

GAHC020007792025

2026:GAU-NL:377-DB



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WA/39/2025

STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF NAGALAND,
DEPT. OF EXCISE AND PROHIBITION

2: THE COMMISSIONER
EXCISE AND PROHIBITION
AND CHAIRMAN
DEPARTMENTAL RECRUITMENT BOARD (DRB) EXCISE
DPARTMENT
NAGALAND DIMAPUR

3: THE JOINT COMMISSIONER OF EXCISE (HQ)
CONVENOR
DEPARTMENTAL RECRUITMENTR MANAGEMENT COMMITTEE
(DRMC) FOR PHYSICAL TEST
NAGALAND
DIMAPUR

VERSUS

SHRI T. AKON PHOM AND 15 ORS
S/O THAPONG PHOM, RESIDENT OF THAHEKHU, DIMAPUR,
NAGALAND

2:SMTI. Y. HOPILA
D/O YANGTSABA
RESIDENT OF DIMAPUR
NAGALAND

3:SHRI CHUMBEN
S/O LT. YANTSIO
R/O KHERMAHAL
DIMAPUR NAGALAND

4:SMTI. CHRISTIE ACHUMI
D/O TOSHEVI ACHUMI
R/O THILUXU
DIMAPUR NAGALAND

5:SHRI Y. CHEMLISE SANGTAM
S/O YANGTSABA
R/O TUENSANG NAGALAND

6:SHRI MUGHAHUTO KIBA
S/O BENJAMIN KIBA
R/O KUHUBOTO NIULAND
NAGALAND

7:SHRI TINGZANG KONYAK
S/O KHAMPO
R/O NYASHA
MON
NAGALAND

8:SHRI VIKACHUMI
S/O LHOVITO ACHUMI
R/O NOTUN BOSTI
DIMAPUR NAGALAND

9:SHRI KANITO SUKHAI
S/O ZHIMO K SUKHAI
R/O DIMAPUR
NAGALAND

10:SHRI AVITO SEMA
S/O LT. KIHOFI SEMA
PWD DIMAPUR
NAGALAND

11:SHRI YAMO KONYAK
S/O PENONG
MON
NAGALAND

12:SHRI AKIHITO V ZHIMO
S/O VIKHESHE ZHIMO
R/O VALLEY VIEW
DIMAPUR NAGALAND

13:SHRI ALOVIKA
S/O SHIKHETO ACHUMI

DAKLANE
KOHIMA
NAGALAND

14:SHRI C. TAIPO KONYAK
S/O M CHINGOH K
R/O MON NAGALAND

15:SHRI ATOKIVI Z ZHIMO
S/O ZHIMO
R/O KHERMAHAL
DIMAPUR NAGALAND

16:SHRI TOKHUPU V YEPTHO
S/O VITOSHE YEPTHO
R/O ZUNHEBOTO
NAGALAND

BEFORE

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MR. JUSTICE PRANJAL DAS

Advocates for the appellants: Mr. C. T. Jamir, Sr. Adv.

Mr. Aliba Ozukum, Adv

Advocate for the respondents: Mr. Tongpok Pongener, Adv,

Date on which judgment is reserved : 17.06.2026

Date of pronouncement of judgment : 23.06.2026

Whether the pronouncement is of the
operative part of the judgment? : No

Whether the full judgment has been
pronounced? : Yes

JUDGEMENT AND ORDER (CAV)

(Nelson Sailo, J)

Heard Mr. C. T. Jamir, learned senior counsel assisted by Mr. Aliba Ozukum, learned counsel for the appellants and Mr. Tongpok Pongener, learned counsel for all the respondents.

[2.] This Intra Court Appeal is directed against the Judgment and Order dated 16.10.2025, passed by the learned Single Judge in WP(C)/128/2025, by which the Corrigendum dated 04.06.2025 that was impugned and also the physical test alleged to be conducted in contravention of the Memorandum dated 19.07.2016 were set aside and quashed. Resultantly, the State respondents in the writ petition were directed to conduct the recruitment process strictly in terms of the Advertisement dated 07.04.2025 and the Memorandum dated 19.07.2016 by way of conducting physical test and suitability test (viva-voce) as was advertised. Alternatively, if the State Government decide to include written test, a fresh advertisement compliant with the constitutional mandate should be issued and recruitment process be conducted in accordance with law. Aggrieved with the said judgment and order, the State respondents as appellants have filed the instant writ appeal. For the sake

of convenience, the writ appellants will be referred to as State appellants and the respondents as writ petitioners hereafter.

[3.] Brief facts of the case, essential for considering the instant writ appeal may be stated at the outset. The Commissioner of Excise and Prohibition, Government of Nagaland on 07.04.2025, issued an advertisement inviting applicants from indigenous inhabitants of Nagaland for filling up of 40 posts of Excise Constables (male and female). It was provided that application forms would be available offline during office hours from 11:00 am to 03:00 pm at the Office of the Commissioner of Excise, Dimapur from 15th to 30th April, 2025. The last date of submission of application form was fixed as 30.04.2025 (03:00pm). The advertisement prescribed for the educational qualification, age limit, minimum height and the recruitment process to be physical test and suitability test (viva-voce). Besides this, the documents which were compulsorily required were also indicated and further, candidates having the defects as was indicated in the advertisement would be summarily disqualified.

[4.] Thereafter, vide Notification dated 23.04.2025, pursuant to the approval of the Government vide letter dated 04.03.2025 for conducting

of recruitment of 40 numbers of posts of Excise Constables and also the approval of the constitution of the Departmental Recruitment Board communicated vide letter dated 25.03.2025, the Chairman and Members of the Departmental Recruitment Board was constituted. The same comprise of a Chairman, four Members and one Member Secretary.

[5.] The Commissioner Excise then vide Addendum dated 14.05.2025, in partial modification of the previous Advertisement dated 07.04.2025, notified 6(six) additional post of Excise Constable (male and female) to be filled up. Therefore, in all, there were now 46 posts of Excise Constables (male and female) to be filled up.

[6.] The Commissioner of Excise and Prohibition again vide Corrigendum dated 04.06.2025, in continuation of the Advertisement dated 07.04.2025 and the Addendum dated 14.05.2025, notified the inclusion of written test in the interview process for the post of 46 Constables of Excise in line with other uniformed services. The candidates were asked to prepare for the interview accordingly.

[7.] By another Notification dated 25.07.2025, with reference to the Advertisement dated 07.04.2025, the Addendum dated 14.05.2025 and the Corrigendum dated 04.06.2025 and also the subsequent physical test

conducted from 14th to 24th July, 2025, it was notified that the list of candidates who have qualified for the written examination will be available in the Department website and the notice board of the Commissioner of Excise Office, Dimapur, Nagaland. It was also notified that the written examination for the qualified candidates will be held on 09.08.2025 at four different examination centers mentioned in the Notification and that the written examination would carry a total 100 marks. The question pattern will be MCQ with no negative marking and based on Class-VIII standard. Further, the duration of the written examination will be two hours i.e., from 10:00 am to 12:00 noon.

[8.] The writ petitioners aggrieved filed a representation before the Commissioner of Excise and Prohibition on 09.07.2025 and soon after on 22.07.2025 filed WP(C)/128/2025, contending *inter-alia* that the official respondents could not have introduced a written test when the same was not provided for in the advertisement dated 07.04.2025. As there was no stay order from the Writ Court, the process of selection continued and the petitioners except for petitioner No.4, participated in the selection process. Subsequently, the learned Single Judge vide the impugned Judgment and Order dated 16.10.2025, allowed the writ petition in the manner as already stated in the preceding paragraphs.

[9.] Mr. C. T. Jamir, learned senior counsel submits that State Government enacted the Nagaland Excise Service (Revised) Rules, 1999 (Rules of 1999), where Rule 5(i) (a), provides that recruitment to the service after commencement of the Rules of 1999 shall be by direct recruitment through competitive examination/ selection. He submits that as per Rule 7 (1), selection for direct recruitment to the post of Excise Constable is to be made by a Board/Committee comprising of the Head of Department as the Chairman, one representative each from the Administrative Department and Personnel & Administrative Reforms Department and an officer nominated by the Head of Department from Directorate as the Member Secretary. Since the Rules of 1999 do not provide in detail as to how the direct recruitment is to be made by competitive examination/selection, a meeting chaired by the Chief Minister and attended by the Deputy Chief Minister, Home, Minister EFCC, Advisors, Fire Services, Home Guards, Prisons, Excise, DGP, ADGP Admn and Principal Secretary, Personnel & Administrative Reforms was held on 16.09.2024 with regard to recruitment of uniformed services. The meeting amongst other resolved that each Department shall set up their respective Departmental Recruitment Boards with representatives from Administrative Department, Personnel & Administrative Reforms, Finance

and Law Departments. That all vacancies are to be advertised in at least two local news papers and the respective Departmental website. The Departmental Recruitment Board is to maintain transparency and fairness while carrying out the recruitment process. Further, in view of the earlier Cabinet decision, relaxation of age up to 3 years would be permissible and therefore the upper age limit would be 38 years at the time of advertisement of the post. Also the examination fee was fixed uniformly at the rate of Rs.300/- per candidates.

[10.] The learned senior counsel submits that pursuant to the said meeting, a circular was issued by the Principal Secretary to the Govt. of Nagaland, Personnel & Administrative Reforms Department (Administrative Reforms Branch) on 19.09.2024, notifying that recruitment of post in uniformed services was exempted from the purview of the Nagaland Staff Selection Board (NSSB) as per Schedule-A of the NSSB Regulations, 2020. The Addl. Secretary to the Govt. of Nagaland, Excise and Prohibition Department vide Communication dated 25.03.2025 to the Commissioner of Excise and Prohibition conveyed the approval of the Government for setting up of Departmental Recruitment Board for recruitment of 40 posts of Excise Constable (Grade-III). Following the approval, the Commissioner of Excise and Prohibition notified the constituted Board vide Notification

dated 23.04.2025.

[11.] The learned senior counsel submits that the Excise Department had received certain requests for information regarding the recruitment process under the Right to Information Act, 2005 (RTI) wherein, a detailed query was made about the marks carried by the viva-voce and the total marks in their entire examination process. It was pursuant to such query received by the Department that it was decided to include written examination/test for better screening and selection of the candidates for the post and accordingly, the same was notified vide the Corrigendum dated 04.06.2025. He submits that the Corrigendum was issued barely after the one and a half month from the date of issuance of the Advertisement and it is applicable not only to the petitioners but to all the applicants who applied for the post in question. Therefore, the petitioners cannot have any legitimate grievance with the same, particularly, when they have participated in the selection process. They are therefore, estopped from raising any objection in the selection process. In this connection, the learned senior counsel relies upon the case of ***Tajvir Singh Sodhi and Ors. Vs. State of Jammu and Kashmir and Ors, (2023) 17 SCC 147.***

[12.] The learned senior counsel further submits that the Advertisement dated 07.04.2025 at Clause-15 provides that any omission or commission will be rectified through notifications and addendums. Further as per Clause-16, in the event of any dispute on recruitment process, the decision of the Department Recruitment Board would be final and binding. The learned senior counsel submits that since the Rules of 1999 did not provide the method of recruitment in detail and as the Memorandum dated 19.07.2016 did not have the approval of the Government and was also not applied in the previous selection process, the Departmental Recruitment Board duly constituted with the approval of the Government for better and efficient screening decided to incorporate a written test through the Corrigendum dated 04.06.2025. The same being applicable to all the persons who applied for the post and the Departmental Recruitment Board being within its power to devise a method, the learned senior counsel submits that the impugned judgment and order is not sustainable and should be set aside. In support of his submission, the learned senior counsel relies upon the case of ***Tej Prakash Pathak and Ors. Vs. Rajasthan High Court and Ors. (2025) 2 SCC 1.***

[13.] The learned senior counsel also submits that although the

learned Single Judge had directed that the Corrigendum dated 19.07.2016 should be applied in the recruitment process but the fact remains that as already submitted that not only is the said memorandum not approved by the Government but the same has never been applied even in the earlier recruitment process. Under the circumstance, the learned senior counsel submits that the impugned judgment and order should be set aside and the appellants allowed to declare the results of the selection process.

[14.] Per contra, Mr. Tongpok Pongener, learned counsel for the respondents submits that the contention raised by the learned senior counsel that the petitioners had participated and therefore they are debarred from raising any grievance now is not correct in view of the fact that the petitioners on 09.07.2025 had submitted their representation before the Commissioner of Excise and Prohibition who was also the Chairman of the Departmental Recruitment Board, protesting the inclusion of written test while asking the said authority to follow the Memorandum dated 19.07.2016. He submits that while the petitioners were expecting that their grievance have been addressed but to their surprise, they found that the Corrigendum dated 19.07.2016 was not adopted after they participated in the physical test. Therefore being aggrieved, they filed the writ petition which was then rightly allowed by the learned Single Judge.

[15.] Mr. Tongpok Pongener, the learned counsel submits that the Rules of 1999 do not prescribe for a written test in filling up the post of Excise Constable by direct recruitment. He submits that the Departmental Recruitment Board was constituted in order to carry out the selection process as per the relevant Rules and procedure and by no means they were empowered to change the Rules of the game by incorporating written test. He submits that it is a settled principle of law that when a thing is prescribed to be done in a particular manner, it has to be done in that manner alone and not otherwise. In this connection, the learned counsel relies upon the case of ***J & K Housing Board and Anr. Vs. Kunwar Sanjay Krishan Kaul and Ors. (2011) 10 SCC 714.***

[16.] The learned counsel further submits that if there are any changes to be done in the manner of selection and recruitment process, the same has to be done before the process starts. He submits that by the issuance of the Advertisement dated 07.04.2025, the recruitment process has started and therefore, the impugned Corrigendum dated 04.06.2025 could not have been introduced midway. In this connection, the learned counsel also relies upon the case of ***Tej Prakash Pathak and Ors. (Supra)***. Referring to the said decision, the learned counsel submits that if the Rules or the advertisement empower the competent authority to set

a benchmark at different stages of the recruitment process, such benchmark can be introduced any time before that stage is reached so that neither the candidates nor the examiner is taken by surprise. In the present case, the learned counsel submits that it is not the benchmark but introduction of a written test not prescribed by the Rules of 1999 which has vitiated the selection process and therefore, the judgment and order of the learned Single Judge should be upheld.

[17.] The learned counsel submits that as he had submitted earlier it is not correct to say that the petitioners did not protest and participated in the selection process willingly. He submits that they did submit a representation to the Commissioner of Excise and Prohibition on 09.07.2025 but since there was no result, they filed the writ petition on 22.07.2025. Since there was no stay, the petitioners had no option to participate except for the petitioner No.4. Therefore, the case of the petitioners is not vitiated because of their participation since they had lodged their protest with the respondent authority concerned. In this connection, the learned counsel has relied upon the case of ***Madan Lal and Ors. Vs. State of J&K and Ors. (1995) 3 SCC 486.***

[18.] The learned counsel further submits that Rule 5 (ii) of the

Rules of 1999 provides that notwithstanding anything contained in Sub-Rule (i) of Rule 5, if in the opinion of the Government, the exigencies of the service so require, the Government may in consultation with the Commission adopt such method of recruitment to the service other than those specified in the Sub-Rule as it may by order issued in this behalf. Since there was no approval from the Government to the introduction of the written test introduced by the Departmental Recruitment Board, the Corrigendum dated 04.06.2025 and the Notification dated 25.07.2025 are not legally sustainable. The learned counsel thus submits that under the facts and circumstances of the case, the Writ Appeal should be dismissed and the decision of the learned Single Judge should be upheld.

[19.] We have heard the learned counsels for the rival parties and perused the materials available on record.

[20.] As already stated, the issue is with regard to the selection conducted for appointment to the 46 posts of Excise Constables. In order to regulate appointment to the post of Excise Constable, the Rules of 1999 was framed by the Govt. of Nagaland in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Rule 2(b) defines 'Board' to mean the Selection Board constituted in accordance

with Rule 7(1) and for promotion to non-gazetted post under Rule 7(3). We are concerned with direct recruitment and therefore, Rule 7(1) would be relevant. Rule 7(1) provides that selection for direct recruitment and promotion to the posts of Assistant Inspector of Excise, Head Constable and Excise Constables shall be made by a Board/Committee consisting of the following members:

- (i) Head of Deptt. - Chairman
- (ii) Representative from Admn Deptt. - Member
- (iii) Representative from P&AR Deptt. - Member
- (iv) An officer nominated by the Head
of Deptt. from the Directorate - Member Secretary

[21.] Rule 3 of the Rules of 1999 provides for category of service and the post of Excise Constable is categorised as Group- 'C' (non-gazetted). Rules 5 (i) (a) provides that recruitment to the service after the commencement of Rules shall be by direct recruitment through competitive examination/selection. Rule 6 (a) provides that all appointments to the Service after the commencement of the Rules shall be made by the respective appointing authority and no such appointment shall be made, except after selection by any one of the methods of

recruitment specified in Rule 5. Rule 9 provides that the decision of the Commission or the Selection Board as the case may be as to the eligibility or otherwise of a candidate shall be final.

[22.] Schedule-II of the Rules which corresponds to Rule 5 provides that the method of recruitment of Excise Constable would be 100% by way of direct recruitment vide Rule 5 (a). Further, Schedule-III corresponds to Rule 8 and provides that the educational qualification prescribed for recruitment to the post of Excise Constable is Class-VIII pass and recruitment is to be done by the Departmental Selection Board.

[23.] From the above, what is clear is that recruitment to the post of Excise Constable is to be done 100% by direct recruitment from those having the educational qualification of Class-VIII pass and the recruitment is to be done by way of direct recruitment through competitive examination/selection. Further, for the post of Excise Constable amongst others, selection for direct recruitment is to be done by the constituted Selection Board and that the decision of the Selection Board as to the eligibility or otherwise of a candidate shall be final.

[24.] Apart from the above provisions, there are no other specific provision as to how direct recruitment to the post in question is to be

made. In meeting held on 16.09.2024, under the Chairmanship of the Chief Minister of the State and representatives of the uniformed services with regard to the recruitment of uniformed services, it was decided that each Department shall set up their respective Departmental Recruitment Boards with representatives of the Administrative Department, P&AR, Finance and Law Departments. That all vacancies shall be advertised in at least two local news papers and in the respective departmental website. Further, the Departmental Recruitment Board shall maintain transparency and fairness while carrying out the recruitment process. The said decision was circulated vide Circular dated 19.09.2024, issued by the Department of Personnel & Administrative Reforms (Administrative Reforms Branch). Thereafter, vide the Communication dated 25.03.2025, the State Government's approval for setting up of Departmental Recruitment Board for recruitment to the post of Excise Constable was communicated and following which, a Notification dated 23.04.2025 was issued by the Commissioner of Excise and Prohibition constituting the Board comprising of Commissioner of Excise as the Chairman and representative of the Department concerned in terms of the decision taken in the meeting held on 16.09.2024 as Members and the Additional Commissioner of Excise as the Member Secretary. The initial 40 posts of Excise Constable

advertisement was later enhanced to 46 posts by adding 6 more posts vide Addendum dated 14.05.2025.

[25.] According to the appellants, after the Advertisement was issued on 07.04.2025, the State respondents have come up with the Corrigendum dated 04.06.2025, by which written test in the interview process was introduced. Thereafter vide Notification dated 25.07.2025, it was provided that those who have qualified in the written examination will be notified in the Departmental website and in the notice board of the Commissioner of Excise Office in Dimapur. That written examination will be held on 09.08.2025 carrying 100 marks in total and the question pattern will be MCQ with no negative marking and based on Class-VIII standard. The centre for examination was also notified in the said Notification while providing the duration of examination as 10:00 am to 12:00 noon.

[26.] The admitted position is that although the appellants submitted their representation against the introduction of written test in the recruitment process, on 09.07.2025, all of them participated in the recruitment process except for the petitioner No.4. It may be noted that the Advertisement was issued on 07.04.2025 and the Corrigendum

including the written test in the recruitment process was issued on 04.06.2025. Thereafter, physical test was conducted on 14.07.2025 to 24.07.2025. According to the State respondents, proper steps for publication was done to call the candidates for conducting the physical test by issuing Notification dated 19.06.2025 which was also widely circulated in two local dailies i.e., 'Nagaland Post' and 'Eastern Mirror'. Similarly, the Corrigendum and the Notification for written test were widely circulated including in the two(2) local dailies. It is also nobody's case that such publicity was not done.

[27.] The Apex Court in ***Tej Prakash Pathak and Ors. (Supra)*** examined issues including the discretion available to the employer to devise its method or procedure to select a candidate and the permissibility of prescribing change of Rules midway through recruitment process. The Apex Court in the given facts of that case held that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the

rules/statute governing service and reservation.

[28.] Further, the Apex Court also held that in absence of rules to the contrary, the recruiting authority can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. Further, if the Rules or the advertisement empowers the competent authority to set benchmark at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that the candidates and the examiner are not taken by surprise.

[29.] In the present case, as already stated earlier, there is no detail procedure prescribed by the Rules of 1999. The constituted Departmental Recruitment Board having regard to the recruitment process, took a decision to include written test in the interview process for those who qualified themselves in the physical test conducted from 14th to 24th of July, 2025. Such a decision was notified vide the Corrigendum dated 04.06.2025 and circulated in the local dailies i.e., 'Nagaland Post'

and 'Eastern Mirror'. As may be noticed, the Apex Court in ***Tej Prakash Pathak and Ors.(Supra)*** held that in absence of the Rules to the contrary written examination and interview may be introduced in a recruitment process but the same has to be before the commencement of the recruitment process. It has also been further clarified that introduction of such criteria will not vitiate the recruitment process so long as the principles enshrined under Article 14 of the Constitution is not overreached. In this regard, the Apex Court had further relied upon the earlier decision rendered by the same Court in ***Tridip Kumar Dingal and Ors. Vs. State of West Begal and Ors. (2009) 1 SCC 768***. It may be gainful to reproduce paragraph No. 38 of the said decision:

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

[30.] In the present case, the facts not disputed is that against

the 46 posts of Excise Constables advertised, there were more than 10,000 applicants and that each of the applicants were required to pay a sum of Rs.300/- towards the fee for the application form. Under the circumstance, having regard to the decision of the Apex Court, it cannot be said that the requirement of screening the candidates by way of taking written test for those who qualified in the physical test in absence of any Rules to the contrary can be said to be arbitrary. No doubt the petitioners had submitted the representation to the Commissioner of Excise and Prohibition on 09.07.2025 but nevertheless they participated in the selection process and appeared for the physical test conducted between 14.07.2025 to 24.07.2025, except for the petitioner No.4. They filed writ petition on 22.07.2025, but no stay was granted by this Court and the petitioners admittedly proceeded to participate in the written test as well.

[31.] The Apex Court in ***Tajvir Singh Sodhi and Ors.(Supra)*** by referring to a catena of decisions on the subject held that candidates having taken part in the selection process without any demur or protest cannot challenge the same after having been declared unsuccessful. In other words, the candidates cannot approbate or reprobate at the same time. The learned counsel for the petitioners by referring to the case of ***Madan Lal and Ors.(Supra)*** has submitted that since the petitioners

had submitted their protest by way of a representation, they are not debarred from challenging the recruitment process. However, the facts remains that the protest made by the petitioners through their representation dated 09.07.2025 was immediately followed by their participation in the physical test conducted from 14.07.2025 to 24.07.2025 except for petitioner No.4 and that though they filed their writ petition, no interim order was passed by this Court. The petitioners therefore proceeded to participate in the subsequent recruitment process involving the written test and viva-voce. Therefore, considering the facts and circumstances, we are not convinced that their right to challenge the process is not effected despite their voluntary participation.

[32.] The case of the ***J & K Housing Board and Anr.(Supra)*** relied upon by the learned counsel for the petitioners would not be applicable to the present case in view of the fact that the Rules of 1999 does not prescribe the details as to how the process of their recruitment for the post of Excise Constable is to be carried out. However, it provides the procedure which is by direct recruitment through competitive examination/selection as can be seen from Rule 5 (i) (a) of the Rules of 1999. Therefore, it cannot be said that the introduction of written test for those who qualified the physical test while conducting the viva-voce

through the Corrigendum dated 04.06.2025 is wholly unjustified and contrary to the statutory provisions.

[33.] As for the Memorandum dated 19.07.2016, it is not in dispute that the same has not been applied even in the earlier selection process. Further, it is the case of the State respondents that the Memorandum is not binding and does not have the approval of the State Government, whereas, the Rules of 1999 as well as the decision taken in the meeting held on 16.09.2024 for recruitment of uniformed services has given the Departmental Recruitment Board to conduct the recruitment by maintaining transparency and fairness. Since the written test has been introduced for all the participants who had qualified the physical test, it cannot be said that the same is arbitrary and against the principles enshrined under Article 14 and 16 of the Constitution of India.

[34.] The Apex Court in ***Santosh Kumar Tripathi and Ors. Vs. Uttar Pradesh Power Corporation and Ors. (2009) 14 SCC 210*** in the given facts and circumstances of the case held that the High Court was right in its view that the power of the Commission or Selecting Authority to 'examine' would also include holding of written examination. This decision was also relied upon by the Apex Court in ***Tej Prakash***

Pathak and Ors.(Supra) as well.

[35.] Thus upon due consideration of the case in its entirety, we find the impugned judgment and order of the learned Single Judge cannot be sustained for the reasons assigned and accordingly, the same is set aside. The State authorities shall now proceed to complete the process initiated vide an Advertisement dated 07.04.2025, by bringing the same to its logical conclusion.

[36.] The writ appeal thus stands allowed and any orders passed earlier in the appeal or in the accompanying Interlocutory Application viz, I.A.(C) No.217/2025 and I.A.(C) No.68/2026 stands merged with this order.

JUDGE

JUDGE

Comparing Assistant