*	*111100640045*	*Exempted*	*----*
18	*Prince Kumar Verma*	*111100290189*	*Not Qualified*	*N/A*
19	*Sanehu Kumari*	*111100330200*	*Not Qualified*	*N/A*
20	*Anupam Kumar Jha*	*111100350178*	*Qualified*	*27.27*
xxx	*xxx*	*xxx*	*xxx*	*xxx*"[2]

[2] Emphasis supplied.

6. As far as the five petitioners are concerned, their results were as follows:

Sl.No.	***Name***	***Roll No.***	***Qualified/Not Qualified***	***Marks Scored***
828	*Saurabh Nishad*	*272104910110*	*Qualified*	*40.91*
1956	*Pramiti Basu*	*136101030006*	*Qualified*	*38.64*
4713	*Anuj Chauhan*	*268104840252*	*Qualified*	*40.91*
6634	*Shahid Ahmed*	*158101620040*	*Qualified*	*38.64*
9075	*Taru Pant*	*145101300201*	*Qualified*	*38.64*

7. It is evident from the above that, although the petitioners were declared "*Qualified*", they did not achieve the score of 43.18, as required to appear in the Descriptive Test.

B. MATERIAL PLACED ON RECORD BY THE RESPONDENT

8. The respondent filed a counter affidavit dated 08.08.2025, and an additional affidavit dated 14.08.2025[3]. The respondent also produced before the Court its record relating to the impugned recruitment. A copy of the record was handed up to the Court at the hearing on 18.08.2025. Although the extracts of the record have not been annexed to the affidavit filed by the respondent, learned counsel for the petitioners were permitted to inspect the record, and make their submissions thereupon. The order of the Court dated 18.08.2025 records that this procedure was adopted with the consent of learned counsel for the parties. A photocopy of the relevant Note from the respondent's record has been placed in a sealed cover with the Registry.

[3] Filed pursuant to permission granted by order dated 12.08.2025.

9. In the affidavits filed by the respondent, they have traced the power to shortlist candidates, to Clause 18 of the Advertisement, which reads as follows:

> "*18.* ***The Registry reserves its right to short-list candidates in any manner as may be considered appropriate with the approval of Competent Authority.*** *The Registry reserves the right to cancel/restrict/enlarge/modify/alter the recruitment process, if needed, without issuing any notice.*"[4]

10. The respondent has also relied upon the Supreme Court Officers & Servants (Conditions of Service and Conduct) Rules, 1961 ["the Rules"], specifically Rule 47, which reads as follows:

> "***47. Residuary Powers*** *- Nothing in these Rules shall be deemed to affect the power of the Chief Justice to make such-orders, from time to time, as he may deem fit in regard to all matters incidental or ancillary to these rules not specifically provided for herein or in regard to matters as have not been sufficiently provided for:*
>
> *Provided that if any such order relates to salaries, allowances, leave or pensions of Court servants, the same shall be made with the approval of the President.*"

11. In the respondent's counter affidavit dated 08.08.2025, the following data has been provided with regard to the recruitment in question:

> "*5. That the complete data of candidates participated for the notified post of 241 are as under:*

Sr. No.	*Particulars*	*Figures*
i.	*Total Number of applications received for the post of Junior Court Assistant*	*1,34,608*
ii.	*Number of candidates appeared in MCQ Test (Written Test)*	*76,749*
iii.	*Number of candidates qualified in MCQ Test (Written Test)*	*61,561*
iv.	*Number of candidates shortlisted for typing speed test on computer*	*10,993*

[4] Emphasis supplied.

	shortlisted on the basis of 100 or more marks out of 125 marks in MCQ Test (Written Test)	
v.	*Number of candidates appeared for Typing Speed Test on Computer*	*10,281*
vi.	*Number of candidates qualified for Typing Speed Test on computer having secured minimum qualified 25 marks or more*	*3731*
vii.	*Number of candidates shortlisted for appearing in Descriptive Test out of candidates who qualified Typing Speed exempted from Test on Computer (Criteria applied – ratio of 1:10) candidates securing marks 43.18 or more were shortlisted*	*2651+10 PwD Candidates exempted from Typing Test*
viii.	*Number of candidates appeared in Descriptive Test*	*2547*"

12. The justification for the benchmark of 43.18 marks is provided in the following extracts of the counter affidavit:

> "*8. That the benchmark of 43.18 marks (i.e., candidates committing up to 3 mistakes in the Typing Test) was fixed by the Registry with the approval of the Hon'ble Chief Justice of India* ***(hereinafter referred to as the 'Competent Authority')****, taking into account the limited number of 241 vacancies and the requirement to maintain a 1:10 ratio of candidates for the next stage. Accordingly, only candidates who secured 43.18 marks or more were shortlisted. This administrative decision was based on performance merit and was consistent with the shortlisting principle applied in the earlier stage of recruitment.*
>
> *9. That it is relevant to note that shortlisting on the basis of a benchmark was also applied at the earlier stage. Out of 61,561 candidates who qualified in the Written Test, only 10,993 candidates scoring 100 marks or more out of 125 were shortlisted for the Typing Speed Test. This demonstrates that benchmarking has been a consistent feature of the entire recruitment process and was applied transparently and objectively at every stage and the petitioners were well aware of the same.*
>
> *xxxx xxxx xxxx*

> *12. That the benchmark of 43.18 marks was finalized upon the submission of a note dated 09.07.2025 and approved by the Competent Authority on 18.07.2025, in consultation with the Hon'ble Judge nominated to oversee the conduct of the examination. Pursuant to this, a total of 2,651 candidates, who secured 43.18 marks or more, and 10 PwD candidates (exempted from the Typing Test) were shortlisted for the Descriptive Test.*
>
> *13. That the decision to apply the said benchmark is further supported and validated by Rule 4(2)(c) and Rule 6 of the Supreme Court Officers & Servants (Conditions of Service and Conduct) Rules, 1961, as well as Article 146 of the Constitution of India, which vests the Hon'ble Chief Justice of India with absolute discretion in matters of appointment and conduct of recruitment in the Supreme Court.*
>
> *14. In view of the above, it is submitted that the fixation of the 43.18 benchmark is neither arbitrary nor retrospective, but rather a lawful, consistent, and rational exercise of administrative discretion. The same was necessary to ensure efficient processing of candidates for the limited vacancies and is fully in line with the terms of the recruitment notification, service rules, and constitutional scheme. The Petitioner's challenge to the shortlisting process is, therefore, unfounded and liable to be rejected.*"

13. In the additional affidavit dated 14.08.2025, paragraph 12 of the counter affidavit dated 08.08.2025 has been clarified, to the extent that the Registry Note dated 09.07.2025 was approved by the Hon'ble Chief Justice of India ["Competent Authority"] on 10.07.2025, in consultation with the Hon'ble Judge nominated to oversee the conduct of the examination ["Nominated Authority"]. The date of "*18.07.2025*" referred to in paragraph 12, was in fact the date of approval of a modification/corrigendum, which was approved by the Nominated Authority.

C. SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

14. Dr. Amit George, who appears for the petitioner in W.P. (C) 11067/2025, advanced arguments on her behalf. Mr. Shubham Prajapati,

learned counsel for the petitioners in the other four writ petitions, supplemented Dr. George's arguments.

15. The principal submission of Dr. George was that the imposition of a cut-off of 43.18 marks in the Typing Test, to proceed to the Descriptive Test stage, was not provided in the advertisement and was, therefore, tantamount to "*changing rules of the game mid-way*". He submitted that a plain reading of the "*Scheme of Examination*" provided the criteria for qualification in the Typing Test, both in terms of minimum speed (35 words per minute) and maximum error count (3% of the total words to be typed). In fact, it was submitted that the petitioners have rightly been declared as qualified, on the basis of these very criteria. Once these conditions were met, they were entitled to participate in the Descriptive Test without any further condition, but have been excluded, for which there is no justification. There was neither any ambiguity in the advertisement, nor any statutory rule, which permitted such a condition.

16. Dr. George submitted that, in the facts of the present case, Clause 18 could not have been used to insert a further qualification requirement to the criteria already mentioned in the advertisement. In circumstances when the benchmark has been set in the advertisement, it was submitted that the Constitution Bench of the Supreme Court in *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors*[5] precludes setting of an additional merit-based benchmark[6], in the manner indicated in paragraph 11 of the respondent's additional affidavit. Dr. George argued that the effect of permitting such a broad interpretation of Clause 18 would, in fact,

[5] (2025) 2 SCC 1 [hereinafter, "*Tej Prakash Pathak*"].
[6] *Ibid*, paragraph 52.

diminish the central ratio of the Constitution Bench decision, that "*rules of the game ought not to be changed mid-way*".

17. Dr. George urged that shortlisting based on a multiple of the number of vacancies, cannot be permitted at the Descriptive Test stage. In the advertisement, such a process was expressly applicable only at the Interview stage, for which a maximum of three candidates were to be called for each vacancy. He argued that, prior to the Interview stage, the minimum qualifications prescribed ought themselves to have been employed for the purposes of shortlisting.

18. It was further submitted that, to the extent that *Tej Prakash Pathak* permits setting of benchmark at different stages of the recruitment process, it requires this to be done *before* the stage in question is reached. In the present case, Dr. George submitted that the benchmark was set only after the Typing Test had been concluded. He argued additionally that the Typing Test and Descriptive Test are, in terms of the advertisement, a single stage of recruitment, and no filtering of candidates was permissible, other than by application of the qualifying criteria.

19. In addition to *Tej Prakash Pathak*, Dr. George cited the judgements of the Supreme Court in *Manoj Kumar v. Union of India*[7] and *Hemani Malhotra v. High Court of Delhi*[8], in support of the above contentions. He also referred to an article by Professor C.H. Powell in the *Constitutional Court Review*[9], to submit that the respondent, being the

[7] (2024) 3 SCC 563 [hereinafter, "*Manoj Kumar*"].
[8] (2008) 7 SCC 11 [hereinafter, "*Hemani Malhotra*"].
[9] C H Powell, 'Judicial Independence and the Office of the Chief Justice' (2019) 9 *Constitutional Court Review* 497.

highest Court of the land, must not only lay down the law, "*but be constituted and maintained by it*".

20. With regard to the scope of Rule 47 of the Rules, Dr. George submitted that it confers only a "*residuary power*", which can be exercised in matters incidental or ancillary to the Rules, or those which have been inadequately provided for. Rule 4 of the Rules, on the other hand, confers a specific power with regard to recruitment, including the power to direct the manner in which recruitment shall be made in a case of direct recruitment, thus denuding Rule 47 of applicability.

21. Dr. George's next argument was centered around the requirement that an exercise of shortlisting, even if permitted by the rules and/or advertisement, cannot be arbitrary. He submitted that no reasons are given in the Noting of the respondent, which was ultimately approved by the Nominated Authority and the Competent Authority, as to why such shortlisting was required. The only observation was with regard to calling an "*appropriate number of candidates*" for interview, but no further elaboration was provided. Dr. George submitted that no such administrative exigency occurs in the present case, so as to justify the implementation of a cut off of 43.18 marks. Out of the total number of 1,34,608 candidates who had applied, 76,749 candidates participated in the first stage of the examination, and the number of candidates had already been reduced to 10,281 at the stage of participation in the Typing Test. 3,731 candidates qualified in the Typing Test, out of which 2,661 candidates[10], were called for the Descriptive Test. The total number of

[10] Including 10 candidates in the Persons with Disability category, who were exempted in the Typing Test.

qualified candidates was 3,731, which would have led to an addition of only 1,080 candidates. He submitted that the participation of a large number of candidates was entirely foreseeable and could not lay the foundation for a claim of administrative necessity.

22. Dr. George lastly submitted that the supply of additional grounds or reasoning in the affidavit of the respondent cannot be used to justify the order, relying upon *Mohinder Singh Gill v. Chief Election Commr.*[11]. He also referred to a judgment of the Supreme Court in *Ramjit Singh Kardam v. Sanjeev Kumar*[12], to argue that decisions cannot be supported by undisclosed "*administrative reasons*".

D. SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. Mr. Chetan Sharma, learned Additional Solicitor General ["ASG"], and Ms. Pratima N. Lakra, learned counsel, advanced arguments on behalf of the respondent.

24. Learned ASG submitted that Clause 18 of the advertisement, specifically permitted shortlisting of candidates in any manner considered appropriate, with the approval of the Competent Authority. He contended that such a reserved power was consistent with the Constitution Bench decision in *Tej Prakash Pathak*, as also the earlier decision of the Supreme Court in *Yogesh Yadav v. Union of India*[13].

25. Relying upon the material placed on record by the respondent, learned ASG contended that the benchmark of 43.18 marks was applied on the basis of a ratio of 10 candidates for every vacancy. This exercise

[11] (1978) 1 SCC 405 [hereinafter, "*Mohinder Singh Gill*"].
[12] (2020) 20 SCC 209 [hereinafter, "*Ramjit Singh Kardam*"].

was approved by the Competent Authority in exercise of powers specifically reserved in Clause 18 of the advertisement, and was applied uniformly to all candidates. He also submitted that the petitioners participated in the selection process, and must therefore live with the consequences of Clause 18, which was known to them from the very beginning of the recruitment process. Specifically, he drew my attention to the counter affidavit dated 08.08.2025[14], which shows that an exercise of shortlisting was conducted even at an earlier stage of the recruitment, i.e. after the Objective Test (Written Test). The affidavit states that 61,561 candidates qualified in the Written Test (Multiple Choice Question), out of which 10,993 were shortlisted for Typing Speed Test, including the petitioners herein. This shortlisting was also carried out, not on the basis of any express criteria in the advertisement, but in exercise of power under Clause 18.

26. Learned ASG further submitted that such a decision was not arbitrary or unreasonable, but was justified by requirements of administrative exigency. He argued that such an administrative decision was also not contrary to any statutory rule, and in fact was authorised by Rule 47 of the Rules.

27. It was, therefore, submitted that the decision was not open to challenge within the limited jurisdiction available under Article 226 of the Constitution. Learned ASG additionally cited *West Bengal Central*

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[13] (2013) 14 SCC 623 [hereinafter, "*Yogesh Yadav*"].
[14] Paragraphs 5 & 7.

School Service Commission & Ors. v. Abdul Halim & Ors.[15] in support of his submissions.

E. ANALYSIS:

i. Constitution Bench judgment in Tej Prakash Pathak

28. The recent Constitution Bench decision in *Tej Prakash Pathak* lays down the legal principles which govern the doctrine against "*changing the rules of the game mid-way*". As learned counsel on both sides placed considerable emphasis on the said judgment, a detailed analysis thereof is required.

29. The issue in that case concerned recruitment to the post of Translator from amongst Judicial Assistants and Junior Judicial Assistants in the Rajasthan High Court. The recruitment was held under Staff Service Rules framed by the Rajasthan High Court in the year 2002. 21 candidates participated in the examination, and three were declared selected, on the basis of a decision of the Hon'ble Chief Justice, that only those candidates who secured a minimum of 75% of the marks would be selected. A writ petition filed on behalf of unsuccessful candidates was dismissed by the Rajasthan High Court. The challenge to the Rajasthan High Court decision was referred to a Constitution Bench, questioning the judgment in *K. Manjusree v. State of Andhra Pradesh*[16], on the ground that it failed to consider an earlier decision in *State of Haryana v. Subhash Chander Marwaha*[17].

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[15] (2019) 18 SCC 39 [hereinafter, "*West Bengal Central School Service Commission*"].
[16] (2008) 3 SCC 512 [hereinafter, "*K. Manjusree*"].
[17] (1974) 3 SCC 220 [hereinafter, "*Subhash Chander Marwaha*"].

30. The Constitution Bench has described the basis of the doctrine as follows:

> "*25. Candidates participating in a recruitment process have legitimate expectation that the process of selection will be fair and non-arbitrary. The basis of doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. This doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure.*
>
> *26. However, the doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation.*
>
> *27. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.*"

31. The Court reconciled the decisions in *Subhash Chander Marwaha* and *K. Manjusree*, and also considered the judgments in *K.H. Siraj v. High Court of Kerala*[18] *and Hemani Malhotra,* as follows:

> "*42. A close reading of the judgment in Subash Chander Marwaha would disclose that there was no change in the rules of the game qua eligibility for placement in the select list. There the select list was prepared in accordance with the extant rules. But, since the extant rules did not create any obligation on the part of the State Government*

[18] (2006) 6 SCC 395.

to make appointments against all notified vacancies, this Court opined that the State could take a policy decision not to appoint candidates securing less than 55% marks. With that reasoning and by taking into account that appointments made were of top seven candidates in the select list, who had secured 55% or higher marks, this Court found no merit in the petition of the writ petitioners.

43. On the other hand, in K. Manjusree, the eligibility criteria for placement in the select list was changed after interviews were held which had a material bearing on the select list. Thus, Subash Chander dealt with the right to be appointed from the select list whereas K. Manjusree dealt with the right to be placed in the select list. The two cases therefore dealt with altogether different issues. For the foregoing reasons, in our view, K. Manjusree could not have been doubted for having failed to consider Subash Chander Marwaha.

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47. The decision in K.H. Siraj makes it clear that if the rules governing recruitment provides latitude to the competent authority to devise its procedure for selection it may do so subject to the rule against arbitrariness enshrined in Article 14 of the Constitution. Even K. Manjusree does not proscribe fixing minimum marks for either the written test, or the interview, as an eligibility criterion for selection. What K. Manjusree does is to regulate the stage at which it could be done. This is clear from the decision of this Court in Hemani Malhotra v. High Court of Delhi.

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52. ***Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.***

53. The decision in K. Manjusree does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution

and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.

54. As already noticed in Section (A), a recruitment process inter alia comprises of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. ***Subject to the rule against arbitrariness, how tests or viva voce are to be conducted, what questions are to be put, in what manner evaluation is to be done, whether a shortlisting exercise is needed are all matters of procedure which, in absence of rules to the contrary, may be devised by the competent authority. Often advertisement(s) inviting applications are open-ended in terms of these steps and leave it to the discretion of the competent authority to adopt such steps as may be considered necessary in the circumstances albeit subject to the overarching principle of rule against arbitrariness enshrined in Article 14 of the Constitution****.*

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57. Likewise in Union of India v. T. Sundararaman[19] where the eligibility conditions referred to a minimum of 5 years' experience, the selection committee was held justified in shortlisting those candidates with more than 7 years' experience having regard to the large number of applicants compared to the vacancies to be filled. The relevant observations are being extracted below:

> *"4. ... Note 21 to the advertisement expressly provides that if a large number of applications are received the Commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In M.P. Public Service Commission v. Navnit Kumar Potdar[20] this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for calling candidates for an interview. This was upheld by this Court. In State of A.P. v. P. Dilip Kumar[21] also this Court said that it is always open to the recruiting agency to screen candidates due for*

[19] (1997) 4 SCC 664.
[20] (1994) 6 SCC 293.
[21] (1993) 2 SCC 310.

> *consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate."*

58. Similarly, in Tridip Kumar Dingal v. State of W.B.[22] *it was held that shortlisting is permissible on the basis of administrative instructions provided the action is bona fide and reasonable. The relevant observations in the judgment are extracted below:*

> *"38. ... The contention on behalf of the State Government that written examination was for shortlisting the candidates and was in the nature of "elimination test" has no doubt substance in it in view of the fact that the records disclose that there were about 80 posts of Medical Technologists and a huge number of candidates, approximately 4000 applied for appointment. The State authorities had, therefore, no other option but to "screen" candidates by holding written examination. It was observed that no recruitment rules were framed in exercise of the power under the proviso to Article 309 of the Constitution and hence no such action could be taken. In our opinion, however, even in absence of statutory provision, such an action can always be taken on the basis of administrative instructions—for the purpose of "elimination" and "shortlisting" of huge number of candidates provided the action is otherwise bona fide and reasonable."*

59. Another example is in respect of fixing different cut-offs for different subjects having regard to the relative importance of the subjects and their degree of relevance. These instances make it clear that this Court has been lenient in letting recruiting bodies devise an appropriate procedure for successfully concluding the recruitment process provided the procedure adopted has been transparent, non-discriminatory/non-arbitrary and having a rational nexus to the object sought to be achieved."[23]

32. On the basis of the above discussion, the Constitution Bench came to the following conclusions:

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[22] (2009) 1 SCC 768.
[23] Emphasis supplied.

*"**Conclusions***

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, 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 v. State of A.P. lays down good law and is not in conflict with the decision in State of Haryana v. Subash Chander Marwaha. Subash Chander Marwaha deals with the right to be appointed from the select list whereas K. Manjusree 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."[24]

ii. Applying the principles to the present case

33. Applying the judgment of the Constitution Bench, I am of the view that the key to this case lies in a cohesive interpretation of both, Clause 18 of the advertisement, and of the "*Scheme of Examination*" provided

therein. The "*Scheme of Examination*" provides for four stages of examination, prior to an interview. Clause 18 expressly reserves a right of shortlisting in the employer, and no statutory rule to the contrary has been cited. Such a provision would therefore fall within the permissible discretion to the employer, as provided in paragraph 52 of *Tej Prakash Pathak*, subject to the test of Article 14 of the Constitution.

34. Dr. George, however, urged that such a procedure cannot be adopted as far as the Descriptive Test stage of the examination is concerned, as the advertisement expressly provides for the criteria required for the preceding stage of Typing Test. While this argument is attractive at first blush, it does not withstand deeper scrutiny. A distinction must be made between qualifying or eligibility criteria provided in the advertisement, and a shortlisting benchmark, which can be supplied later, if the rules and/or the advertisement so permit. A limited reading of Clause 18, which mandates application of the same criteria as stated in the advertisement, for the purposes of shortlisting, denudes the Registry of the power expressly reserved by Clause 18. Such an analysis, which conflates qualification or eligibility criteria, with shortlisting or selection benchmarks, is in my view not consistent with *Tej Prakash Pathak*.

35. Dr. George raised an ancillary textual argument, that the "*Scheme of Examination*" required the Typing Test and Descriptive Test to be considered as a single stage, without any shortlisting permissible between the two sub-stages. He clarified that the advertised criteria for the Typing Test could be used to weed out candidates at that stage, but submitted that

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[24] Emphasis supplied.

no other benchmark could have been employed. I am unable to accept this submission. The Typing Test and Descriptive Test were clearly enumerated as the third and fourth stage of the recruitment process. The very fact that separate criteria have been laid down for the Typing Test, implies that they were separate and distinct stages. That they have been dealt with conjointly in the narrative below the tabular "*Scheme of Examination*" cannot, by itself, be determinative. The petitioners accept that every candidate, who was permitted to participate in the Typing Test, need not also be called for the Descriptive Test, but suggest that the disqualification should be limited to those who did not fulfil the minimum criteria laid down in the advertisement itself [speed of 35 words per minute and maximum 3% mistakes]. I am of the view that, to the contrary, permitting such an exercise implies that the two are different stages, in which case, both qualification and shortlisting benchmarks could have been applied.

36. Dr. George next pointed out that, in *Tej Prakash Pathak*[25], the Constitution Bench has held that a shortlisting benchmark must be set before the relevant stage is reached, so that neither the candidate, nor the evaluator/examiner/interviewer is taken by surprise. The procedure adopted in the present case does not, in my view, violate the intention of the observation of the Supreme Court. Shortlisting was being conducted, in the present case, at an intermediate stage of the recruitment, on the basis of a multiple of the number of vacancies. The marking scheme for Typing Test was known to candidates all along; they were well aware that they would be assessed on the basis of speed and accuracy. There was no

change in these parameters of assessment. Consequently, the case does not raise any question of being taken by surprise, because the very same marking scheme was adopted.

37. Dr. George's submission, that such an interpretation of *Tej Prakash Pathak* permits the exception to govern, rather than the rule, does not commend to me. The Constitution Bench has itself characterised the exercise as one of balancing legitimate expectations with public interest.[26] The objectives of a selection process have been identified as selection of the most suitable person, based on impartial and objective merit-based selection, avoiding patronage and favouritism. There is no allegation in the present case, that these fundamental attributes have been breached. The balance struck by the Constitution Bench must, therefore, be observed, to the fullest extent possible. Application of the doctrine against change of rules midway, even in a case where such a "*change*" is permitted by the judgment, would disturb the balance.

38. This approach is also, in my view, supported by the judgment of the Supreme Court in *Yogesh Yadav,* cited by the learned ASG. In that case, the employer had fixed a minimum benchmark for selection of candidates after the written test and interview process. The number of available vacancies was not filled, only on the ground that sufficient number of candidates did not meet the benchmark imposed later. The Supreme Court referred to the judgments in *Subhash Chander Marwaha* and *Hemani Malhotra*, both of which have been considered in *Tej Prakash Pathak*, and held as follows:

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[25] Paragraph 52.
[26] Paragraph 27, *Tej Prakash Pathak*.

"*13. The instant case is not a case where no minimum marks are prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview.* ***The entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since a benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the "rules of the game".*** *The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of the game.* ***On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. The fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by Hemani Malhotra case.***

*14****. The decision taken in the instant case amounts to shortlisting of candidates for the purpose of selection/appointment which is always permissible. For this course of action of CCI, justification is found by the High Court noticing the judgment of this Court in State of Haryana v. Subash Chander Marwaha .*** *In that case, Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules was the subject-matter of interpretation. This Rule stipulated consideration of candidates who secured 45% marks in aggregate. Notwithstanding the same, the High Court recommended the names of candidates who had secured 55% marks and the Government accepted the same. However, later on it changed its mind and the High Court issued mandamus directing appointment to be given to those who had secured 45% and above marks instead of 55% marks. In appeal, the judgment of the High Court was set aside holding as under:*

> *"12. ... It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the*

preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of 'selection for appointment'. Even as there is no constraint on the State Government in respect of the number of appointment to be made, there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for mere eligibility."

15. ***Another weighty reason given by the High Court in the instant case, while approving the aforesaid action of CCI is that the intention of CCI was to get more meritorious candidates. There was no change of norm or procedure and no mandate was fixed that a candidate should secure minimum marks in the interview.*** *In order to have meritorious persons for those posts, fixation of minimum 65% marks for selecting a person from the OBC category and minimum 70% for general category, was legitimate giving a demarcating choice to the employer. In the words of the High Court:*

"In the case at hand, as we perceive, the intention of the Commission was to get more meritorious candidates. There has been no change of norm or procedure. No mandate was fixed that a candidate should secure minimum marks in the interview. Obtaining of 65% marks was thought as a guideline for selecting the candidate from the OBC category. The objective is to have the best hands in the field of law. According to us, fixation of such marks is legitimate and gives a demarcating choice to the employer. It has to be borne in mind that the requirement of the job in a Competition Commission demands a well-structured selection process. Such a selection would advance the cause of efficiency. Thus scrutinised, we do not perceive any error in the fixation of marks at 65% by

> *the Commission which has been uniformly applied. The said action of the Commission cannot be treated to be illegal, irrational or illegitimate."*
>
> *16.* ***It is stated at the cost of repetition that there is no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut-off marks in the interview. It is the shortlisting which is done by fixing the benchmark, to recruit best candidates on rational and reasonable basis. That is clearly permissible under the law****."*[27]

39. Thus, in *Yogesh Yadav,* the minimum benchmark for selection was not provided at all, but was permitted to be fixed later. This is also in line with the decision of the Constitution Bench in *Tej Prakash Pathak*. In the present case also, there is a difference between the qualification criteria laid down in the advertisement, and the shortlisting criteria applied while issuing the impugned notification date 14.07.2025. This is also thus a case of shortlisting, similar to that in *Yogesh Yadav*, although applied at an intermediate stage of the recruitment process, rather than at the final stage of selection.

40. I am, therefore, of the view that the impugned action of shortlisting was permissible under Clause 18 of the advertisement.

41. It may be noted that learned ASG raised an alternative submission, that the respondent's action in the present case would be justified in terms of the decision of the Constitution Bench in *Tej Prakash Pathak,* even in the absence of Clause 18. I do not consider it necessary to enter into this contention at all as, in my view, Clause 18 expressly provides the answer. For the same reason, it is not necessary to examine whether the respondent's actions were also be justified by Clause 47 of the Rules.

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[27] Emphasis supplied.

iii. Judgments cited by the petitioner

42. The judgments in *Manoj Kumar* and *Hemani Malhotra*, cited to support the petitioners' contentions on permissibility of setting such a shortlisting benchmark, do not persuade me to a contrary conclusion.

43. *Manoj Kumar* predates the judgment in *Tej Prakash Pathak.* The employer had reserved the right to shortlist candidates at different stages of recruitment. The vacancy circular provided the basic qualification criteria and selection was to be made after conducting interview of qualified candidates. The employer, however, later issued a notification dispensing with the interview, and instead allocating additional marks for essential qualifications, essential experience, and a written test. One of the candidates challenged the selection, on the ground that he possessed an additional post-graduate qualification, but it was ignored on the ground that it was not in the relevant subject. The variation in the selection procedure was not challenged.

44. Dr. George, however, relied upon the following observations of the Supreme Court:

> "*12. The standard argument made consistently and successfully before the Single Judge and the Division Bench must fail before us.* ***Clauses 14 and 19 of the vacancy circular do nothing more than reserving flexibility in the selection process. They cannot be read to invest the Institute with unbridled discretion to pick and choose candidates by supplying new criteria to the prescribed qualification. This is a classic case of arbitrary action.*** *The submission based on Clauses 14 and 19 must fail here and now.*
>
> *13. The other submission of the respondent about restricting a "PG Degree" to a "PG Degree in relevant subject" must also be rejected. The illegality in adopting and applying such an interpretation is evident from a simple reading of the Notification dated 27-4-2016 providing for additional qualifications. The additional qualifications*

> *provided under Clauses 'a' to 'd' are under two categories. While 'a', 'b' and 'd' relating to PG Diploma, PG Degree, and PhD are general qualifications providing for 5, 6 and 10 marks, respectively, the category under 'c' relates to professional qualification in the field. This is where specialisation is prescribed. If we add the requirement of specialisation to category 'b' i.e. PG Degree, then that category becomes redundant. The whole purpose of providing PG Degree independently and allocating a lesser quantum of 6 marks will be completely lost if such an interpretation is adopted. This can never be the purpose of prescribing distinct categories. No further analysis is necessary. We reject this submission also.*
>
> *14. The Single Judge as well as the Division Bench did not really analyse the prescription of additional qualifications and the distinct marks allocated to each of them, but confined their decision to restraint in judicial review and dismissed the appellant's prayer. When a citizen alleges arbitrariness in executive action, the High Court must examine the issue, of course, within the context of judicial restraint in academic matters. While respecting flexibility in executive functioning, courts must not let arbitrary action pass through. For the reasons stated above, we are of the opinion that the decisions of the Single Judge and the Division Bench are not sustainable, and we hereby set aside their judgments.*" [28]

45. This judgment is of little assistance to the petitioner in the present case. The right reserved to the employer was of shortlisting, but the entirety of the process was amended, both in the procedure itself, and by qualifying the grant of additional marks based on subject of study. Paragraph 12 of *Manoj Kumar* proscribes "*supplying new criteria to the prescribed qualification*". In the present case, however, no new criteria were supplied. Candidates were assessed against the original criteria of typing speed and number of mistakes, and candidates were shortlisted in proportion to the number of vacancies.

46. *Hemani Malhotra* has been dealt with in the Constitution Bench judgment in *Tej Prakash Pathak*. The Court held that imposition of a

[28] Emphasis supplied.

minimum qualifying mark in a *viva voce* test, which was not provided for in the recruitment advertisement, by a subsequent notification, was invalid.

47. It may further be noted that, in *Hemani Malhotra*, there was no rule akin to Clause 18 of the advertisement, which specifically reserved the right to shortlist. The judgment is, therefore, distinguishable. In any event, the Constitution Bench in *Tej Prakash Pathak,* laid down the principles referred to above - including paragraph 52 - after considering the judgment in *Hemani Malhotra*.

iv. Argument of arbitrariness

48. This takes us to the petitioners' argument that the decision in the present case, does not pass the test of arbitrariness. To establish arbitrariness to a degree calling for the interference of the writ Court, the petitioners would have to demonstrate unreasonableness, in the sense that no reasonable decision-maker could have arrived at the same conclusion, based on the material.

49. As far as this aspect is concerned, it is evident from the Note of the Registry that the appropriateness of the ratio of 1:10 was proposed in the context of the number of posts to be filled, and it was also mentioned that the next stage of examination is the Descriptive Test. The Note later recorded the modalities for conduct of the Descriptive Test, either through University academicians or officers of the Registry. It also proposed checking of answer sheets by outside academics and detailed the consequent financial outlay. This also alludes to the task becoming more burdensome with a larger number of candidates. Read as a whole,

although the considerations have not been articulated in detail, the context of the number of posts, and the reference to a Descriptive Test as the next stage, provide sufficient foundation for the term "*appropriate ratio*". Relying upon the record produced before the Court, I find the material adequate, to resist a finding of manifest arbitrariness or unreasonableness.

50. The affidavits filed by the respondent, extracted above, provide further information in support of the aforesaid decision. In the context of Dr. George's reliance upon *Mohinder Singh Gill* and *Ramjit Singh Kardam*, suffice it to state that I do not read the respondent's affidavits as supplying new reasons for the decision taken, but as adding some data and detail to the analysis. However, as noted above, I have concluded that the decision can be defended on the basis of the record alone. The Registry's Note also contains sufficient detail as to the *"administrative reasons"* which prevailed with the respondent.

51. Dr. George's reference to the illuminating commentary in Professor Powell's article also does not call for further discussion, as the respondent has not claimed any immunity or relaxed standard of judicial scrutiny, in respect of its administrative decision-making. I am guided by the general principle that all administrative decision-makers are entitled to exercise discretion in matters within their remit, in accordance with law. The writ Court examines the decision-making process alone, and restrains itself from imposing its preferred outcome on an otherwise lawful decision.[29]

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[29] *West Bengal Central School Service Commission.*

F. CONCLUSION

52. For the reasons stated above, the writ petitions are dismissed, but without any order as to costs.

PRATEEK JALAN, J

AUGUST 29, 2025
'*pv'/Ainesh/*