

Amit Tiwari and ors Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Mar-03-2014

Appellant : Amit Tiwari and ors

Respondent : State and ors

Judgement :

SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 1/71 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Panne Singh & Ors. Vs. RSRTC & Ors S.B.CIVIL WRIT PETITION NO.6757/2013 along with 13 other connected matters (See Schedule) DATE OF

JUDGMENT

:

3. d March, 2014 PRESENT HON'BLE DR.JUSTICE VINEET KOTHARI Dr. Nupur Bhati,]. Mr.Mukesh Rajpurohit,]. Mr.Lokesh Mathur,]. Mr. S.K.Verma,]. Mr. Vipin Mankad,]. for the petitioners. Mr. M.S.Rathore]. Mr. Inderjeet Yadav,]. Mr. P.R.Singh, Addl. Advocate General for RSRTC. REPORTABLE BY THE COURT:

1. This bunch of cases has come up before this Court on account of termination of services of the petitioners, who were appointed as Conductors in the respondent RSRTC, a Corporation incorporated under the provisions of The Road Transport

Corporations Act, 1950. The facts illustratively are taken from SBCWP No.6757/2013 - Panne Singh & ors. vs. RSRTC & Ors.

2. In the selection process initiated by the respondent RSRTC in SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 2/71 pursuant of advertisement Annex.1 No.219/2009-10, in all 793 posts were advertised for different categories, namely; 190 post of Drivers, 472 posts of Conductors, 12 posts of Artisan Gr.II and 119 posts of Artisan Gr.III. The petitioners were appointed after a litigative battle in this Court. The impugned termination order is dated 27/5/2013 passed by the Executive Director (Traffic) and the said termination order was passed after giving a show cause notice to the petitioner on 11/1/2013 in which the petitioner was called upon to show cause giving reference to the previous litigation of the said selection process decided by this Court that the petitioner may produce proof of the fact that he did not possess Driving Licence of Heavy Vehicle and also that he had challenged the said condition of requirement of possessing such Driving Licence prior to 9/11/2011, which is the date of judgment of coordinate bench of this Court at Jaipur in SBCWP No.13855/2011 - Prem Prakash Sharma & Ors. vs. RSRTC & Ors. decided on 9/11/2011. The petitioner furnished an explanation and from the said reply, apparently, it appears that he satisfied both these conditions of not possessing the Heavy Driving Licence and also that he had challenged the said condition by way of his writ petition No.10019/2011, which was filed on 17/10/2011, prior to 9/11/2011 and, therefore, his services could not be terminated. However, the services of the petitioner came to be terminated vide impugned order dated 27/5/2013 (Annex.16) which was passed in respect of 36 persons including the present petitioner at serial No.16 - Shri Panney Singh s/o Jai Singh. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 3/71 3. While issuing notices to the respondents, a coordinate bench of this Court stayed the effect and operation of the termination order dated 27/5/2013 and the petitioners are, thus, still continuing in the said service of Conductors. The respondent RSRTC has filed a reply to the writ petition and has contested the writ petitions through Shri P.R.Singh, Addl. Advocate General and standing Counsel for the RSRTC and on behalf of petitioners, arguments were led by Ms. Nupur Bhati, Mr. Mukesh

Rajpurohit with the host of learned counsels.

4. The selection process of Drivers and Conductors of respondent RSRTC has a statutory as well as litigation background, as aforesaid, and a brief look at both of them is necessary for resolving the present dispute.

5. Firstly, a brief review of the judgments rendered by coordinate benches, which have been cited at the bar, will be not only opportune in progression with reference to their dates but necessary to appreciate the controversy in hand.

6. On 31/5/2013 in the case of Narpat Dan vs. RSRTC & Anr. & 35 other writ petitions since reported in 2011 (3) WLC677 a coordinate bench of this court dealing with the said selection process of Drivers and Conductors examined the controversy relating to higher cut off marks for reserved category of OBC, SBC, SC & ST in comparison to cut off marks of general category and finding the SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 4/71 same to be illegal and relying upon the judgments of Hon'ble Supreme Court in the cases of Indra Sawhney vs. Union of India (AIR 1993 SC477, R.K.Sabharwal vs. State of Punjab (1995) 2 SCC745& Ritesh R.Sah vs. Dr. Y.L.Yamul & Ors. (AIR 1996 SC1378 the learned Single Judge of this Court (Hon'ble G.K.Vyas,J.) directed the respondent RSRTC to redraw the merit list of the selected candidates while considering the candidates of reserved categories; SC/ST, OBC and SBC against the unreserved posts as per their respective merits and, thereafter, remaining candidates of reserved categories of OBC and other reserved categories may be considered against the quota of reservation prescribed according to the Rules and then publish the cut off marks of reserved categories and general category strictly as per the adjudication made by Hon'ble Supreme Court in the aforesaid cases and, thereafter, to proceed further with the selection process and the entire exercise was directed to be completed within a period of three months. The RSRTC appears to have redrawn the merit list in pursuance of the aforesaid directions of the learned Single Judge, which judgment appears to have become final, as no further challenge to the same was made before the higher Courts.

7. Another spate of litigation landed before the Jaipur Bench in the case of Nirmal Kumar Jain & Ors vs. RSRTC - SBCWP No.14710/2010 reported in (2012) 3 RLW2212 and 79 other writ petitions came to be disposed of on 2/9/2011 (Hon'ble Justice M.N.Bhandari & other judgments referred hereafter also were SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 5/71 rendered by His Lordship) and after hearing the large number of advocates on both sides and Advocate General on behalf of the State Government and Sr. Advocate appearing for the the RSRTC, the learned Single Judge of this Court at Jaipur decided that the conditions imposed by the office order dated 23/4/2010, which were incorporated in the advertisement dated 24/9/2010 for the said selection process and the condition for possession of Driving Licence for heavy motor vehicles by the applicants for the post of Conductors and also the Conductors Licence including the Badge (inadvertently mentioned as Batch in the Judgment), was challenged as illegal and the learned Single Judge despite the arguments of learned Advocate General to the contrary, which would be referred slightly later, passed an almost agreed order between the parties, perhaps with a view to not to disturb the ongoing process of selection, on which the respondent Corporation was said to have spent more than one crore rupees and was in dire urgent need of Drivers and Conductors to ply buses for the convenience of public at large, held that the condition of Trade Test (including theory paper & practical driving test) for Conductors with a condition to possess the Driving Licence for heavy motor vehicles could not be insisted upon since the amendment incorporating the said conditions for such candidates under Office Order dated 23/4/2010 was not notified in the Gazette in terms of amended provisions of Section 45 of the 1950 Act and, therefore, the appointments to the said posts may be made without insisting upon the said condition. The relevant portion of the judgment of learned Single Judge is quoted below for ready reference:- SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 6/71 In view of the discussion made above, I am not required to go into other aspects of the matter, like conflict of regulations with the provisions of Act of 1988 and the Rules made thereunder as learned Advocate General agreed to look into the Rules of 1990 for amendment, if in future Corporation needs to ply/run their business without a

Conductor and thereby to give dual responsibilities to the Driver and at the same time, to have an arrangement to use Driver and Conductor with interchangeable duties in certain contingencies. Looking to all these facts, issue remains for my consideration is that as to what relief can be granted to petitioners. The issue aforesaid was argued by both the parties and they agreed that selection made to the post of Conductor/Driver may not be disturbed as the Corporation has incurred more than Rs. 1 crore and they are in need of Driver/Conductor to ply buses smoothly for the convenience of the public at large. In view of the agreement on the issue of relief by both the parties, these writ petitions are disposed of with the following directions and observations :- 1. The Corporation will not effect order dated 23.4.2010 and amendment specified therein, on the petitioners, till it is notified in the gazette.

2. The petitioners, who have already appeared in the written examination either under the interim order of this court or at the instance of the Corporation, would be eligible to appear in the trade test provided they have obtained required cut off marks or qualifying marks in the written test.

3. The petitioners, who have already undergone for SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 7/71 written examination and also for trade test, would be considered for their appointment to the posts of Driver or Conductor, as the case may be, provided they have obtained merit position in the selection and subject to qualifying interview or medical test, as the case may be and if any.

4. Those petitioners, who were not in possession of the qualification as per unamendment regulations of the Corporation on the last date of submission of the application i.e. 24.9.2010, will have no right of consideration for appointment to the posts of Driver and Conductor, as the case may be.

5. The Corporation would be at liberty to request the State Government for sending amended regulations for its gazette notification and State Government would also be at liberty to make amendment in the Rules of 1990, if they so wish, after taking note of proposed changes in the working of the Corporation with the introduction of buses with new technology.

6. If any of the petitioners obtained merit position for their appointment on the posts of Driver or Conductor, as the case may be, then they have agreed to possess required qualification as provided under amended regulations within a period of two years, if amended regulation is notified in a gazette and period of two years would be counted from the date of gazette notification. In case, they failed to obtain the required qualification within the period given above, liable to be discontinued from the services of the Corporation. However, to obtain the qualification of secondary class a period of 3 years from the date of notification would be admissible for them to obtain the required qualification. The aforesaid condition may be incorporated while issuing SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 8/71 appointment orders.

7. The Corporation will run their buses in compliance of the Rules of 1990 unless amended by the Government to have a provision to run a bus without a Conductor.

8. Directions referred to aforesaid would be applicable only to petitioners before this High Court and appeared in the written examination. This is to avoid delay in completion of selections.

9. Respondent Corporation has agreed not to debar any candidate for want of batch, (Sic! Badge under Rule 3.15 of the Rajasthan Motor Vehicles Rules,1990) till it becomes available with the Transport Department.

10. Aforesaid arrangement has been agreed by both the parties so that selection is not disturbed. This is more so when it is unknown to everyone as to whether any of the petitioners will fall in the merit to get appointment because result of the selection is yet to be declared by the Corporation. Directions aforesaid are thus kept limited to the petitioners as given by the Hon'ble Apex Court in the case of Sanjay Singh vs. U.P. Public Service Commission, Allahabad and another reported in JT20072) SC534 wherein holding application of scaling for selection to the Judicial Services to be illegal, selection was not disturbed so as the application of scaling and marks reduced therein, however, relief was granted limited to the petitioners, if they obtained merit position vis-a-vis selected candidates.. 8. In

another bunch of litigation before the Jaipur Bench, the same learned Single Judge in another batch of writ petitions led by SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 9/71 Prem Prakash Sharma vs. RSRTC & others - SBCWP No.13855/2011 and 95 other writ petitions on 9/11/2011 almost created a water shed in the said litigation process for this selection process and, though several grounds were raised as noticed by the learned Single Judge, mainly the conditions of holding Trade Test for the post of Conductors for which 50 marks were allocated and minimum passing marks were prescribed in such Trade Test which included theory paper and practical driving test in simulated conditions and while dealing with the said requirement of Trade Test and allocation of marks and the very requirement of holding such Trade Test to the extent of practical driving knowledge for the post of Conductors, the learned Single Judge again passed an agreed order, mainly on the certain concessions made by the respondent RSRTC as would be discussed hereinafter. The relevant portion of the said judgment on the agreed terms are quoted for ready reference:- Looking to the fact that the respondent Corporation has agreed to redress the grievance as indicated in their arguments and the petitioners are also in agreement to the aforesaid, these writ petitions so as the stay applications are disposed of on the following agreed terms between the parties.

1. Those petitioners who have appeared for the post of Conductor and were asked to undertake driving to assess their performance for 30 marks out of 50 marks would be benefited by redetermination of marks of trade test on the SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 10/71 percentage of marks as obtained in the written examination of 20 marks in trade test. Whatever percentage of marks they have obtained out of 20 marks would be taken into consideration on remaining 30 marks and providing same percentage of marks on 30 marks, determination of marks on total 50 marks would be made. For illustration, if a candidate has obtained 15 marks out of 20, his marks in the trade test would be considered as 37.5 out of 50 marks. Same way, if one has obtained 10 marks out of 20, then his marks would be taken as 25 out of 50 marks. Aforesaid formula would be applicable to the petitioners as well as those appeared in the trade test

pursuant to the order of the court in the earlier litigation where challenge was to conditions to possess driving licence for the post of Conductor. The merit position for such petitioners would be redetermined based on the aforesaid and if they find place in the merit, the Corporation will give appointment to the meritorious candidates. This direction would be applicable to those petitioners who had contested the matter by challenging requirement of driving licence and remain successful in the petitions. (This condition is at the root of present set of writ petitions) 2. The respondent Corporation will not insist upon minimum pass marks in the trade test, accordingly, one would not be denied benefit of appointment merely for the reason that he/she has failed to secure minimum pass marks in the trade test. The appointment would, however, be purely on the basis of merit and if one has failed to secure merit marks, he/she would not be entitled for appointment. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 11/71 3. So far as discrepancies shown in the first list on website and amended list is concerned, petitioners, who are aggrieved by the aforesaid, would be at liberty to make a representation to the respondent Corporation to allow inspection of copies to see their actual marks as written examination as well as the written test as a part of trade test. After inspection of copies, if any discrepancy is found in the marks shown in the final list, the Corporation will rectify the mistake by indicating the same marks as is obtained by the candidate in the written examination as well as written test as a part of trade test.

4. So far as petitioners who were allowed for the trade test pursuant to the cut off marks indicated by the Corporation at the first instance would not be deprived to get appointment subject to their merit position only on the ground that they failed to get required cut off marks subsequently declared i.e. after the judgment in the case of Narpat Dan (supra).

5. Those petitioners who are aggrieved by the result of the medical test would be at liberty to make a representation to the respondent Corporation for their re-examination. In case of submission of representation, Corporation will get the candidate re-examined by the medical board to be constituted by the Superintendent, SMS Medical College & Hospital, Jaipur. Aforesaid directions

would be applicable to those petitioners who are aggrieved by the medical examination and would also be applicable to the SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 12/71 medical certificate in regard to their colour blindness. If any of the candidates is found medical fit and obtains required merit position then he would be given appointment.

6. So far as issue of qualification of 4 candidates to the post of Artisan Gr III is concerned, their cases are sub judice before this court thus final outcome of those writ petitions will decide fact of such candidates.

7. The Corporation would extend benefit of 1% reservation to those candidates falling in SBC category subject to their merit position.

8. Petitioners, who have appeared for the post of Conductor have agreed to abide by the directions issued by this court in the case of Nirmal Kumar Jain (supra) and, accordingly, would possess driving licence within the period given therein.

9. The directions aforesaid would not be applicable to those petitioners who had earlier preferred writ petitions before the Principal Seat, Jodhpur on the same issue and their writ petitions were dismissed thereafter.

10. The issue as to whether reserve caste category candidates taken benefit of relaxation or concession in the selection would be entitled to shift to general category is kept open as presently aforesaid has not been pressed by the petitioners Same way, the issue regarding determination of merit SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 13/71 after considering academic qualification is also kept open for adjudication in future, if so raised. The respondent Corporation is now expected to undertake and complete the exercise, as indicated above, within shortest possible time.. 9. Soon after rendering the judgment in the case of Prem Prakash on 9/11/2011, the same learned Single Judge was called upon to decide the batch of writ petitions & review petitions in the case of Ramesh Chand vs. RSRTC & Ors. - SBCWP No.3600/2012 and in this batch of cases the learned Single Judge decided on 30/7/2012 two issues; (i) the

candidates, who failed to secure the required marks in the written examination were given appointment leaving those who secured more marks than them and (ii) the petitioners, who in the judgment of Prem Prakash (supra), who were not in a possession of driving licence while applying for the post of Conductors and were directed to be given proportionate marks in the Trade Test on the basis of formula evolved in the case of Prem Prakash of giving 2 times marks obtained by them in the written/theory paper of the Trade test while dispensing with the requirement of undergoing the practical test of driving, which is the other part of the Trade test and thus, the second issue came before the Court as to whether the candidates who approached the Court on or before 9/11/2011 (the date of judgment in the case of Prem Prakash Sharma) were liable to be retained or even other persons should be given the benefit of such higher marks in the Trade test SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 14/71 on the basis of formula so evolved. The said two issues were determined by the learned Single Judge in the following manner:- Issue No.1 - Learned counsel for petitioners allege that the candidates failed to secure required cut off marks in the written examination have been given appointment leaving those who are better placed. It is also submitted that there are candidates who have not secured final cut off marks, yet given appointment. Learned counsel for respondents submit that for general category, initially, cut off marks in written examination were 65, later on, it was changed to 75 however pursuant to the directions of this court in the case of Prem Prakash Sharma (supra) those candidates were adjudged suitably for trade test if secured earlier cut off marks but subject to the condition that they had earlier approached this court. This is in view of the fact that they were not party in the case of Narpat Dan (supra) thus judgment in that case should not have adversely affected them. I find that while making selection, respondents determined cut off marks on two occasions. Initially, on completion of written examination so as to make candidates eligible for trade test. The cut off marks was changed in view of the judgment in the case of Narpat Dan (supra). The revision of cut off marks was made from lower to higher only for general/ open category candidates otherwise it was lowered down for reserve category candidates. However, it was without hearing them either in the case of Narpat Dan (supra) or by the SBCWP No.6757/2013 -

Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 15/71 respondents thus a direction was given by this court in the case of Prem Prakash Sharma (supra) to consider petitioners therein for appointment but it was only for general/ open category candidates who had secured higher marks than initial cut off marks. Hence, if any candidate failed to secure cut off marks either prescribed initially or later on yet allowed in the trade test and selected leaving the petitioners then action of the respondents is discriminatory and illegal. It is also seen by this court that even the candidates secured less marks than the final cut off marks, have also been selected and appointed. The aforesaid is also illegal as respondents cannot ignore candidates having higher marks. It is seen that earlier cut off marks for general category candidates was 65, whereas, for OBC it was 77. Aforesaid cut off marks were changed, making it 75 marks for general category and 71 for OBC category to become eligible for trade test. As per the judgment in the case of Prem Prakash Shama (supra), general category candidates, who approached this court in the aforesaid set of petitions on or prior to 9.11.2011 would be entitled to the benefit of earlier cut off marks thus, if any other candidate was permitted to appear in the trade test followed by selection and appointment without obtaining required cut off marks in the written examination then it is due to default of the respondents. The respondents are accordingly directed to reconsider the matter so that no candidate is continued if obtained less marks than final cut off marks or the cut off marks of the written examination. If respondents intend to continue them, then petitioners SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 16/71 who have secured better marks would also be eligible for appointment. The direction aforesaid would be applied after taking precaution of those candidates belonging to open/ general category and were part of the litigation in the case of Prem Prakash Sharma (supra) or in the earlier litigation thus covered by the direction No.4 in the case of Prem Prakash Sharma (supra) because their required cut off marks for written examination would be 65 but not for others. The aforesaid arrangement was allowed in view of the consent of the Corporation in the case of Prem Prakash Sharma (supra), however, if general category candidates had not approached this court before 9.11.2011 then they would not be entitled to such benefit because

consent of the Corporation cannot be applied in rem, rather, their candidature would be considered as per the revised cut off marks. Accordingly, first issue is allowed in favour of the petitioners. Respondents would be free to discontinue the candidates if appointed ignoring cut off marks in the written examination or final cut off marks. The discontinuance would however be after giving an opportunity of hearing to them. In case they are continued despite their low marks than cut off marks then those petitioners, who have obtained higher marks, would be entitled to appointment. Issue No.2 - Second issue raised by the petitioners is arising out of the judgment in the case of Prem Prakash Sharma (supra). In the aforesaid judgment, it was agreed that those petitioners, who were not in possession of driving licence and applied for the post of Conductor, would be given proportionate SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 17/71 marks in the trade test on the formula given in the said judgment.

2. Second issue pertains to driving licence by those who have applied for the post of Conductor. Learned counsel for petitioners submit that amendment in the Regulations has not been made thus condition to possess driving licence cannot be imposed. Learned counsel for respondents, on the other hand, submit that condition to possess driving licence would not be imposed in the new recruitment but if Regulations are amended then those appointed on the post of Conductor will give an undertaking to possess driving licence within a period of two years from the date of notification of amended Regulations. By the aforesaid, they would be kept at par with earlier appointees. I have considered the submission and find that respondents themselves have done away with the condition to possess driving licence by those applied for the post of Conductor thus, presently, aforesaid condition would not be imposed. The respondent Corporation would however be at liberty to impose such a condition if, finally, Regulations are amended. If any undertaking is required as was then in the previous litigation in the case of Prem Prakash Sharma (supra) then Corporation would be at liberty to impose such a condition but merely that certain candidates are not in possession of driving licence at present, would not be debarred to apply and compete SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 18/71 in the selection for the post of

Conductor.

3. The third issue pertains to the qualification. It is submitted that under the Act, required qualification is only VIIIth pass. Respondent Corporation put a condition to possess Secondary Certificate ignoring the aforesaid. I find that the condition to possess required qualification should be as per the Regulations. If Regulations provide Secondary to be minimum qualification, then the aforesaid condition would be adhered to. This is more so when it has not been challenged. If Regulations itself provide qualification of VIIIth then the Corporation will not debar the candidate(s) in absence of the qualification of Secondary, if he is otherwise in possession the qualification of Class VIIIth pass and other condition of eligibility. With the aforesaid, all the writ petitions pertaining to new recruitment so as the stay applications are disposed of. In view of the directions and observations made above, review petitions preferred by the respondent Corporation and private petitioners also stand disposed of.. 10. The fall out of the aforesaid litigations and the judgments came on petitioners like Hanuman Singh, who were served with the termination notice during the probation period as Conductors having been appointed in pursuance of formula evolved in the Prem Prakash case (supra) calling upon them to show cause (i) Whether SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 19/71 he was in possession of the heavy motor vehicle driving licence or not and (ii) whether he had laid a challenge to the condition to possess such licence prior to 9/11/2011. If these two purported conditions were not satisfied, his services were liable to be terminated. Though, Hanuman Singh replied the said show cause notice, his services came to be terminated by the respondent RSRTC and upon writ petition filed by him - SBCWP No.9185/2013, the same learned Single Judge on 31/5/2013 dismissed the aforesaid writ petition of Hanuman Singh in the following terms:- The petitioner is aggrieved by the order dated 27.05.2013 whereby his services have been dis- continued. Learned counsel submits that pursuant to the selection for the post of Conductor, petitioner was given appointment as probationer trainee vide order dated 31.01.2012. The petitioner was then served with show cause notice dated 11.01.2013 as to why his service may not be discontinued. It is in view of various judgments referred therein. The petitioner was specifically called upon to indicate as to whether he was in

possession of heavy motor vehicle license and as to whether challenge to the condition to possess such licence was made prior to 09.11.2011. The petitioner gave reply vide his letter dated 07.03.2013 wherein copy of the writ petition earlier filed by the petitioner was enclosed to indicate its filing prior to 09.11.2011 and to show all the issues raised therein. A prayer was thus made to drop the notice but the respondents have failed to consider the aforesaid and passed impugned order of termination. The similar SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 20/71 order has been stayed by the Principal Seat at Jodhpur. In view of the above, while issuing notice, stay may be granted..... To appreciate the fact as to whether petitioner had ever challenged requirement of the heavy motor vehicle driving licence can very well be looked into by referring earlier writ petition enclosed with this petition and otherwise part of reply to show cause notice. Perusal of writ petition does not show a challenge to the condition requiring heavy motor vehicle driving licence for the post of Conductor. What was challenged by petitioner was the procedure with prayer that trade test should consist of 20 marks instead of 50 marks. The trade test for 30 marks should not have been made applicable to the post of Conductor. For ready reference, grounds of challenge taken by petitioner in earlier writ petition are quoted hereasunder: a) That the action of the respondents of declaring petitioners not qualified for the post of conductor is ex-facie illegal, arbitrary and malafide. b) That the action of the respondents of declaring the petitioners not qualified is against the above referred procedure of selection prescribed and approved by the Management Board of the respondent Corporation. c) That so far as selection for the post of conductor is concerned, successful candidates of written examination have SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 21/71 been asked to appear both in trade test and interview, whereas there was no need to appear in trade for the post of conductor as per prescribed and approved procedure of selection. Further the respondents have fixed minimum and maximum marks equality in trade test / interview as 30 & 20 respectively and declared the candidates not qualified who secured marks lesser than 30, whereas maximum marks for interview is 20 for the post of conductor and therefore the respondents should have prepared merit list of

the successful candidates out of 120 marks instead of 150 marks since trade test of 30 marks is not applicable on the post of conductor. As such whole action and selection process adopted by the respondents is faulty, against the prescribed and approved selection process and therefore the same is liable to be quashed and set aside. d) That the action of the respondents is wholly illegal, arbitrary, malice in law because the petitioners have been subjected to appear in trade test beyond the prescribed and approved selection process and have been declared not qualified under the garb of said trade test which is not applicable on them. Thus, due to such illegal, arbitrary and malice action of the respondents the whole career of the petitioners has been ruined and they have been deprived to get appointment. (Sic! SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 22/71 Here was the challenge to the requirement of Driving Licence and driving knowledge by Conductors, by the petitioner) The learned Single Judge, however, repelled the challenge by holding as under:- The direction aforesaid has not been read by the petitioner properly. It is not that the issue was determined in the case of Prem Prakash Sharma (supra) only but was further clarified in the subsequent litigation of Ramesh Chand Vs. Rajasthan State Road Transport Corporation & Ors., S.B. Civil Writ Petition No.3600/2012, decided on 30.07.2012. Copy of the judgment has been enclosed at Annexure-5 by the petitioner himself. The relevant para of the said judgment is also quoted for ready reference: I have considered the submissions of learned counsel for parties and find that judgment in the case of Prem Prakash Sharma (supra) was more or less on agreed terms. As per the judgment in the case of Prem Prakash Sharma (supra), revised marks in the trade test was to be applied. The issue aforesaid was considered in the light of the condition to possess driving licence for the post of Conductor and it was only for those who were not in possession of driving licence. The challenge to the condition was thus not made by those who were having driving licence while applying for the post of Conductor. To clarify the aforesaid, the revised criteria for trade test was applicable only on those who approached this court on SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 23/71 or before 9.11.2011 i.e. the date of judgment in the case of Prem Prakash Sharma (supra) or in the earlier judgment in

the case of Nirmal Kumar Jain (supra). The judgment aforesaid is not applicable to those who were in possession of driving licence so as Conductor's licence while applying for the post of Conductor and failed to challenge it before appointment. (This proposition gave rise to termination of petitioners herein). If the Corporation has revised the marks of trade test even for those candidates who were in possession of driving licence and not earlier challenged the condition to possess driving licence while applying for the post of Conductor, are not to be governed by the directions in the case of Prem Prakash Sharma (supra). It is for the reason that immediately after the judgment in the case of Prem Prakash Sharma (supra), appointments were given thus whoever failed to approach this court before appointment cannot be governed by the earlier judgment due to delay and consent of the Corporation is limited to those earlier petitions. Accordingly, if the Corporation has revised the marks of the trade test for those who are in possession of driving licence while applying for the post of Conductor or for those who had not approached this court on or before 9.11.2011 and denied benefit of revised marks to the petitioners then their action becomes discriminatory in nature. Accordingly, they are directed either to withdraw benefit of revised marks in the trade test for those who were not before the court on or before 9.11.2011 and otherwise the condition was not challenged as candidates were in possession of driving licence. If the appointments are cancelled in those cases, it SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 24/71 should be by applying principles of natural justice. In case, respondent Corporation takes a decision to continue them, then all the petitioners would be eligible for revised cut off marks in the trade test, who applied for the post of Conductor and if find more marks than of candidates appointed, would also be eligible for appointment. The limited application of earlier judgment with cut off date in the case of Prem Prakash Sharma (supra) can be in view of judgment of the Apex Court in the case of Kailash Chand Sharma versus State of Rajasthan & ors., reported as (2002) 6 SCC562 Therein also, petitions filed after the earlier and main judgment were not entertained.

. The para quoted above shows as to why cut-off date of 09.11.2011 was given. The direction in the case of Prem Prakash Sharma (supra) for enhancement of marks of trade test would not be applicable to those who are in possession of

required driving licence as licensee could perform driving skills. Since the petitioner is in possession of driving licence thus was wrongly extended benefit of enhancement of marks in trade test. Thus, respondents have rightly rectified the error by passing impugned order after show cause notice. It is necessary to indicate that petitioner had appeared in the written test followed by trade test prior to filing of first writ petition, rather filing of petition was after declaration of result as is coming out from bare perusal of Para No.7 of the earlier writ petition No.14595/2011. It is settled law that process of selection or condition of eligibility cannot be challenged by a candidate who remain unsuccessful in SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 25/71 the selection test. If at all challenge is to be made, it should be immediately on appearance in the selection and in any case before declaration of result. The candidate remaining unsuccessful cannot challenge process of selection. The issue aforesaid has been decided by Hon'ble Apex Court in the case of Manish Kumar Shahi Vs. State of Bihar & Ors., reported in (2010) 12 SCC576 The relevant para of the aforesaid judgment is quoted hereasunder: We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in Madan Lal v. State of J.

and K. : (1995) 3 SCC486 Marripati Nagaraja v. Government of Andhra Pradesh and Ors. : (2007) 11 SCC522 Dhananjay Malik and Ors. v. State of Uttaranchal and Ors. : (2008) 4 SCC171 Amlan Jyoti Borooah v. State of Assam : (2009) 3 SCC227 and K.A. Nagamani v. Indian Airlines and Ors. (supra).

. The judgment referred to above applies even to SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 26/71 this case as challenge to the condition of driving licence could have been in the hands of petitioner after declaration of result. At this stage, learned counsel for petitioner submits that there are many candidates who had challenged the condition to possess driving licence subsequent to declaration of result. He was asked to substantiate the argument by naming the candidates but failed to do so. The factual plea cannot be accepted in absence of material. In view of the discussion made above, I do not find any illegality in the action of the respondents for passing impugned order. Accordingly, writ petition so as the stay application are dismissed. Since the litigation is pending consideration before the Principal Seat, Jodhpur thus Registry is directed to send copy of this judgment to the Managing Director of the Corporation for appropriate reference in pending writ petition before the Principal Seat, Jodhpur.

. 10A. Let us now test the classification created by Prem Prakash and restated in Ramesh Chand (supra) by following example. Let us take cases of two candidates DL (a candidate who had the driving licence and after passing in the written test actually appeared in both, theory and practical part of Trade Test and did not file any writ petition) and another candidate PP (like Prem Prakash, who did not possess the Driving Licence but challenged the condition before Court before 09.11.2011 and got appointment because of marks awarded as per formula of 2.5 times of marks obtained in theory paper of the Trade Test). SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 27/71 DL PP Written Exams 50 out 100 50 out of 100 Trade Test:

1. Theory Paper 15 out of 20 15 out of 20

2. Practical 15 out of 30 - 30 out of 50 37.50 out 50 (Due to formula) Total marks obtained 80 out of 150 87.50 out of 150 So now by aforesaid classification, DL even though appointed, possessing all qualifications and having appeared in Trade test will be terminated but PP will get preference in appointment over DL because of his 87.50 assumed marks due to formula. Is it justified, or is it legally

sustainable classification?. Can the two candidates who got same marks in actual performance, still PP will get preference in appointment and DL will lose his job even though he satisfied all conditions. I think, the answer has to be in negative !

11. The further appeal filed by the Hanuman Singh before the Division Bench also failed and the Division Bench of this Court dismissed his DB Civil Special Appeal (Writ) No.718/2013 - Hanuman Singh vs. RSRTC & Ors on 24/9/2013 in the following terms:- It was in clear terms specified that the revised criteria for trade test was applicable only to those who had approached this Court on or before 9.11.2011 i.e.before the date of judgment in Prem Prakash Sharma (supra) and was in fact for those who were not in possession of the driving licence. It was further elucidated that if the Corporation had revised the marks of trade test even for candidates who were in possession of driving licence and had not earlier challenged this condition while applying for the post of conductor would not be governed by the directions contained in Prem Prakash Sharma (supra). It was elaborated further that if the Corporation had revised the marks of the trade test for those who were in SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 28/71 possession of the driving licence while applying for the post of Conductor or those who had not approached this Court on or before 9.11.2011, the benefit of revised marks of the trade test would be withdrawn. The appellant who had meanwhile been appointed on 31.1.2012 in the post of Conductor, was thereafter served with a notice requiring him to furnish the proof that he did not possess the driving licence of a heavy motor vehicle at the relevant point of time or that he had challenged the criteria to this effect on or before 9.11.2011, where after on a consideration of the explanation submitted by him, his services were terminated on 27.5.2013, being adjudged to be beyond the purview of the benefit extended by Prem Prakash Sharma (supra) and Ramesh Chand Vs. Rajasthan State Road Transport Corporation & Ors.(supra). Mr.Goyal has urged that as the appellant had before 9.11.2011 challenged the requirement of subjecting the candidates contending for the post of Conductor to the test to adjudge their driving skills, he was entitled to the benefit of revised marks in the trade test as provided in Prem Prakash Sharma (supra), and thus, the impugned judgment and order to the contrary, is liable to be interfered with. The learned counsel has further urged that

in any view of the matter as several posts of conductor under the Corporation are vacant as on date, on the basis of the appellant's performance and the services rendered, an appropriate writ, order or direction ought to be issued to restore him in service with all consequential benefits. Upon hearing the learned counsel for the appellant and on a consideration of the materials on record, more particularly the sequence of events witnessed by the decisions rendered in Prem Prakash Sharma (supra) and Ramesh Chand (supra), we do not feel persuaded to sustain these pleas. Having regard to the nature of the challenge, admittedly laid by the appellant/writ petitioner as referred to hereinabove, and the reliefs extended in Prem Prakash Sharma (supra) subject to the consciously prescribed requisites therefor, judicial intervention as sought for by the appellant is not warranted. The learned Single Judge, as the impugned judgment and order would reveal, after traversing the pleaded facts and on a consideration as well of the factual backdrop in details and the considerations on which the reliefs in Prem Prakash Sharma (supra) and Ramesh Chand (supra) SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 29/71 had been granted, in our view, rightly refused to interfere with the termination of his services. At this point of time on the culmination of such repeated bouts of protracted litigation pertaining to a process for recruitment to public office, no further interjection is called for. Availability of vacancies as pleaded by the appellant is no ground to justify such a course. In the present intra court appeal, in view of the contextual facts, we do not find any convincing and cogent reason to differ from the reasonings and the conclusions recorded in the impugned judgment and order. The appeal lacks in merit and is dismissed. No costs. The stay application also stands rejected..

12. With this background of legal battle in the said selection process of 2010 for the posts of Conductors, the present set of cases have arisen before this Court and as the learned counsel for the respondent RSRTC, Mr. P.R.Singh urged that the present set of petitioners are also situated similarly as aforesaid Hanuman Singh was and since he has already lost before this Court by way of aforesaid judgments upto the Division Bench, the present set of writ petitions also deserve to be dismissed in same terms. This was the sheet anchor of the contentions raised by the learned counsel for the respondent RSRTC, though he fairly and candidly

submitted that he was unable to explain the concession made by the learned counsel for the respondent RSRTC before the Jaipur Bench of this Court in the case of Prem Prakash (supra), wherein, the said formula of 2 times of the marks in Trade test, which carried 50 marks in total was evolved and though Mr. P.R.Singh sought to rely upon the same arguments as raised by the learned Addl. Advocate General Mr. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 30/71 G.S.Bafna before the Jaipur Bench in the case of Ramesh Chand (Supra), the learned counsel Mr. P.R.Singh at best could produce the relevant documents before this Court showing the approval of the Policy decision of respondent RSRTC for evolving the said method of Trade test and imposing condition of holding Driving Licence and qualification at the level of Secondary Education for Conductors in the said decision of RSRTC dated 23/4/2010, which had the approval of the State Government also on the preceding date 22/4/2010, which documents are being quoted below.

13. On the other hand, Ms. Nupur Bhati along with other learned counsels appearing for the petitioners vehemently submitted that the appointment of present petitioners could not be terminated on the ground that they were more qualified and even possessing the Driving Licence for the post of Conductors, which was the originally envisaged condition in the advertisement, and having been appointed in pursuance of the formula evolved in the case of Prem Prakash (Supra), they could not be terminated on the aforesaid two grounds namely; (i) possessing the Driving Licence for heavy motor vehicles and (ii) not having challenged the said condition of the advertisement prior to 9/11/2011, which is date of judgment in the case of Prem Prakash (Supra). They urged that neither such negative burden of proof could be laid upon the appointees nor this could be the condition for terminating their services now. They also pointed out that the petitioner like Panney Singh and others had also challenged the aforesaid condition of possessing the Driving Licence SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 31/71 before this Court prior to 9/11/2011 and, therefore, factually the aforesaid ground of their termination now was unsustainable viz. the writ petition No.10019/2011 of Panney Singh was filed on 17/10/2011 under the caption Bharat

Singh & Ors. vs. RSRTC vide NIC status report Annex.14 (page 109 of the paper book) and the learned counsels also urged that for the fault of the respondent RSRTC, namely; for imposing such a condition in the advertisement and petitioners fulfilling the same having been appointed as Conductors, now cannot be thrown out on account of confusion and complexities made on account of concessions made by the RSRTC before this court in the case of Prem Prakash (Supra) and Ramesh Chand (Supra).

14. I have heard the learned counsels for the parties at length and carefully perused the judgments of this Court cited above.

15. At this juncture, this Court would like to pause and give a reflection on the conditions imposed in the selection process of Drivers and Conductors by the respondent RSRTC in pursuance of the amendment and later on retracting from the same and making concession before this Court, resulting in the selection process of the Drivers and Conductors of the year 2010 skewed & distorted because of the same.

16. First the relevant provisions in the Central Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989, Rajasthan Motor Vehicles SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 32/71 Rules, 1990 & Road Transport Corporations Act, 1950 & Regulations of 1965 to their relevant extent are quoted below for ready reference:- Relevant provisions of the Central Motor Vehicles Act, 1988 - Section 9 - Grant of driving licence (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area- (i) in which he ordinarily resides or carries on business, or (ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated. for the issue to him of a driving licence. (2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government. (3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence: Provided that no such test shall be necessary where the

applicant produces proof to show that- (a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 33/71 (ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or (iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8, (b) the applicant is not suffering from any disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in subsection (3) of section 8: Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub-section, if the applicant possesses a driving certificate issued by any institution recognised in this behalf by the State Government. (4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12. (5) Where the applicant does not pass the test, he may be permitted to re-appear for the test after a period of seven days: Provided that where the applicant does not pass SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 34/71 the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.]. (6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers: Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear. (7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall

issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence: Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority: Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence. (8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he- (a) is a habitual criminal or a habitual drunkard; or (b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 35/71 (c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked, it may, for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority. (9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear. Section 27 - Power of Central Government to make rules (a) regarding conditions referred to in sub-section (2) of Section 3; (b) providing for the form in which the application for learner's licence may be made, the information it shall contain and the documents to be submitted with the application referred to in sub-section (2) of section 8; (c) providing for the form of medical certificate referred to in sub-section (3) of section 8; (d) providing for the particulars for the test referred to in sub-section (5) of section 8; (e) providing for the form in which the application for driving licence may be made, the information it shall contain and the documents to be submitted with the application referred to in sub-section (2) of section 9; (f) providing for the particulars regarding test of competence to drive, referred to in sub-section (3) of section 9; (g) specifying the

minimum educational qualifications of persons to whom licences to SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 36/71 drive transport vehicles may be issued under this Act and the time within which such qualifications are to be acquired by such persons; (h) providing for the form and contents of the licences referred to in sub-section (1) of section 10; (i) providing for the form and contents of the application referred to in subsection (1) of section 11 and documents to be submitted with the application and the fee to be charged; (j) providing for the conditions subject to which section 9 shall apply to an application made under section 11; (k) providing for the form and contents of the application referred to in subsection (1) of section 15 and the documents to accompany such application under sub-section (2) of section 15; (l) providing for the authority to grant licences under sub-section (l) of section 18; (m) specifying the fees payable under sub-section (2) of section 8, sub-section (2) of section 9 and sub-sections (3) and (4) of section 15 for the grant of learner's licences, and for the grant and renewal of driving licences and licences for the purpose of regulating the schools or establishments for imparting instructions in driving motor vehicles; (n) specifying the acts for the purposes of clause (f) of sub-section (1) of section 19; (o) specifying the offences under this Act for the purposes of sub-section (2) of section 24; (p) to provide for all or any of the matters referred to in sub-section (1) of section 26; (q) any other matter which is, or has to be, prescribed by the Central Government SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 37/71 Section 28 - Power of State Government to make rules - (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 27. (2) Without prejudice to the generality of the foregoing power, such rules may provide for- (a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities; (b) the conduct and hearing of appeals that may be preferred under the Chapter, the fees to be paid in respect of such appeals and the refund of such fees: Provided that no fee so fixed shall exceed twenty-five rupees; (c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which has become obsolete and the fees to be charged therefor; (d)

the badges and uniform to be worn by drivers of transport vehicles and the fees to be paid in respect of badges; (e) the fee payable for the issue of a medical certificate under sub-section (3) of section 8; (f) the exemption of prescribed persons, or prescribed classes of persons, from payment of all or any portion of the fees payable under this Chapter; (g) the communication of particulars of licences granted by one licensing authority to other licensing authorities; (h) the duties, functions and conduct of such persons to whom licences to drive transport vehicles are issued; (i) the exemption of drivers of road-rollers from all or SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 38/71 any of the provisions of this Chapter or of the rules made thereunder; (j) the manner in which the State Register of Driving Licences shall be maintained under section 26; (k) any other matter which is to be, or may be, prescribed.

Section 29 - Necessity for conductor's licence

(1) No person shall act as a conductor of a stage carriage unless he holds an effective conductor's licence issued to him authorising him to act as such conductor; and no person shall employ or permit any person who is not so licensed to act as a conductor of a stage carriage.

(2) A State Government may prescribe the conditions subject to which sub-section (1) shall not apply to a driver of a stage carriage performing the functions of a conductor or to a person employed to act as a conductor for a period not exceeding one month.

Section 30 - Grant of conductor's licence

(1) Any person who possesses such minimum educational qualification as may be prescribed by the State Government and is not disqualified under sub-section (1) of section 31 and who is not for the time being disqualified for holding or obtaining a conductor's licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business for the issue to him of a conductor's licence.

(2) Every application under sub-section (1) shall be in SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 39/71 such form and shall contain such information as may be prescribed.

(3) Every application for a conductor's licence shall be accompanied by a medical certificate in such form as may be prescribed, signed by a registered medical practitioner and shall also be accompanied by two clear copies of a recent photograph of the applicant.

(4) A conductor's licence issued under this Chapter

shall be in such form and contain such particulars as may be prescribed and shall be effective throughout the State in which it is issued. (5) The fee for a conductor's licence and for each renewal thereof shall be one-half of that for a driving licence.

Section 38 - Power of State Government to make rules (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter. (2) Without prejudice to the generality of the foregoing power, such rules may provide for- (a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities under this Chapter; (b) the conditions subject to which drivers of stage carriages performing the functions of a conductor and persons temporarily employed to act as conductors may be exempted from the provisions of sub-section (1) of section 29; (c) the minimum educational qualifications of conductors; their duties and functions and the conduct of persons to whom conductor's licences SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 40/71 are issued; (d) the form of application for conductor's licences or for renewal of such licences and the particulars it may contain; (e) the form in which conductor's licences may be issued or renewed and the particulars it may contain; (f) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete and the fees to be charged therefor; (g) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees: Provided that no fee so fixed shall exceed twenty-five rupees; (h) the badges and uniform to be worn by conductors of stage carriages and the fees to be paid in respect of such badges; (i) the grant of the certificates referred to in sub-section (3) of section 30 by registered medical practitioners and the form of such certificates; (j) the conditions subject to which, and the extent to which, a conductor's licence issued in another State shall be effective in the State; (k) the communication of particulars of conductor's licences from one authority to other authorities; and (l) any other matter which is to be, or may be, prescribed.

Relevant provision of the Central Motor Vehicles Rules, 1989 SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 41/71

8. Minimum educational qualification for driving transport vehicles.- The minimum educational qualification

in respect of an applicant for obtaining a licence to drive a transport vehicle shall be a pass in the eighth standard: Provided that the minimum educational qualification specified in this rule shall not apply in the case of - (i) renewal of a driving licence to drive a transport vehicle; or (ii) addition of another class of transport vehicle to the driving licence; already held before the commencement of the Motor Vehicles (Amendment) Rules, 2007.]. Relevant provisions of the Rajasthan Motor Vehicles Rules, 1990 - 2.26. Drivers Badge of Transport Vehicles - (1) A circular metal Badge shall be issued by the Licensing Authority to every person who has been granted an authorisation to driver a Transport vehicle under these rules. The badge shall be in the form and shape as mentioned below:- Mention here district code Rajasthan Transport Department No.14/135 Transport Vehicle Driver Diameter of badge 6 cms and number to be in large figures. (2) The driver of a transport vehicle shall, while on duty, display a badge on the left side of his chest. No driver shall hold more than one such badge. (3) (a) The fee for the issue of badge and for issue SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 42/71 of duplicate badge, if the badge is lost, destroyed or damaged shall be as prescribed. (b) If the badge is lost, destroyed a duplicate badge shall be issued by the authority by which it was issued on an application made in Form R.S.2.7. (4) No driver of a Transport Vehicle shall not hold more than one such badge. (5) No driver shall lend or transfer the badge to any person. Any person finding the badge shall unless he returns the same to a person, who may not to be the holder, forthwith surrender to the authority by whom it was issued or to a Police Officer. (6) When authorisation on the driver's driving licence entitling him to drive a public service vehicle, is suspended or revoked by any authority or by the Court or ceases to be valid by efflux of time, the driver shall, within seven (7) days of such suspension or revocation or surrender the badge held by him to the authority by which it was issued. 3.4 Qualification for grant of Conductor's licence No person shall be granted a conductor's licence unless he satisfies the Licensing Authority that:- (i) he has adequate knowledge of the provisions of the Act and the rules made thereunder relating to the duties and functions of a conductor. (ii) he possesses a good moral character. (iii) he possesses a valid First aid certificate issued by the St.Johns Ambulance Association of India. (iv) he has passed tenth

standard or equivalent or higher examination and possesses working knowledge of the language or languages of the area in which he intends to work as a conductor. Provided the provisions of sub-clause (iv) shall not apply to the SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 43/71 person who has granted conductor's licence previous to coming into force of these rules.

3.15 Conductor's badge -

(1) The conductor of a stage carriage shall display on the left side of his chest badge in the rectangular shape measuring 6 cms.x4 cms. and inscribed with the name of the authority by whom the conductor's licence is granted and the word Parichalak. together with an identification mark. Here mention the code of Rajasthan Sarkar the district 14/241 Parichalak

(2) A conductor shall not hold more than one such badge issued by the Licensing Authority.

(3) The fee for issue of a conductor's badge as aforesaid shall be as prescribed in rule 3.17, if the badge is lost or destroyed, duplicate badge shall be issued by the authority which issued it on payment of prescribed fee in rule 3.17 by the authority which issued on an application made to it in Form R.S.3.8. In case the original badge is later found, it shall be returned to the Licensing Authority.

(4) If at any time the conductor's licence is suspended or revoked by any authority or by any court or ceases to be valid by the efflux of time, the conductor shall, within 7 days, surrender his badge to the authority by which it was issued.

(5) No conductor shall lend or transfer the badge to any person. Any person finding the badge shall, unless he returns the same to the person who he knows to be the holder, forthwith surrender it to the authority by which it was issued or to the nearest Police Station.

SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 44/71 Relevant provisions of the Road Transport Corporations Act, 1950 Section 45 - Power to make regulations

(1) A Corporation may with the previous sanction of the State Government (and by notification in the Official Gazette), (words inserted by Act No.4 of 2005) make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :- (a) the manner in which, and the purposes for which, persons may be associated with the Board under section 10;

(b) the time and place of meetings of a the1[Board]. and the procedure to be followed in regard to transaction of business at such meetings; (c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or as the case may be, the Chief Accounts Officer-cum-Financial Adviser; (d) the issue of passes to the employees of the Corporation and other persons under section 19; (e) the grant of refund in respect of unused tickets and concessional passes under section 19. 45A. Every rule and regulation to be laid before State Legislature Every rule and every regulation made under this Act SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 45/71 shall be laid, as soon as may be after it is made, before the State Legislature.

17. Let us have a look at the relevant part of the advertisement for selection process of the year 2010 itself in the first instance to the extent of relevant conditions imposed for such selection, namely Advertisement No.219/2009-10 as regards the conditions for Drivers and Conductors: 1. :- 1. # 2. 3. 3 4. # / , , 5. 2. :- 1. # 2. 2 3.

"18. The said conditions in the advertisement were imposed in SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 46/71 pursuance of the Resolution of the Board of Directors of RSRTC dated 18/2/2010, which is referred to in the Office Order dated 23/4/2010, which is quoted below for ready reference:- , , 2/ / /1 #/ 243/010/293 2:-23-4-2010 - ; < # 2009-10 < 793 > A < 2 ; 2 18.02.2010 < 2 14/242/2010 2 < , , A , < # 2 A , 2 15/2010 2 18.02.2010 2 2 A 1950 ; A 45(2)(#) 2 17(14) /09/ , 2 22.04.2010 / , 1997 < , , 2 A ; # :- SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 47/71 . / 2 A 2. , ; .2.

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19. The said Office Order of RSRTC had the approval of the State Government also vide letter No. 17(14)/09 dated 22.4.2010 of the State Government. The same is also quoted below in extenso for ready reference:- K 17(14)/09 , 2 22.04.2010 () , - 2 > ; A < K / /1 #/ 243/010/138 2 26.02.2010 2 204 2 22.03.2010 < SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 48/71 2 ; 2 2 15/2010 2 18.02.2010 < - ;

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20. The approval for the said selection process was given by the RSRTC vide proposal No.14/242/2010, which gave the details of the Committee constituted as well as marking for the written test and Trade test. The said proposal to its relevant extent is also reproduced below for ready reference:- " , # 2 :- 14/242/2010: SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13

other connected matters Judgment dt:3/3/2014 49/71 :- , , :- < #A# > A < < # 2009-10 < > #A# ; > #A# ; # 1. 472 2. 190 3. P -# 12 4. P - R # 119 793 2:

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"21. In the background of aforesaid approvals and policy decisions, the advertisement in question was issued by the RSRTC for the said selection process.

22. At first blush and even on considered thought being given to it, this Court does not find any fault, much less illegality in the said conditions imposed for the candidates for the posts of Drivers and Conductors, namely; the increased educational qualification of Secondary Level instead of 8th Standard and possession of Driving Licence for the post of Conductors and Conductors' Licence for the post of Drivers, namely; interchangeable licence, as obvious purpose for these conditions appears to be and was admitted to be by the learned counsel for the RSRTC that in case of emergency like road accident, if the driver gets hurt, the conductor in the bus can be SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 53/71 the another authorized person to drive the vehicle upto the safe place if bus is in running condition and, therefore, he should know the driving and possess the Driving Licence of heavy vehicles. Such a bonafide and valid conditions imposed for the selection process could not be said to be illegal or ultravires by any means. The only lacunae, which was pointed out by the learned counsel for the petitioners before the Jaipur Bench in the earlier round of litigation and on the basis of which, it appears that they had to make concession was that the said amendment in the conditions was not in accord with the provisions of Central Motor Vehicles Act, 1988 or the Central Motor Vehicles Rules made thereunder or the Rajasthan Motor Vehicles Rules, 1990 and published in Gazette as per the amended provisions of Section 45 of The Road Transport Corporations Act, 1950. On a perusal of these relevant provisions also quoted above, this Court was unable to see any illegality in the conditions qua these statutory provisions nor any such

illegality or conflict with the statutory provisions was pointed out before the Jaipur Bench of this Court. The only ground on which the challenge succeeded appears to be non-publication of these amendments in the Gazette by the State Government as per amended Section 45 of the 1950 Act amended in the year 2005, which escaped their notice for compliance, even though, admittedly, as quoted above, the said Policy Decision was taken by the Board of Directors, which also had the approval of the State Government vide communications dated 22/4/2010 and 23/4/2010. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 54/71 23. The immediate question which would arise is, is it fatal not to have the Gazette publication before hand in accordance with the amended Section 45 of the Act of 1950 or can such a Policy Decision with State's approval to this effect could still survive?. The answer, in the opinion of this Court, is in negative and the reason for that is that these conditions were duly notified and published in the advertisement itself on the basis of which all the candidates in question appeared in the selection process with all knowledge of these conditions, not only in the written test but also in the Trade test including the practical test by way of driving the vehicle etc. The purpose of Gazette Notification is only imputing the statutory presumption of such knowledge that public at large is expected to know the law which is notified in the Gazette. If the same purpose is achieved by way of publication of advertisement itself, the said Policy Decision with State's approval cannot be struck down for such technical & inadvertent lapse, more so, when it was in the larger public interest, to have such conditions for the selection process. Unfortunately, this aspect of the matter was not even canvassed by the learned counsel for the respondent RSRTC properly before this Court at Jaipur Bench and unwittingly they made certain concessions before the Court due to hurry in completing the selection process, which led the learned Single Judge to evolve & approve the formula of awarding 2 times of marks in the theory paper of Trade test by ignoring the condition of possessing the Driving Licence or their practical experience of driving vehicle for the post of Conductors, as had been done in the cases of Prem Prakash and Ramesh Chand SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 55/71 (supra).

24. At this stage, it would be relevant to quote the arguments of Advocate General, when the case of Nirmal Kumar Jain (supra) was argued and which resulted in the judgment of learned Single Judge on 2/9/2011:- Learned Advocate General, Mr. G.S. Bapna, appearing on behalf of the Corporation on the other hand, supported the amendment and the office order issued by the Corporation followed by an advertisement for selection to the posts of Driver and Conductor apart from other post. It is stated that Section 9(4) read with Section 27(g) of the Act of 1988 provides only about minimum qualification of Driver to be prescribed by the Central Government, thus Act of 1988 does not debar for prescribing higher qualification for a Driver to seek appointment. Similar issue was considered by the Hon'ble Apex Court in the case of S. Satyapal Reddy and others vs. Government of A.P. and others reported in 1994(4) SCC391 and recently in the case of State of Uttar Pradesh and others vs. Bhupendra Nath Tripathi and others reported in 2010(13) SCC203 It was held that the Central Act provides minimum qualification, thus the State Government is not debarred to provide higher qualification, hence, there exists no repugnancy in the Central and the State Legislations, thus both can go together being reconcilable. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 56/71 Coming to the Rules of 1990, it submitted that stage carriage is required to run the bus with a Driver as well as Conductor and Corporation is not going to flout the Rules as they would run their buses with the Driver and the Conductor. The amendment in the regulations has been made after taking into consideration certain emergent requirement of a Driver to work as a Conductor and a Conductor to work as a Driver. This is to avoid disturbance of the Schedule of the buses on account of absence of a Driver or a Conductor vice-versa or to take note of such similar contingencies. The Corporation has no intention to ply bus without a Conductor, hence by virtue of the amendment in the regulations, there would be no violation of the Rules.

8. Learned Advocate General further states that the confusion is created by the petitioners by referring to the provisions of the Act of 1988 and the Rules made thereunder as it has not been noticed that those provisions do not exist to prescribe qualification of Conductor and Driver for their appointment in the Corporation. The conditions for appointment can be provided by the Corporation in

view of the provisions of Section 45 of the Act of 1950, thus amendment in the regulation by the Corporation is as per the powers given to them under Section 45 of the Act of 1950 and such powers are not subjected to any other provision in any other Act, hence, regulation so framed by the Corporation is legal and valid. The intention of the Corporation is to introduce quality buses with latest technology and at the same time to make them cost effective by curtailing avoidable expenditure. Thus, looking to the good intention of the Corporation, amendment may be saved. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 57/71 Learned Advocate General was fair enough to concede that amendment so sanctioned by the Government has not been notified in the gazette as yet. It is submitted that issue aforesaid has not been raised by any of the petitioners in the petitions, but raised during the course of arguments. Hence, reply to the writ petition does not cover the aforesaid aspect, may it be a legal issue. (Unfortunately, nothing about sustainability of such amendments, even without Gazette publication was even argued, except the prayer in following paras, as there were no pleadings & grounds raised in the writ petitions). It is urged that the regulations so amended would be sent for notification in the gazette in the near future, but for that reason, selection may not be annulled as Corporation has incurred more than a sum of Rs. 1 crore for the said selection. This is more so when most of the candidates approached this Court have already allowed their participation in the written examination and even in few cases, for trade test also. Thus, petitioners, who have appeared in the written examination and obtained required cut off marks, would be permitted for trade test, if anybody is left out from his appearance in the trade test after qualifying the written examination by securing required cut off marks. The Corporation will conduct the trade test for them within the time frame given by this Court, but consideration of the candidature of said petitioners for appointment to the post of Conductor SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 58/71 and Driver would be subject to obtaining merit position. They may further be commanded to obtain required qualification and respective licence within a period of two/three years from the date of gazette notification of the amended regulations. This is more so when similar controversy has already been decided by this Court in the case of Deep Singh &

10 Ors. vs. RSRTC & Anr. reported in 2010(4) WLC (Raj.) 308. The aforesaid judgment is based on earlier judgment in the case of Sohan Lal vs. RSRTC & Ors. - S.B. Civil Writ Petition No.4167/2010 decided on 28.4.2010 holding that condition to obtain driving licence of heavy motor vehicle by the Conductor cannot be held to be illegal. I have heard learned counsel for parties and scanned the matter carefully.. 25. The aforesaid arguments, which in the opinion of this Court, justifiably supported the holding of practical Trade test and requirement of possessing the Driving Licence for the posts of Conductors and vice versa, were, however, repelled by the learned Single Judge by observing as under:- Perusal of the provisions quoted above shows that Corporation can frame the regulations with previous sanction of the State Government and by notification in the official gazette. The regulations may provide condition of appointment and service and scale of pay of the officers other than of Managing Director, Chief Accounts Officer and SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 59/71 Financial Adviser etc Section 45, as originally existing, was not providing a condition of gazette notification of the regulations, however, aforesaid provision was substituted by the Act 4 of 2005. As per the amendment made, following words' were added under Section 45 of the Act of 1950, which are "and by notification in official gazette."

By virtue of the amendment of the year 2005, regulations can be framed or amendment can be made, in the manner indicated under the amended provisions of Section 45 of the Act of 1950. It is not disputed by learned Advocate General that the amendment in regulations have not been notified in the gazette though it has come much after the amended provisions of Section 45 of the Act of 1950. In the light of the aforesaid, amendment in regulations cannot have effect till it is notified in the gazette (with great respects, there is no legal support for this proposition) and aforesaid issue has not been disputed by the learned Advocate General, who admitted, on the instruction of the officers present in the court, that after sanction of the Government for amendment in the regulations, it was not sent for gazette notification. The only prayer made by learned counsel for respondent Corporation is to allow them to send the amended regulations for gazette notification now and at the same time to save the selection by issuing necessary directions as indicated while arguing the matter. The side opposite i.e. learned

counsel for SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 60/71 petitioners agreed that after gazette notification of the amended regulations, petitioners will obtain required licence within a period of two years and even qualification of secondary class for the post of Driver within three years. It is further agreed that a condition can be imposed to that effect by the Corporation while issuing the appointment orders, but then period of two years should be reckoned from the date of gazette notification of the amended regulations. The petitioners may, accordingly, be considered eligible for the posts of Driver and Conductor without imposing a condition of required qualification as per the amended regulations. So far as the judgment of this Court in the case of Sohan Lal vs. RSRTC & Ors. (supra) and subsequent judgment in the case of Deep Singh & 10 Ors. vs. RSRTC & Anr. (supra) are concerned, they were in respect of the first advertisement issued and were not involving the challenge to the amendment regulations. The writ petitions therein were dismissed holding conditions of driving licence of heavy motor vehicle for the post of Conductor after considering the advertisement, but therein petitioners failed to refer or argue the matter that qualification provided under the regulations, then existing, were different than provided in the advertisement. In fact, first advertisement was consist of qualifications of Driver and Conductor without an amendment in the regulations, thus was not valid and it is therefore only Corporation not only issued subsequent advertisement, but it was after the amendment in the regulations with previous sanction of the Government though without getting it notified in the gazette. Since legal provisions applicable to the SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 61/71 present matter were not brought to the notice of the court while arguing the matter aforesaid, judgments were rendered therein based on the arguments made by those petitioners. Conversed to the aforesaid, detailed arguments have been made in this case in reference to the legal provisions and have been dealt with accordingly, thus judgments in the two cases referred aforesaid, are based on distinguishable facts, hence, not applicable even if few writ petitions were dismissed by the Coordinate Bench of this Court, as any judgment contrary to the statutory provision otherwise remains per-incuriam. Accordingly, judgments in the cases of Sohan Lal and Deep

Singh (supra) provide no assistance to the Corporation.. 26. This Court upon consideration of the aforesaid legal precedents is constrained to hold even now that even assuming for arguments sake that the selection process was required to be expedited and in the absence of proper Gazette Notification, the respondent RSRTC had to make the aforesaid concession with liberty to publish such amendment in the Gazette at a later point of time and that liberty was given by the Court, they could proceed with the selection process, but the same cannot result in the termination of services of the Conductors, who were appointed in pursuance of the said selection process on the aforesaid two grounds, namely; (i) their challenge before this Court to the condition of holding Driving Licence and that too prior to 9/11/2011, being the date of judgment in Prem Prakash case (supra) and (ii) that they actually hold such SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 62/71 Driving Licences.

27. This Court is of the considered opinion that the petitioners so appointed even if not fulfilling the two conditions cannot be thrown out of the job now. These conditions are not only onerous and cast a negative burden upon the petitioners but also their services deserve to be protected because they were given such appointments as they were possessing the higher qualification and better eligibility by holding such Driving Licences, fulfilling the conditions laid down in the advertisement itself and since this Court is taking a view that mere non-publication in Gazette of such change of conditions for recruitment under the orders of Board of Directors dated 23/4/2010 with the prior approval of the State Government on 22/4/2010, could not said to be fatal defect merely on account of their non-publication in the Gazette in accordance with the amended provision of Section 45 of the Road Transport Corporations Act, 1950, which plea was raised only during the course of arguments of the case only because the purpose of publication in the Gazette i.e. knowledge to public at large was duly achieved in the form of advertisement itself, where such conditions were duly notified & published for the public at large including the candidates, who applied for such posts with open eyes & full knowledge of these amended conditions, therefore, such candidates having been appointed by taking no illegal benefit of their fulfillment of amended qualifications & may be because of the formula evolved for marking for Trade Test,

cannot now be thrown out on account of aforesaid two grounds taken by the respondent SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 63/71 RSRTC itself before this court on the aforesaid two grounds. The blame of mix-up and confusion created by the RSRTC cannot be laid at the doors of petitioners, causing them loss of their services even though they satisfied all the conditions for their such appointments. The petitioners like Bharat Singh & Panne Singh had even fulfilled the said two conditions on the basis of which their services were threatened to be terminated.

28. Consequently, the impugned termination orders in the present set of writ petitions are liable to be quashed.

29. Before parting with the case, with regard to the contention of learned counsel for the respondent RSRTC about decision in the case of Hanuman Singh, where such termination was upheld by the learned Single Judge and also by the Division Bench of this Court, it can be said that it was a judgment in persona, rather than a judgment in rem, therefore, as a precedent, it cannot lead to the dismissal of the services of the present petitioners also. The complete facts of that case, as to actually holding of Heavy Motor Driving Licence by Hanuman Singh and in the writ petition earlier filed by him challenging these conditions are not available, though it appears from the quoted portion of the said judgment of learned Single Judge that the said Hunuman Singh had laid such a challenge to these conditions but the same was repelled.

30. About the sanctity of policy decisions of the State or even Public Authorities like RSRTC, the Hon'ble Apex Court as well as this SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 64/71 Court has consistently held that interference in the policy decisions of the State, unless they are shown to be palpably arbitrary and in conflict with the constitutional mandate, cannot be made by the Courts and the Court cannot substitute its own wisdom for such policy decisions. There is a strong presumption of constitutional validity of any statutory provision or the Policy Decision and unless with proper pleadings and established grounds, such policy

decisions are found to be ultra vires to the provisions of Constitution, the Court cannot strike down the same or change the same at its own will. In the present case also, on the basis of arguments raised, without any pleadings & grounds properly established in the writ petition, namely; lack of Gazette Notification, the RSRTC purportedly extended a concession for not enforcing the amendment in the qualifications and requirement of practical Trade Test and on such concession of respondent, apparently, without anything further on the record by the RSRTC, a formula was evolved of giving 2 times marks obtained in theory paper of Trade Test to all but later on in review petitions the said benefit was restricted only to those who had laid such a challenge before this Court before 9/11/2011 and were not even in the possession of Driving Licence. Such moulding of policy decision on the basis of only factual admission of learned Advocate General about non-publication in Gazette, the same could not have furnished the basis for changing the rules of the game during the selection process and drawing support for the presumption of validity and constitutionality in respect of said policy decision, which was taken with the approval of the State SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 65/71 Government itself and the purpose of Gazette Notification having been served by publication in the advertisement itself, now later on such benefit of bonus marks of 2 times could not be restricted to a particular class of litigants only and that is what had given rise to this subsequent batch of writ petitions by the persons, who were appointed on the basis of such benefit of higher marks for Trade Test (Practical) but were later on sought to be terminated on the alleged non-compliance of the twin conditions of having laid challenge before the Court before 9/11/2011 and negatively proving that they did not possess the Driving Licence of Heavy Vehicles, at that time, though factually some of the petitioners even satisfied these onerous conditions also.

31. For the aforesaid proposition, reliance may be placed on the following decisions of Hon'ble Apex Court : (i) M. Rathinaswami & Ors. vs. State of Tamil Nadu & Ors. - (2009) 5 SCC625 (ii) Ekta Shakti Foundation vs. Govt. of NCT of Delhi - (2006) 10 SCC337 In M. Rathinaswami's case (supra), while dealing with the matter relating to promotion to the post of Deputy Tehsildar in the Revenue Department of Tamil Nadu, the Hon'ble Supreme Court held that it is for the

Government to decide whether qualifications have a reasonable relation to the nature of duties and responsibilities of a promotional post. The relevant extract of the judgment is quoted SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 66/71 below for ready reference:-

26. Whether graduate degree is a sufficient basis for classification for promotion vis-à-vis non- graduates, and whether such classification has rational relation to the nature of duties of a Deputy Tehsildar, is, in our opinion for the State Government to decide, and not the Court. Hence, we uphold the validity of impugned rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non graduates.

27. However, we cannot find any rational basis for giving preference to the direct recruits over those promotee Assistants who are graduates, since the very basis for the distinction sought to be drawn by the respondents is that the direct recruits are graduates and hence intellectually superior to non graduates. Hence we have to read down the impugned rule in order to save it from becoming violative of Articles 14 and 16 of the Constitution.

28. It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted or extended interpretation of the statute has to be given. This is because it is a well-settled principle of interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the Legislature is presumed not to have intended SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 67/71 to have exceeded its jurisdiction.

29. Sometimes to uphold the constitutional validity the statutory provision has to be read down. Thus, In re, Hindu Women's Right to Property Act, AIR 1945 FC28 the Federal Court was considering the validity of the Hindu Women's Right to Property Act, 1937. In order to uphold the constitutional validity of the Act, the

Federal Court held the Act intra vires by construing the word 'Property' as meaning 'property other than agricultural land'. This restricted interpretation of the word 'Property' had to be given otherwise the Act would have become unconstitutional.

30. Similarly, in *Kedarnath vs. State of Bihar* AIR 1962 SC955 this Court had to construe Section 124- A of the Indian Penal Code which relates to the offence of sedition which makes a person punishable who 'by words, either spoken or written or by sign or visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law'. This Court gave a restricted interpretation to the aforesaid words so that they apply only to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. This was done to avoid the provisions becoming violative of Articles 19(1)(a) of the Constitution which provides for freedom of speech and expression.

31. Several other decisions on the point have been given in Justice G.P.Singh's Principles of SBCWP No.6757/2013 - *Panne Singh & Ors. vs. RSRTC & Ors.* Along with 13 other connected matters Judgment dt:3/3/2014 68/71 Statutory Interpretation (7th Edn 1999 pp 414-417).

. In *Ekta Shakti Foundation's case* (supra), the Hon'ble Supreme Court held that the interference in policy decisions or exercise of discretion by Government, so long as infringement of fundamental rights is not shown, the courts will have no occasion to interfere and court will not and should not substitute its own judgment for that of executive in such matters. The relevant portion of the said judgment is quoted below for ready reference:- Pursuant to the Supreme Court's directions in *PUCL case*, (2004) 12 SCC104 in respect of the replacement of contractors for procurement for the ICDS Programme, the Delhi Government framed a detailed scheme. The objective as appeared from the scheme was involvement of Self-Help Groups (SHGs.). The scheme envisaged that within 27 months SHGs would completely take over the running of the Anganwadis from the NGOs. Keeping in view of the observations made by the Supreme Court about the elimination of the contractors only it was stipulated that registered non-profit organisations with at

least 3 years' experience were eligible to apply. The writ petitioners questioned at rationale of the stipulation regarding three years' experience of working as a non-profit organization or public trust registered under the Societies Registration Act, 1860. The correctness of the reasons which prompted the SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 69/71 Government in decision making taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental rights is not shown, the courts will have no occasion to interference and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government. It is not the case of the petitioners that the eligibility criteria has been stipulated with any oblique motive. On the contrary, after analysing the issues, a committee appointed by the respondent had suggested the norms and the schemes were accordingly prepared. There is no irrationality much less something which is totally out of context to justify interference. There is nothing illicit in the impugned criteria to warrant interference.. 32. For the aforesaid reasons, this Court upholds the contentions raised by the learned counsel for the petitioners that termination of services of present petitioners on these grounds cannot be sustained. SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 70/71 33. Consequently, in the considered opinion of this Court, the present set of writ petitions deserve to be allowed and the impugned termination orders dated 27/5/2013 and show cause notices dated 11/1/2013 on the aforesaid two grounds deserve to be quashed and they are hereby quashed.

34. Accordingly, the present writ petitions are allowed. (Dr. VINEET KOTHARI), J.

item no.1 to14 baweja/- SBCWP No.6757/2013 - Panne Singh & Ors. vs. RSRTC & Ors. Along with 13 other connected matters Judgment dt:3/3/2014 71/71

SCHEDULE1 SBCWP No.6646/2013- Suredra Singh Ratnu Vs. RSRTC & Ors.

2. SBCWP No.6647/2013- Mool Singh Charan Vs. RSRTC & Ors.

3. SBCWP No.6694/2013- Sandeep Kumar Vs. RSRTC & Ors.

4. SBCWP No.6731/2013- Suredra Kumar Vs. RSRTC & Ors.

5. SBCWP No.6808/2013- Vijay Kumar Vs. RSRTC & Ors.

6. SBCWP No.6825/2013- Nemi Chand Muwal Vs. RSRTC & Ors.

7. SBCWP No.6894/2013- Sandeep Kumar & Ors. Vs. RSRTC & Ors.

8. SBCWP No.6895/2013- Jaipal Singh Yadav & Ors. Vs. RSRTC9 SBCWP

No.6952/2013- Ashok Kumar Gurjar & Ors. Vs. RSRTC10SBCWP No.6999/2013-

Sharwan Ram Saran Vs. RSRTC & Ors. 11.SBCWP No.7411/2013- Puneet

Shrivastava Vs. RSRTC & Ors. 12.SBCWP No.9257/2013- Harveer Singh Vs.

RSRTC & Ors. 13.SBCWP No.9592/2013- Amit Tiwari & Ors. Vs. RSRTC & Ors.

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