



LPA-1668-2023 and other connected matters

2024:PHHC:061783-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**LPA-1668-2023, 1670-2023, 1651-2023, 1671-2023,
1837-2023, 34-2024, 85-2024 and 201-2024 (O&M)**

Reserved on: 19.04.2024 and 20.04.2024

Date of Decision: 13.05.2024

Sajan

.....Appellant(s)

Versus

Vishal Chaudhary and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate with
Ms. Gurpreet Kaur Bhatti, Advocate,
Mr. Vidul Kapoor, Advocate, for the appellants in
LPA No. 1651-2023.

Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate and
Mr. Mayank Vashisth, Advocate,
Ms. Prerna Malhotra, Advocate, for appellants
in LPA Nos. 1670, 1668, 1671 of 2023 & 201-2024 & 34-2024.

Mr. Jatinder Pal Singh, Advocate, for the appellants in
LPA No. 1837-2023 and 85-2024.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Brijesh Khosla, Advocate and
Mr. Abhishek Arora, Advocate, for respondent No.24 in
LPA No. 1671 of 2023.

Mr. Amit Jhanji, Sr. Advocate with
Mr. Abhishek Premi, Advocate, for all private respondents
(except respondent No.24) in LPA No. 1671 of 2023.

Mr. Gaurav Chopra, Senior Advocate with
Mr. Anurag Chopra, Advocate for respondent No.1 in
LPA Nos. 1651 and 1668 of 2023.

Mr. Siddharth Gupta, Advocate, for respondent in
LPA No. 1668 of 2023.

Mr. Deepak Sabharwal, Advocate with
Mr. Suneet Pal Singh Aulakh, Advocate for respondent No.7
in LPA No. 1670 of 2023.

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Mr. R.K.Malik, Senior Advocate with
Mr. Varunveer Chauhan, Advocate, for respondents
No. 2,4,7 and 8 in LPA No.1668-2023.

Mr. Karan Nehra, Advocate and
Mr. Harvinder Singh, Advocate,
Mr. Abhay, Advocate, for respondent No.3 in
LPA N. 34 of 2024.

Mr. Saurabh Bajaj, Advocate for the applicant in
CM No. 4702-LPA-2023 in LPA-1651-2023.

Mr. Baltej S.Sidhu, Senior Advocate with
Mr. Divij Datt, Advocate and
Mr. Gurpreet S.Brar, Advocate,
for respondent-Deepinder Money.

Mr. Saurav Khurana, Addl. Advocate General, Punjab &
Mr. Salil Sabhlok, Sr. Deputy Advocate General, Punjab-PPSC.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE

1. The present appeals, which are 8 in number, are directed against the judgment dated 13.10.2023 passed by the learned Single Judge wherein, he allowed the writ petitions filed by the private respondents and quashed the letter dated 05.06.2023 (Annexure P-7) while deciding the bunch of 11 writ petitions, the lead case of which was CWP-13497-2023, “Jyotsana Rawat and others vs. State of Punjab and others”. It was further directed that the State shall taken steps to fill up the posts of the Assistant District Attorneys (in short 'ADAs') and the Deputy District Attorneys (in short “DDAs') within a period of one month. Reference is being made to ***LPA-1668-2023, Sajan vs. Vishal Chaudhary and others***, for the purpose of extracting the factual matrix.

2. Vide the abovesaid letter, the Office of the Director, Prosecution and Litigation and Additional Secretary, Government of Punjab had asked all the District Attorneys to give evidence to prove experience and claims, every year (6) Court orders/interim orders for the purposes of proving the attendance in Court as the list of the selected candidates had been sent by the Commission. Apparently, the same was in pursuance of the earlier communication dated 02.06.2023

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(Annexure P-6) whereby, the Department of Home Affairs and Justice, Judicial Branch-II had written to the Director, Prosecution & Litigation, Punjab that the list had been received from the Punjab Public Service Commission (in short 'the Commission') containing the names of the selected candidates for the posts of ADAs and DDAs and the evidence to prove their claims regarding experience of every year and 6 Court orders/zimini orders in lieu of attendance in Court be sent to the Government.

Reasoning of the Learned Single Judge :

3. The learned Single Judge, vide detailed judgment while dealing with both the selection processes of DDAs and ADAs, came to the conclusion that the matter regarding the 'Change of Rules of the Game" was still pending consideration before the Apex Court in ***Tej Prakash Pathak vs. Rajasthan High Court, (2013) 4 SCC 540*** and, therefore, refrained from applying the said principle. However, he examined the legality of the issue of the letter dated 05.06.2023 and while relying upon the judgment in ***Bar Council of India vs. A.K. Balaji, (2018) 5 SCC 379; Devinder Singh vs. State of Haryana, (1997) 5 SLR 580*** and ***Madan Lal vs. State of Jammu and Kashmir, 1995 (3) SCC 486*** and held that an Advocate once enrolled with the Bar Council would actually start practice and, therefore, a certificate given by the Bar Association or by the concerned Court would be valid and would have the same force as that of a certificate from the judicial or quasi judicial authorities and the candidate was not required to further prove his experience. The self attestation or an affidavit of being engaged in advocacy alone could be obtained from a candidate. However, if there was some doubt regarding his enrollment or he was not actually practicing law, the said aspect would result in his being ousted under the Bar Council Rules. Reference was also made to the Advocates Act, 1961 and the Rules of Legal Education, 2008 framed to fall back on the practice of law and Article 220 of the

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Constitution of India. The fact that a lawyer could be appearing before the Wakf Board, Service Tribunal, Labour Courts and Industrial Tribunals or any other tribunals or forums like Central Administrative Tribunal, Income Tax Appellate Tribunal, District Consumer Courts and Commissions weighed with the learned Single Judge while relying upon Section 24(7) Cr.P.C., whereby, it provided that the Public Prosecutor or an Additional Public Prosecutor could be eligible to be appointed if he had been practicing as an Advocate for not less than 7 years. Resultantly, it was held that candidates who had been selected by the Commission and from whom certificates had been demanded was non-application of mind.

4. The argument of the State that it has the power to examine the suitability of the candidate recommended by the Commission was not accepted and it was held that Article 320 of the Constitution of India empowers the Commission to conduct the selection process. The same being statutory authority (sic Constitutional Authority), it was held that the Secretary of the State could not ignore the recommendations of the Commission by introducing an additional requirement after the selection process had been concluded and recommendations had been forwarded and the same was not permissible. The State Government only had the power to examine the suitability of the candidate with reference to his antecedents or his medical fitness or if there was any forgery or impersonation on account of the selected candidate. The opinion given by Additional Advocate General, Punjab on the basis of which the evidence had been called for was adversely commented upon and a conclusion was arrived at that directions had been issued earlier to conclude the selection process and on account of the impugned action, the selection process had been put to a stand still. It is pertinent to notice that the adverse comments against the said officer have been apparently given without issuing notice to the said officer. Thus, it was observed that the letter issued by the Superintendent of the Home Affairs and Justice Department,

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Punjab Government demanding the selected candidates to submit certificates was not sustainable. However, if the State Government wanted the selected Advocates to have rich experience and practice in Courts, they should have incorporated such conditions in the rules by making appropriate amendments and should have put a condition in advertisement for demand of a particular certificate at the stage of participation. Similar observation had earlier also flown from the learned Single Judge that the State may consider amendment in the Rules while observing that self attestation or an affidavit of being engaged in advocacy alone could be demanded from the candidate.

Case of the writ petitioners before the Learned Single Judge :

5. A perusal of the writ petition i.e. CWP-13522-2023, Vishal Chaudhary vs. State of Punjab, out of which LPA-1668-2023 arises, would go on to show that the prayer in the writ petition was based on the fact that the result had been declared in the month of March, 2023 by the respondent-Commission and the name of the petitioner surfaced in the final combined merit list (Annexure P-4). Directions had been issued in CRM-M-50353-2022 that the entire process of appointment of DDAs be completed by 30.06.2023 without any further delay. The impugned letter dated 05.06.2023 (Annexure P-7) was stated to be in violation of the provisions of the advertisement and, thus, was liable to be set aside. It was pleaded that attendance of the main counsel was marked and the attendance of associates and juniors in orders is very rare and the Rules of the Game had been changed after the game had been played.

Stand of the State Before the Learned Single Judge

6. The stand of the State, which is now at variance in the present Letters Patent Appeal, was that the Punjab Prosecution and Litigation (Group A) Service Rules, 2002 provide 7 years' experience at the Bar. The Government being the employer in its wisdom had decided to recruit only experienced candidates who

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are having actual experience at the Bar. The directly recruited DDAs would be posted in the Courts of Additional District Judges and had to pursue session trials which included ones pertaining to heinous crimes. The advertisement also provided 7 years' experience and practice at the Bar and it was not optional but mandatory apart from the academic qualifications of the Degree in Bachelor of Law. The experience envisaged could not be given any less weightage than the academic qualification and the definition of 'practice' as such includes a wider connotation including chamber practice, pleadings, conveyancing, drafting and rendering legal opinions. The person is said to be practicing at the Bar only when he is actually appearing before the Courts of Law while falling back on the definition in the Black's Law Dictionary which provided the definition 'at the Bar' as before the Court. It was pleaded that freshly recruited DDAs do not have any pre-induction training and those candidates who are experienced enough to conduct the cases before the Court from the very first day after the recruitment were required and the merit list must, therefore, be drawn from the eligible candidates having requisite experience of 7 years of practice at Bar. Reliance was placed upon the various clauses of the advertisement regarding the fact that the candidates knew that the documents were subject to scrutiny and the candidature was liable to be cancelled. Therefore, the argument that it was 'change of the rules in the middle of the game' was not sustainable and the standard of scrutiny could not be said to be 'Change of Rules'. The petitioners having failed to furnish *zimini* orders, could not as such challenge the said action and it was an essential qualification of experience. The certification of the chamber senior would amount to recruiting an associate of an Advocate who is practicing at the Bar and the advertisement did not prescribe as such. The Bar Association never had any record of the Advocates appearing before the Court and the Bar Association at the most could certify that after enrollment with the Bar Council, the candidate was

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enrolled as a Member of Bar Association and it could not be a competent authority to certify the experience or practice at Bar. Court record was the only source from which the claim of practice at Bar could be verified. The recruitment process was still in progress and the petition was pre-mature and the merit list also contained a disclaimer and the Commission had reserved the right to rectify the same.

Stand of Commission before the Learned Single Judge

7. The respondent-Commission, in its reply, pleaded that under Article 320 of the Constitution of India, the Commission was established with the purpose of recruiting officials in various departments of the Government of Punjab as per the requisition sent by the Government in this regard from time to time. After completing the recruitment process, vide letter dated 15.03.2023, the Commission had sent the record of 63 short listed candidates for the 41 posts of DDAs, for which the written examination was held on 18.12.2022. The list of provisionally short listing the candidates was done from 30.01.2023 to 01.02.2023 and the interviews were conducted from 28.02.2023 to 02.03.2023 and the result was declared in March, 2023. The petitioner stood at Sr. No.41 in the combined merit list and the impugned letters dated 02.06.2023 and 05.06.2023 had not been issued by the Commission, who had not sought six interim orders from inspiring candidates. The documents and certificates had been checked and on 30.01.2023, the officials of the Department of Prosecution and Litigation, Government of Punjab had been deputed to check the same documents and after scrutiny by the said employees of the documents and certificates, the final merit list was prepared.

Stand of State before the Court in Appeal

8. An additional affidavit dated 04.12.2023 was filed by the Secretary to the Government of Punjab, Department of Home Affairs and Justice, Shri Gurkirat Kirpal Singh, in compliance of the order dated 08.11.2023 wherein the Co-ordinate Bench had asked for filing of the additional affidavit as to how

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experience of 7 years of an enrolled Advocate had been assessed for selection for the posts of DDAs/ADAs and what was the criteria to be followed by the Selection Committee. It is accordingly pleaded that the appellants did not have any locus standi to file the appeals as they had already participated in the selection process and were unsuccessful candidates as they failed to qualify the competitive written examination and were subsequently not called for the interview or were lower in merit and thus were not included in the final selection list.

9. Reference has been made specifically to the appellant in LPA-1668-2023, Sajan that he had failed to qualify for the interview and was already working as ADA recruited in the year 2014 and out of the total of 480 marks, he had obtained only 256 marks and the last candidate shortlisted for interview had obtained 273 marks. Similarly, Harpreet Singh, appellant in LPA-1651-2023 had only got 268 marks and Binni Mittal, appellant in LPA-1837-2023 had got 249 marks. All the three were thus working as ADAs and were not within the zone of consideration of two times the candidates to be called for interview. Harwinder Singh in LPA-1670-2023 had scored 307.44 marks and was ranked at Sr.No.28 of the General Category but there were only 16 posts out of which 7 were reserved for women. Similarly, for the Assistant District Attorney, the appellant-Pankaj Mittal in LPA-1671-2023 had got 268 marks whereas the last short-listed candidate had obtained 375 marks. The appellants were thus only disgruntled candidates who had participated in the selection process and were precluded from challenging the same being aware of the rules which was uniform to all candidates. The Department was facing a shortage of DDAs as 70 posts are lying vacant which was leading to delay of trials.

10. The candidates possessing a professional degree in Law and enrollment certificate and certificate from the Bar Association concerned would substantiate the expression 'at the Bar' since that could only imply practice before

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the competent Court of law. The rules not being challenged, the appellants were not permitted to contend that the rules of the game had been changed midway during the selection process. The procedure for selection was applied uniformly by passing a competitive written examination and being shortlisted for appearing in the interview for the posts of DDAs and there were no marks contemplated or designated for the experience. The seven years experience for the DDAs and two years for the ADAs, thus, could be verified in the following manner:

- “ i. Degree of Professional Law,*
- ii. Certificate of Enrollment as an Advocate in the Bar Council,*
- iii. Certificate of Membership of the concerned Bar Association duly certified by the President/Secretary of the Bar Association or the Certificate given by the advocate with whom the candidate is associated as a legal practitioner in the Bar Association of the District Concerned.*
- iv. Certificate of All India Bar Examination successfully qualified to practice as an Advocate conducted by the Bar Council of India.’*

11. It is pointed out that in earlier direct recruitments conducted by the State to recruit DDAs in the Prosecution and Litigation Department, Punjab in the years 2014 and 2016, no such challenge had been raised. Reliance was placed upon various provisions of the advertisement that the candidates eligibility could be checked at any time before or after the competitive examination/interview and scrutiny was to be undertaken firstly by the Punjab Public Service Commission and secondly, by the Committee constituted by the Secretary/Incharge, Department of Home Affairs. The verification was done for the 64 provisionally selected candidates and the list was uploaded on 20.01.2023 of the shortlisted candidates. After that, exercise of the third verification of the experience certificate from the issuing authority had been undertaken. The appeals were vague and if the selected candidates did not have the real experience, the



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documentary proof should be provided by the appellants to substantiate the grievance. The posts could not be filled on account of the interim orders passed and the letter of appointments could not be issued and there were total 399 posts of ADAs and 130 posts of DDAs that were lying vacant and work was suffering in various Courts.

Supplementary stand of Commission :

12. The Commission filed its independent supplementary affidavit in pursuance of the directions issued by this Court on 18.03.2024, clarifying that all the candidates filled in different formats as there was no prescribed format. The persons of the Department were deputed for assistance only on the request of the Commission on 23.01.2023 and they were not having any access to any other area or aspect of the recruitment process and no candidate was rejected by the Commission out of those who had produced the documents. The result had accordingly been forwarded by the Commission vide its letter dated 14.03.2023 (Annexure R-3) and the record had been asked to be collected from the candidates for further process. No ineligible candidate had been allowed to participate in the interview process and therefore, candidates twice the number of vacancies had been called for the interview. Keeping in view the vacancies, the following table was given showing how the candidates were called for interview:

<i>Sr. No.</i>	<i>Code Category</i>	<i>Total Posts Applied</i>	<i>Present</i>	<i>Pass</i>	<i>Shortlisted</i>	
1	71 General Category	16	666	419	207	32
2	92 General Economically	4	10	6	4	4
3	72 ESM, Punjab	3	3	3	0	0
4	73 LDESM, Punjab		11	9	0	0
5	74 Ward of Freedom 1 Fighter, Punjab		7	5	1	1
6	76-A Blind and Low Vision	1	1	1	1	1
7	77 SC Others, Punjab	5	237	152	46	10
8	80 SC Sports Person, 1 Punjab		0	0	0	0
9	81 Balmiki/Mazhbi Sikh, 5 Punjab		109	75	16	10
10	82 Balmiki/Mazhbi Sikh 1 ESM, Punjab		0	0	0	0
11	83 Balmiki/Mazhbi Sikh		1	0	0	0



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	<i>LDESM, Punjab</i>					
12	85	<i>BC, Punjab</i>	3	135	88	44
13	86	<i>BC ESM, Punjab</i>	1	0	0	0
14	87	<i>BC LDESM, Punjab</i>		5	5	0
		Total	41	1185	763	319

13. It was submitted that there is no ambiguity in the certificates produced by the candidates which were in different formats and it prayed that the appeals be dismissed without getting permission for leave to appeal.

ARGUMENTS IN THE CASES OF DEPUTY DISTRICT ATTORNEYS

14. The argument raised by the appellants through Mr. Ashwani Chopra, Sr. Advocate and Mr. Prateek Mahajan, Advocate is that the employer was not barred from checking the eligibility of the candidates and the change of the stand by the State in the affidavit in the form of written statement is not permissible. Mr. Jatinder Pal Singh, Advocate for the appellants in LPA-1837-2023 and LPA-85-2024 has accordingly argued that the experience of practice at Bar had to be before the Court and Section 24 of the Advocates Act, 1961 provides for enrollment and the reference of 'practice of law' was a wider term and it was never the case of the writ petitioners that they had the necessary practice. It was accordingly contended that merely being member of the Association would not as such mean that candidates had essential qualifications and had only certain privilege had been given and it was not necessary to be a member of the Bar Association and thus it was not a competent authority to give a certificate. There were no certificates by District Judges or Registrars and the State was only seeking the presence of the selected candidates in Court by way of asking for *zimini* orders. Session trial cases were to be conducted by the Deputy District Attorneys and offences of heinous crimes were to be supervised by the Prosecutors and the State could not now take a contrary stand in the additional affidavit. It is submitted that 319 candidates had passed having the 40% cut off as per the additional affidavit now filed by the Commission and, therefore, the

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eligibility had to be seen from the 319 candidates who had passed rather than restricting the zone of consideration from the candidates on the top or to the extent of twice the number against the posts which had been advertised. The writ petitioners did not have the qualification of practice and, therefore, the learned Single Judge was not correct in setting aside the said letters issued by the State.

15. Mr. Jhanji and Mr. Chopra, Senior Counsels, representing the writ petitioners/selected candidates, submitted that as per Clause 8.6, the experience certificate which were being considered, were the Bar Council certificate alongwith Bar Association certificate and they had the necessary qualifications. They had been duly interviewed and had the necessary enrollment certificates and the necessary checking had been done. The assessment had been done by the Interview Panel and they had actual practice.

16. Mr. Karan Nehra, Advocate has pointed out that the Assistant District Attorneys who were in service wanted to stall the direct recruitment process of the Deputy District Attorneys and filed appeals. They were not in the zone of consideration. Only at a later point of time, they had stepped in. As per Clause 6.8.1, candidates not having more than 2 times the number of posts in the order of merit of written examination having secured the cut off were liable to be short listed for appearing in the interview. The order of merit was limited only to two times. The fairness of the procedure was never in question and, therefore, the non-intervenors had no right.

17. Mr. Salil Sabhlok, counsel for the Commission also highlighted the fact that two times the number of candidates was the requirement and the experience was being counted on the basis of Bar Council certificates. *Mala fides* as such had not been alleged and that the process had been followed year after year and the State was only checking the eligibility.

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18. Mr. Saurav Khurana, Addl. A.G., Punjab, on the other hand, submitted that there was no *locus standi* since the appellants had not even cleared the basic cut off and were not in the zone of consideration. He accordingly referred to his affidavit to submit that many of the appellants had failed to qualify in the interview and the change of the stand of the State was only on account of the fact that the State has chosen to accept the decision since prosecution department was facing extreme shortage of the posts which were sought to be filled and there was no *mala fides* as such. It is accordingly submitted that having chosen to take part in the selection process and without having objected to it earlier, the appellants were not entitled to challenge the decision of the learned Single Judge on the principle of estoppel as laid down by the Apex Court.

Factual matrix pertaining to cases of Assistant District Attorneys :

19. For the said posts, vide advertisement dated 30.04.2022, 119 posts were advertised, which would be clear from Annexure P-3 of CWP-13497-2023 out of which LPA-1671-2023, “Pankaj Mittal vs. Jyotsana Rawat and others” arises. The following essential qualifications were required with which we are concerned alongwith the two years experience of practice at the Bar:-

“Persons who possess a degree of Bachelor of Law (Professional Degree) of a recognized university or institution or who are Barristers of England or Ireland or are members of Faculty of Advocates of Scotland and are eligible for being enrolled as an Advocate under Advocates Act, 1961, and who have two years experience of practice at the Bar.”

20. The written competitive exam was to consist of 120 questions as per Clause 6.1 of 4 marks each totalling to 480 marks and there was no interview for the said post. The minimum marks for eligibility to be appointed were 40% in the competitive exam for the general category and 35% for candidates belonging to Scheduled Castes of Punjab and Backward Classes of Punjab, as per Clause 6.8.3

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and the selection for the post was to be finalized on the basis of written examination only. Thus, the necessary requirement of obtaining 192 marks (40%) and 168 marks (30%) for the candidates was the mandate before they could be put in the zone of consideration and eligibility was accordingly to be determined as per the cut off date of the advertisement which was 20.05.2022 as per Clause 6.7.2. The exam was held on 06.11.2022 and the short-listing of 226 candidates was done and the scrutiny of the documents took place between 10.01.2023 to 12.01.2023. Resultantly, on 18.01.2023 (Annexure P-6), on various deficiencies having been noticed in various required documents, the Commission called for the relevant documents through e-mail or by hand. Mr. Prateek Mahajan, Advocate appearing for the appellants has vouched for the action of the State.

21. A perusal of the deficiencies would go on to show that various documents were required including resident certificate, original LDESM certificates, Bar Council certificates, proof of date of birth and enrollment certificate with Bar Council, EWS certificates and proof of Indian nationality. The said exercise was repeated by another notice dated 15.02.2023 while specifying that six roll numbers had not done the needful and they were given two days' time to do the needful, failing which, their posts may be cancelled. Vide notice dated 23.02.2023, the result was declared for various categories and the six roll numbers mentioned in public notice dated 15.02.2023, who had not furnished the required documents were declared ineligible. 15 roll numbers were put in the result subject to final outcome of various writ petitions pending before this Court. On 03.03.2023, the Commission as such sent the record of 218 candidates manually through one of its officials to the Secretary, Government of Punjab, Department of Home Affairs and Justice (Annexure R-1). It is on 02.06.2023 (Annexure P-10), the impugned letters were issued whereby, the candidates were asked to prove their experience by 6 court orders of each year. The said communication was

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followed up on 05.06.2023 wherein the same exercise was sought to be conducted that 6 court orders/zimini orders of each year were asked for from where the presence in the Court could be ascertained.

Arguments in the case of ADAs :

22. Resultantly, keeping in view the above, it is the argument of the senior counsel Mr. Rajiv Atma Ram for the selected candidates/writ petitioners that the present appeal filed by Pankaj Mittal is not liable to be entertained since it is on the basis of an application with a prayer to allow leave to appeal. The said appellant was only an intervenor in the writ petition while referring to the interim order passed before the learned Single Judge on 17.07.2023. The limited relief which had been granted to him under his application under Order 1 Rule 10 CPC was to be impleaded in CM-10924-CWP-2023 to the extent that a hearing would be given as per order dated 17.07.2023. He had never been allowed to be impleaded as a party and, therefore, could not challenge the said order. It is pointed out from the merit list that he was at Sr. No.709 having Roll No.56564. His name was never in the initial list of candidates and he had never challenged the said list by filing any writ petition and had, thus, accepted the fact that he was not in the zone of consideration. In the absence of any legal right and having not been considered as such not coming in the zone of consideration, he could not at this belated stage, object to the judgment which had quashed the orders dated 02.06.2023 (Annexure P-10) and 05.06.2023 (Annexure P-11).

23. Counsel for the respondents has accordingly argued that there were two views possible and there was no illegality in the order of the learned Single Judge and the practice at the Bar would mean a certificate as such from the Bar Council and Bar Association and the Commission having weeded out the ineligible candidates, the Government could not as such ask for the Court orders. Reliance was accordingly placed upon the fact that the requirement of an

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experience certificate under Clause 8.6(v) was only which was to be issued by competent authority and it would not be applicable to the experience since the definition of competent authority under Clause 12.7.3 had been shown as the Deputy Commissioner, Additional Deputy Commissioner, SDM, Executive Magistrate, PCS Officers, Tehsildar which would only pertain to the certificates which were to be issued for the reserved candidates and not pertaining to the eligibility criteria as such. The Commission was the recruiting agency and having done so, it is not for the Government as such to substitute its opinion and take over the recruitment process. It is submitted that the 6 candidates who did not produce the certificates had been rendered ineligible as per the notices dated 15.02.2023 and as the final result had been declared on 23.02.2023. Thus, the Commission had accepted the certificates of the Bar Councils and the Bar Associations and it is not for the Government to substitute its opinion.

Legal Issues Arising For Consideration

24. The two legal issues which would arise for consideration before this Court would be as under:-

1) Whether the appeals would be maintainable by the present appellants who are apparently not within the zone of consideration and had never raised any challenge to the list forwarded by the Commission?

2) Whether the judgment of the learned Single Judge taking the view that the certificates relied upon by the short listed candidates regarding their professional degree of law and enrollment as an Advocate in the Bar Council or membership of the concerned Bar Association would be sufficient as such to satisfy the eligibility aspect as done by the Commission and whether the State Government had any role to play in the said process.

Our Findings on Issue No.1

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25. It is not disputed that for the 41 posts of the Deputy District Attorneys which were advertised on 05.04.2022 (Annexure P-1), the essential qualifications which were required read as under, which also provided that there was 7 years' experience required at the Bar as per Clause 4. The said clause reads thus:-

“4. ESSENTIAL QUALIFICATIONS:-

4.1 Persons who possess a degree of Bachelor of Law (Professional Degree) of a recognized university or institution or who are Barristers of England or Ireland or are members of Faculty of Advocates of Scotland and are eligible for being enrolled as an Advocate under Advocates Act, 1961, and who have 7 years' experience of practice at the Bar.”

26. The written competitive examination provided 120 questions of 4 marks each totalling 480 marks. The interview was to carry 60 marks. Thus, the totalling was 540 marks. In order to qualify and come within the zone of consideration of two times the number of posts in the order of merit of written examination, 40% was the requirement in the written examination for general category and 35% for the reserved categories for Scheduled Castes of Punjab and Backward Classes of Punjab. The cut off date was 26.04.2022 and the written test was held on 18.12.2022. Apparently, the scrutiny was done in pursuance of the letter written by the Commission on 30.01.2023 after getting help from the staff of the appointing authorities between 31.01.2023 and 01.02.2023. The merit list was then published on 02.03.2023 (Annexure P-4) and on 15.03.2023, the Commission recommended the names of 63 short listed candidates. The said action of the Commission has never been a subject matter of challenge. Apparently, the State took a legal opinion on 23.05.2023 and issued the impugned letters on 02.06.2023 and 05.06.2023 and resultantly, the matter went into litigation by the selected candidates.

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27. The position of law on the first issue is crystal clear that a dissatisfied candidate as such having sat in the examination and having accepted the terms and conditions cannot turn around and question the process, specially more so, having not filed any writ petition at an earlier point of time. The appeals, as noticed, arise out of the judgment of the learned Single Judge whereby the short listed candidates whose names were forwarded by the Commission had been asked to get proof of their eligibility to the extent of producing *zimini* orders to show their presence in the Court. The subject matter of challenge before the learned Single Judge was that whether the appointing authority had any jurisdiction as such to scrutinize the eligibility criteria which was apparently done by the Commission at its own level. Resultantly, the learned Single Judge had decided the writ petition in favour of the writ petitioners. Having accepted the terms and conditions of the advertisement and the short listing aspect, the candidates are bound by the conditions of the advertisement and now cannot turn around and challenge the same. In ***Madan Lal and others vs. State of Jammu and Kashmir and others, (1995) 3 SCC 486***, the said view had been laid down. The relevant portion reads thus:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and

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oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner. 10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

28. The said view was followed in ***K.A. Nagamani Vs. Indian Airlines and others, (2009) 5 SCC 515; Manish Kumar Shahi vs. State of Bihar and***

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others, (2010) 12 SCC 576; Madras Institute of Development Studies and another vs. K. Sivasubramaniyan and others, (2016) 1 SCC 454.

29. In *Ashok Kumar and another Vs. State of Bihar and others, (2017) 4 SCC 357*, a Three Judge Bench of the Apex Court, while dealing with the promotions of Class-IV to Class-III posts in District Courts, held that candidates who had taken part in the selection process were not entitled to question the same and to hold out that the same was without jurisdiction and it was impermissible. It was noticed that the written examination was to carry certain marks and the interview marks were also specified and having participated in the selection process, they could not question the interpretation of the rule. Resultantly, the order of the Division Bench upsetting the order of the Learned Single Judge was upheld where the Division Bench of the High Court followed the said principle.

30. Similarly, in *Ramjit Singh Kardam Vs. Sanjeev Kumar & others, AIR 2020 (SC) 2060*, the issue was that without any allegation of mala-fides, the writ petitioners could not lay challenge to the criteria of selection after they had participated in the same. Resultantly, it was held that the only exception would be if the criteria was changed and otherwise candidates who had participated in the selection process would be barred. It was noticed in the said case that the Chairman of the Commission had changed the rules of the game and objections taken regarding the challenge raised could not be sustained in the peculiar facts in the absence of any mala-fides against the Chairman or the Members of the Commission. The concept of 'malice in fact' and 'malice in law' has to be kept in mind which was also dealt with in the above-said judgment wherein it was held that 'malice in law' is something done without the lawful excuse and malice in fact is an actual malicious intention on the part of the Members who have done the wrongful. In the absence of any such allegations being raised against the selecting body, we are of the considered opinion that the appellants are estopped from

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challenging the findings of the Learned Single Judge having never chosen to question the selection at any point of time after the shortlisting of the candidates.

Findings regarding DDAs :

31. The appellants had only a right of consideration and having not come within the zone of consideration and in the absence of any malice or *malafides*, cannot in appeal by filing an application for grant of leave to appeal, challenge the decision of the learned Single Judge. The Commission was empowered to device the mode of selection and scrutinize the documents for the selection of the posts of the selected candidates. Having done so as per the terms of the advertisement and forwarded the list as such to the State, it was not within the power of the State as such to question the wisdom of the Commission, which is a constitutional body. It is to be noticed that for the 41 posts advertised for the post of DDAs, the Commission has wherever found possible, recommended two time candidates by short listing the same and forwarded the same to the Government. The same was done in pursuance of the criteria which was part of the advertisement after interviewing the said candidates. Clause 6.8.1 provides that not more than two times the number of posts in the order of merit of the written examination who had secured minimum percentage in the written examination were to be short listed for appearing in the interview. The final result was, thus, to be prepared as per Clause 6.9.1 on the basis of the grand total of the marks obtained in the written competitive exam and the interview. The checking was to be done after the competitive examination/interview and the eligibility conditions, if not fulfilled, the examination was likely to be cancelled by the Commission if the claim was found to be incorrect as per Clause 6.7.3. Similarly, the scrutiny of the application forms was to be done after the conduct of the examination.

32. As noticed, the officials of the State were associated with the limited purpose for scrutinizing the documents from 31.01.2023 to 01.02.2023 by issuing

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the requisite letter dated 30.01.2023 in the case of the DDAs. It was thereafter the interviews were held between 28.02.2023 to 02.03.2023 and the merit list was then published by the Commission. The names were then recommended on 15.03.2023. The State chose to take a legal opinion on 23.05.2023, on the basis of which, it sought to take over the role as such of the Commission regarding the checking the eligibility part. The learned Single Judge, thus, came to the conclusion that it was not the duty of the State as such and allowed the writ petitions.

33. Clause 6.7.2 provides that the candidates not meeting the eligibility criteria would be rejected after the scrutiny process or any time if found ineligible and the cut off date as such was 26.04.2022, which was regarding the relevant documents, which necessary exercise was done by the Commission. It is in such circumstances 64 persons were short listed against the 41 posts against various categories as noticed in Para No.12. It is apparent that against 666 persons who had applied against the 16 general seats, only 419 had come present and out of them, only 207 had passed the test. 32 persons in the general category had, thus, been short listed and their names forwarded and the persons who had, thus, not come within the zone of two times, their names were never forwarded. The appellants are that set of persons whose names were never forwarded and, therefore, they cannot now agitate for consideration. Clauses 6.7.2, 6.7.3 and 6.8.1 read thus:-

“6.7.2 The scrutiny of application forms shall be done after the conduct of the examination. During the process of scrutiny, the application forms and other relevant documents, certificates, etc. of the candidates shall be examined to determine their eligibility as on 26/04/2022. Candidates not meeting the eligibility criteria will be rejected after the scrutiny process or any time thereafter if found ineligible.”



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6.7.3 *The candidates applying for the Competitive Examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination for which they are admitted by the Commission viz. Competitive Examination and Interview will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If on checking at any time before or after the Competitive Examination/ Interview, it is found that they do not fulfill any of the eligibility conditions their candidature for the examination will be cancelled by the Commission. If any of their claims is found to be incorrect, they may render themselves liable to disciplinary action by the Commission or the civil court. Any attempt on the part of a candidate to obtain support for his candidature by any unfair means will render him/ her liable for disqualification and disciplinary action.*

6.8 INTERVIEW

6.8.1 *Candidates not more than two times the number of posts (in their order of merit of written examination? Who have scored a minimum of 40 percent marks in written examination (35% for candidates of Scheduled Castes of Punjab and Backward Classes Punjab) will be short-listed for appearing in the interview. However, this number shall be subject to variation if two or more candidates at the bottom of this list (the number at the end) get equal marks. In such case, then all of them will be considered for appearing in the Interview (subject to eligibility), warranting the corresponding increase in the stipulated ratio.”*

34. In such circumstances, the writ petitioners and the State are well justified to submit that the appeals are not maintainable as such from the side of the candidates who never made the cut and were never within the zone of consideration of two times the candidates as per the terms of the advertisement.

Findings in case of ADAs :

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35. Similarly, in the case of the ADAs, since there was no interview to be conducted, the exam had been held on 06.11.2022 for the 119 posts advertised vide advertisement dated 29/30.04.2022. A short listing of 226 candidates was done on 05.01.2023 (Annexure P-5) and the scrutiny of the documents then took place from 10.01.2023 to 12.01.2023. Various deficiencies had been noticed in documents and on 18.01.2023, the Commission had called for the relevant documents through e-mail vide notice dated 15.02.2023. Six candidates whose roll numbers were mentioned were asked to do the needful and 2 days' time was given to them to give documents to overcome the deficiencies, failing which, their posts would be cancelled. Not having done so, the result was declared on 23.02.2023 for the said posts and the 6 candidates had been declared ineligible. After having sent the names to the Government, the impugned letters were issued, as noticed on the same principle as of the DDAs. The cut off date as such was 20.05.2022 as per Clause 6.7.2 of the advertisement and the final result was to be prepared on the basis of net marks obtained in the written competitive examination since there was no interview to be conducted. As per Clause 6.7.1, the acceptance of applications by the Commission did not indicate the acceptance of candidature and the scrutiny was to be done only after the conduct of the examination, to determine the eligibility. The right as such remained with the Commission as such that if the candidate did not fulfill the eligibility, their candidature was liable to be cancelled by the Commission as per Clause 6.7.3. The claim of the State as such to take over the role of the Commission has been rightly cut short by the learned Single Judge. The relevant Clauses read thus:-

“6.7 ELIGIBILITY AND SCRUTINY OF APPLICATION FORMS AND TESTIMONIALS

6.7.1 *All candidates who apply for the ibid posts will be treated “provisionally eligible” for appearing in the competitive exam. Acceptance of applications at this stage and*



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allotment of Roll Numbers by PPSC does not indicate acceptance of candidature by the PPSC, since there is no scrutiny of documents before the written Exam.

6.7.2 *The scrutiny of application forms shall be done after the conduct of the examination. During the process of scrutiny, the application forms and other relevant documents, certificates, etc. of the candidates shall be examined to determine their eligibility as on 20/05/2022. Candidates not meeting the eligibility criteria will be rejected after the scrutiny process or any time thereafter if found ineligible.*

6.7.3 *The candidates applying for the Competitive Examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination for which they are admitted by the Commission viz. Competitive Examination will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If on checking at any time before or after the Competitive Examination, it is found that they do not fulfill any of the eligibility conditions their candidature for the examination will be cancelled by the Commission. If any of their claims is found to be incorrect, they may render themselves liable to disciplinary action by the Commission or the civil court. Any attempt on the part of a candidate to obtain support for his candidature by any unfair means will render him/ her liable for disqualification and disciplinary action.”*

36. It is, thus, apparent that the persons who had been short listed were, thus, being again scrutinized by the State on the pretext of getting *zimini* orders, which was not permissible. It was only within the purview of the Commission as such who had accordingly forwarded the names by short listing the same on the parameters which had been laid down in the advertisement. The appellants not being within the zone of consideration, had accepted the merit list which had been sent and had never challenged the short listing process by filing the writ petition.

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It is only when the State as such questioned the experience aspect of the short listed candidates, the appellants herein chose to intervene in the proceedings before the writ Court. Therefore, keeping in view the law laid down in the above judgments, they cannot be permitted to do so.

37. It is a matter of record that it is the own case of the appellants themselves that applicant-Pankaj Mittal had filed an application under Order 1 Rule 10 CPC for impleadment bearing CM-10924-CWP-2023 in CWP-13497-2023 for impleadment as respondent No.4. Similar applications were also filed in other cases. A perusal of the application would go on to show that the case put forth was that the applicant was eligible having more than 6 appearances before the Courts of law and his name was mentioned in the merit-list at Sr.No.709 against Roll No.56564. The plea taken was that the applicant was likely to fall within the zone of consideration if the writ petitioners and other petitioners had not counted practice at the Bar are held to be disqualified for appointment as they do not fulfill the eligibility conditions. Thus, wanting to bring additional facts before the Court, the applicant pleaded for impleadment.

38. The Learned Single Judge never allowed the applications and only gave them permission to be heard as interveners which would be clear from the order dated 17.07.2023. Same reads as under:

“Application bearing No.CM-10924-CWP-2023 in CWP-13497-2023 has been filed for impleadment of applicant as respondent no.4 in the Writ Petition; application bearing No. CM-10914-CWP-2023 in CWP-13522-2023 has been filed for impleadment of applicants as respondent nos. 4 to 6 in the Writ Petition; and application bearing No. CM-11202-CWP-2023 in CWP-13525-2023 has been filed for impleadment of applicant as respondent no.4 in the Writ Petition;

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For the reasons stated in the applications, the same are allowed to the extent that the applicants shall be heard as intervenors in the Writ Petitions.

List again on 16.08.2023.

To be shown in the Urgent List.

Photocopy of this order be placed on the files of the connected cases.”

39. In the present appeals preferred, necessary applications have been filed with the prayer to allow leave to appeal bearing CM-4230-LPA-2024 in LPA-1668-2023, on the ground that the appellant has material interest in the matter and that they had been allowed to intervene in the matter vide order dated 17.07.2023. In such circumstances, we are of the considered opinion that the applications are not liable to be allowed in the peculiar facts and circumstances and the appellants cannot choose to question the judgment of the Learned Single Judge having been satisfied with the process of the recruitment and never having come within the ambit of the two times of the candidates who were to be short-listed in both the categories. In LPA-1651-2023, the appellant was never a party to the writ petition i.e. CWP-13522-2023 and had filed CM-10914-CWP-2023. He, however, has not filed any application for leave to appeal under Rule 2 of Chapter 1 Part C of the High Court Rules and Order, Vol.5 and, therefore, the appeal otherwise is not maintainable at his instance. Merely because he had filed an application for impleadment of respondent No.4, which was never allowed, he cannot file the present appeal. Rule 2 reads thus:-

“2. Appeals by persons other than parties to the decree or order appealed from.- Whenever by a decree or order which appealable to the High Court the interest of-

(a) a beneficiary in property which at the date of such decree or order was vested in or in the possession of a trustee, an executor, an administrator, or a receiver or manager appointed by a court who as such was a party to such decree



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or order; or Procedure to make respondent the legal representative of a deceased party who died after the decree or order appealed from. Appeals by persons other than parties to the decree or order;

(b) a legal representative as such of a deceased party to such decree or order; or

(c) an assignee of a party to such decree or order by assignment subsequent to the date of such decree or order; or

(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest, by, through, or from any party to such decree or order is affected;

and such beneficiary, legal representative, assignee, or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to present to the High Court for admission a memorandum of appeal from such decree or order, he may name himself therein as an appellant if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make himself an appellant, and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application : Provided always, that a Judge of the High Court may, by an order allow in his discretion a reasonable time in that behalf for the presentation of such an affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal.”

40. Similarly, in LPA-201-2024, one candidate has filed the appeal along with application for leave to appeal on the ground that she had participated in the recruitment process of Assistant District Attorney and was placed at Sr.No.2 of the category of ‘Locomotor Disability’ and was pleading her case only on the ground that the candidate at Sr.No.1 had not submitted the required zimni orders and there was a chance that he could be cast-out due to non-fulfillment of the eligibility in

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the selection criteria. It was thus pleaded that the applicant was likely to fall within the zone of consideration and was liable to be appointed against the advertised post. It is thus apparent that the said appellant had not even bothered to join the proceedings and file any application for impleadment and is now fishing in the dark by seeking a prayer for consideration only on the strength of the fact that the State has chosen to take over the role of the Commission which further fortifies the objections raised by the writ petitioners regarding the maintainability of the present appeals.

41. Resultantly, we are of the considered opinion that the appeals are not maintainable at the instance of the appellants. ***Accordingly, Issue No.1 is decided against the appellants.***

Our Findings on Issue No.2

42. On the second aspect as such whether the learned Single Judge was correct in allowing the writ petition, reliance can be rightly placed upon the judgment in *Madan Lal's case (supra)* wherein, the process of selection of Munsiffs in the State of Jammu and Kashmir was the subject matter of consideration. While dealing with the contention No.6 which was regarding the two years of actual practice at the Bar for the purposes of being eligible, it was held that merely because a candidate has kept himself busy while attending Courts regularly by being in the law library or in the bar room and to insist upon the professional attachment to a concerned Court would amount to re-writing the Rule. In the said case, the candidates as such had the certificates from the District Judge as such, which were accepted as such. The argument that actual practice would mean appearance before the Courts and conducting cases was rejected. Para No.20 of the judgment rendered in *Madan Lal's case (supra)* reads thus:-

“20. It was next vehemently contended by the petitioners that actual practice would mean that the concerned



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candidates should have appeared before courts and conducted cases during these two years. It is difficult to accept this contention. A member of the bar can be said to be in actual practice for 2 years and more if he is enrolled as an Advocate by the concerned Bar Council since 2 years and more and has attended law courts during that period. Once the Presiding Officer of the District Court has given him such a certificate, it cannot be said that only because as an advocate he has put in less number of appearances in courts and has kept himself busy while attending the courts regularly by being in the law library or in the bar room, he is not a member of the profession or is not in actual practice for that period. The words 'actual practice' as employed in rule 9 indicate that the concerned advocate must be whole time available as a professional attached to the concerned court and must not be pursuing any other full time avocation. To insist that the terms 'actual practice' should mean continuous appearances in the court would amount to rewriting the rule when such is not the requirement of the rule. There is no substance even in this additional aspect of the matter canvassed by the learned senior counsel for the petitioners. It must therefore be held that respondent no. 10 & 13 were eligible for competing for the said posts of Munsiffs.”

43. Similarly, in ***Devinder Singh vs. State of Haryana, (1997) 5 SLR 580***, a Division Bench of this Court rejected the argument raised whereby the eligibility as such of the respondent was sought to be questioned on the ground that he was only on the rolls of the Bar Council and the Bar Association and not going to the Court. The relevant portion reads thus:-

“12. Annexure R4/3 is the certificate issued by the Secretary, District Bar Association, Rohtak. A perusal thereof shows that the respondent No. 4 had been practising as an Advocate at the District Courts, Rohtak from 11.11.1991 to 13.7.1995. This certificate has been counter-signed by the District & Sessions Judge, Rohtak on 13.7.1995. If we read

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Annexure R4/3 along with Annexure R4/4, there remains no doubt that the respondent No. 4 had practised at the bar for more than three years as on 24.7.1995. Thus, no illegality has been committed by the respondents No. 1 and 3 in treating the respondent No. 4 eligible for recruitment to the Haryana Civil Service (Judicial Branch). No doubt, in All India Judges Associations' case (supra), the Supreme Court has laid emphasis on the first hand experience of working of the Court system and the administration of justice begotten through legal practice, but we do not find any rationale in the argument of the learned counsel for the petitioner that such experience can be gained only by arguing cases in a Court of law. An Advocate may be actually on the rolls of the Bar Council and the Bar Association and he may be actually coming to the Court for a particular length of time but may not be able to get an opportunity to argue the case. A new entrant in the profession may join a Senior Advocate. He may remain attached to such Advocate for sufficiently long time but may not get opportunity to argue the case. However, only on that count it cannot be said that the new entrant has not practised at the bar or that he has not gained experience as an Advocate. We, therefore, hold that for satisfying the conditions of eligibility prescribed in the rules, it is not necessary that an Advocate must have actually appeared and argued the cases in the Courts for a period of three years.

44. The stand of the Commission in accepting the certificates issued by the Bar Association, duly counter signed by the District Judge, was accepted and it was held that if the Government was to make detailed enquiries to determine the eligibility of three years' experience, it would be impossible to complete the process of recruitment within a reasonable time frame.

45. The stand of the State is thus categorical in the additional affidavit filed that the uniform procedure was applied to the selection process and shortlisting was done. The documents were being verified on the basis of the

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degree of the profession of Law, certificate of enrollment with the Bar Council, certificate of membership in the Bar Association, duly certified by the President/Secretary or the certificate given by the Advocate with whom the candidate was associated as a legal practitioner and lastly, the certificate of All India Bar Examination having successfully qualified to practice as an Advocate which was conducted by the Bar Council of India. It was also mentioned that in the earlier recruitment made in 2014-16, the criteria of selection had been on the very same documents and no other document was requisitioned by the State.

46. It is in such circumstances, the State is now supporting the selected candidates having realized its folly. Reliance can be placed upon the judgment in ***Union Public Service Commission Vs. M. Sathiya Priya & others, AIR 2018 SC 2790*** wherein it was held by the Apex Court that it would not be open to the Courts to sit over the assessment made by the Selection Committee as an Appellate Authority. The Selection Committee members have got expertise in the matter and it is not for the Court to interfere in the such matters except where the assessment is vitiated, biased, *mala fide* or arbitrary. Whether a candidate is fit for a particular post or not had to be decided by the duly constituted expert body and Courts have very limited scope of judicial review except on the ground of mala-fides or serious violation of the statutory rules or mala-fides. In the said case, the Selection Committee was constituted by the UPSC and it was held that no grave mistake was committed and the selection had been made rationally. Resultantly, the judgments of the Central Administrative Tribunal and the High Court were set aside. Relevant portion of the judgment read as under:

“15. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High Level

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Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.

We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Acton "Power tends to corrupt, and absolute power corrupts absolutely". The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by the UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinised the

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Government of NCT of Delhi, (1999) 1 SCC 330 held that the members of the Bar mean 'a class of persons who are actually practicing in the Courts of Law as Advocates and Public Prosecutors and Government Counsels on the rolls of the Bar Council would be entitled to practice under the 1961 Act" and were held to be covered under the expression "Advocate". It was held that the said persons are professional practitioners.

48. In *Bar Council of India and others vs. A.K. Balaji and others, 2018 (5) SCC 379*, the Apex Court held that practice of law includes not only appearance in Courts, but also giving opinions, drafting of instruments, participation in conferences involving legal discussion. Resultantly, it was held that Advocates enrolled with the Bar Council alone are entitled to practice law except otherwise provided in any other law while dilating on the issue whether there was any bar under the Advocates Act or the Rules for the purpose of giving legal advice to their clients.

49. In *Sanjay Dhar vs. Jammu and Kashmir Public Service Commission, (2000) 8 SCC 182*, a three-Judge Bench while examining Rule 9 of the J & K Civil Service (Judicial) Recruitment, Rules, 1967, held that if an Advocate is practicing exclusively in the High Court, the District Courts could not have any material available in its record and, therefore, a certificate issued by the Registrar, counter signed by the District Judge, would be sufficient as such to satisfy the requirement. Resultantly, it was held that rejection as such of the said certificate by the Commission and to hold the candidate ineligible was not correct.

50. The said judgments have, thus, been relied upon by the learned Single Judge to grant the benefit of practice at Bar, which the candidates as such had produced by way of relying upon the Bar Council certificates, the Bar Association certificates which had been duly accepted by the Commission. The State as such chose to put in its own criteria, which we feel was beyond its purview since it was

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only the appointing authority and not the recruiting authority. The exclusive jurisdiction lay with the Commission. The learned Single Judge, in such circumstances, was justified as such in quashing the said letters and coming to the valid conclusion as such that the Secretary could not ignore the recommendations of the Commission by introducing additional requirement after the process had been concluded by the Constitutional Authority. The only power as such to examine the suitability of the candidate was with regard to the antecedents of the medical fitness or whether there was any forgery or impersonation on account of the selected candidates.

51. Thus, once the Punjab Prosecution Litigation (Group-B Service) Rules, 2002 and the Punjab Prosecution Litigation (Group-B Service) Rules, 2010 provided that lawyers having 7 years of experience at the Bar and 2 years experience and practice at the Bar were being tested on the strength of an Enrollment Certificate as an Advocate or by the Bar Council or the Bar Association or any other certificate, as noticed, the findings which have been recorded do not suffer from any infirmity.

52. However, one factor we would like to keep in mind that the Learned Single Judge was not very kind to the Law Officer (Addl. Advocate General) who gave the opinion on the basis of which the State had asked for the zimni orders and the Learned Single Judge had said that because of the said opinion and the action, the selection process had been put to a stand-still. It was held that the action of the State was deplorable and the opinion placed on record was not based upon any law and appears to have been given at the asking. The said observations, without having given an opportunity of hearing to the Law Officer who only gave the opinion, whether rightly or wrongly, could not have been adversely commented upon by the Learned Single Judge. Therefore, we are of the considered opinion that the said portion of the judgment of the Learned Single

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Judge whereby adverse comments had been made on the opinion given by the Law Officer would be required to be deleted from the body of the judgment. Resultantly, we direct so.

53. A perusal of the letter dated 14.03.2023 (Annexure R-3) sent by the Commission would go on to show that the details of 10 candidates who had filed writ petitions had also been mentioned, out of which some had been provisionally short listed for interview and others have not even been short listed. It was specifically mentioned that out of the 10 candidates, only one had been provisionally short listed. All the photocopies of the certificates sent as such regarding the caste certificates, handicap certificates, freedom fighter certificates issued by the concerned authorities had to be checked at the own level by the Government. Thus, the Government as such was to check the self attested certificates regarding various categories and to ensure that the candidates, if any, who had applied against various reserved categories, had the relevant documents and issued by the competent authorities. The limited role as such of the State was in pursuance of the letter which had been forwarded and it could not sit over the recommendations as such and once the interview had been done in the case of the DDAs and as per the merit, list had been forwarded. Similarly, for the ADAs also, on the basis of the marks obtained in the written examination, the list had been forwarded after duly weeding out 6 candidates who had chosen not to furnish the necessary documents and had to be duly processed against vacancies.

54. Keeping in view the above discussion, ***Issue No.2 is also decided against the appellants.***

55. In such circumstances, we do not find any ground as such to entertain the present appeals and the same stand dismissed. Applications for grant of leave



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to appeal also, in such circumstances, stand dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

13.05.2024
shivani/sailesh

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes