

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16957 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 16379 of 2020****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 16379 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 16551 of 2020****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 16551 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SANDEEP N. BHATT****Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PRAVINBHAI PIRABHAI KHATANA & 27 other(s)**Versus****STATE OF GUJARAT & 2 other(s)**

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Appearance:**Special Civil Application No.16957 of 2020 :****MR SHALIN MEHTA, SENIOR ADVOCATE with****MR RUSI B TRIVEDI, ADVOCATE for the Petitioners****MR MANRAJ BAROT, AGP for the Respondents – State Authorities**

**Special Civil Application No.16379 of 2020 &
Special Civil Application No.16551 of 2020 :**

MR SI NANAVATI, SENIOR ADVOCATE with
MR MAULIN PANDYA, ADVOCATE for the Petitioners

MR MANRAJ BAROT, AGP for the Respondents – State Authorities

**Civil Application No.2 of 2022 in Special Civil Application No.16957 of
2020 &
Civil Application No. of 2022 in Special Civil Application No.16551 of
2020 :**

MR NK MAJMUDAR, ADVOCATE for the Applicants

MR MANRAJ BAROT, AGP for the Opponents – State Authorities

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 31/03/2023

CAV JUDGMENT

1.1 Since the issue involved in all these petitions is same, all these petitions are tagged, heard and disposed of together, with consent of all the learned advocates.

1.2 By way of present petitions, the petitioners seek to direct the respondents authorities to consider them for the post of Police Sub Inspector Mode-3 (Unarmed) from their cadre of Assistant Sub Inspector (Unarmed).

2. Heard Mr.S.I. Nanavati, learned senior advocate with Mr.Maulin G. Pandya and Mr.Shalin Mehta, learned senior

advocate with Mr. R.B. Trivedi, learned advocate for the petitioners, Mr.N.K. Majmudar, learned advocate for the proposed petitioners and Mr. Krutik Parikh, learned Assistant Government Pleader for the respondents – State Authorities at length.

3. Rule. Learned AGP waives service of notice of rule for and on behalf of the respondents – State Authorities.

4.1 Learned senior advocate Mr. S.I. Nanavati with learned advocate Mr. Maulin G. Pandya for the petitioners has submitted that all the petitioners are the Unarmed Assistant Sub Inspector.

4.2 As per their case, the issue involved in this group of petitions is that when they appointed on the basis of *ad-hoc*, whether that period of *ad-hoc* should be considered for the eligibility to appear in the departmental examination and also for the purpose of promotion.

4.3 He has submitted that so far as the stand of the Government is concerned, the *ad-hoc* period of three years as eligible for the purpose of appearing in the examination and five years for the purpose of promotion, cannot be considered.

He has submitted that the Government Resolution dated 18.01.2017 itself suggests that such *ad-hoc* period is required to be taken into considered for the purpose of examination as well as for promotion. On that basis, the authorities have extended the

benefits to the lower post as well as to the other posts also.

4.4 He has drawn the attention of this Court to the Notification dated 27.01.2020 issued by the Home Department of the State Government, more particularly Clause 3(1) and Clause 3(2) thereof.

He has submitted that merely relying upon these Clauses, the stand taken by the Government that once they are confirmed in the post of regular ASI, the period is to be calculated or a period to start thereafter only and even the petitioners are not eligible to apply also, is not correct by reading the rules and the notifications / Government Resolutions in proper context.

At this stage, he has relied upon the Notification dated 18.01.2017 issued by the Finance Department of the State Government, more particularly Clause 2 thereof.

He has further submitted that when appointing the petitioners vide order dated 18.05.2017, the Authority has clearly mentioned about the reference of the Government Resolution dated 18.01.2017. He has submitted that as per conditions stipulated in the said notification, when the petitioners were appointed, they have been appointed giving the benefit of that *ad-hoc* period as per the Government Resolution dated 18.01.2017.

4.5 He has further relied upon the Notifications dated 30.11.2015 and 07.10.2022 issued by the Home Department of the State Government.

4.6 He has also drawn the attention of this Court to the reply filed by respondent No.2 – the Director General and Inspector General of Police dated 07.11.2022, more particularly the contention towards Rule 3(2) of the Police Sub Inspector (Unarmed), Class III, (Departmental Examination) Rules, 2019.

He has submitted that Clause 2 of the Resolution dated 18.01.2017 is made applicable for Lok Rakshak in 2022.

He has submitted that the authority is not considering the case of the petitioners because of Clause 3(2) of the Notification dated 27.01.2020. He has submitted that the authority, as a defense, has contended in its reply that they want to follow this Clause of the Notification dated 27.01.2020.

4.7 He has submitted qua the defense taken by the respondent authority in its reply at Para 16 that, as far as the applicability of the Government Resolution dated 18.01.2017 is concerned, the reply is totally silent qua this.

4.8 He has submitted that the Government cannot close its eyes to the Government Resolution dated 18.01.2017, which clarifies in terms and categorically that, for the purpose of promotion also, this ad-hoc period is required to be considered. He

has submitted that in case of similarly situated persons of a lower post i.e. Lok Rakshak, considering the very Government Resolution dated 18.01.2017 in the year 2022, they have been given benefits to those when appointed on the ad-hoc period.

He has further submitted that while appointing the petitioners, it has given to understanding that while applying for this post, whatever benefits flow from the said Government Resolution dated 18.01.2017, will also be available.

At this stage, he has reiterated by referring the appointment order dated 18.05.2017, wherein Government Resolution dated 18.01.2017 has been considered by the Authority. He has submitted that once we have been given the promise, now the Authority has referred to Rule 3 of the Rules, 2019 and denied the benefits to the petitioners, which is not permissible.

4.9 He has submitted that by the interim order dated 18.12.2020, this Court has allowed the petitioners to participate in the examination, but subject to final outcome of the petitions.

4.10 Learned senior advocate Mr.S.I. Nanavati has also submitted that the petitioners are the representatives of other 530 candidates and therefore, the result of these petitions would affect all 530 candidates also, over and above the present petitioners, which list is annexed to the petitions.

4.11 Lastly, learned senior advocate Mr.S.I. Nanavati for the petitioners has submitted that the controversy is in narrow compass. He has submitted that according to the petitioners, for the purpose of written examination, three years ad-hoc period of the appointment to be calculated or not and five years for promotion also, the ad-hoc appointment period to be taken into consideration or not.

4.12 He has drawn attention of this Court to the affidavit in reply filed by the respondent Authority, wherein it is stated that Rules, 2008 which was saying about efficiency etc., for the purpose of promotion, stand superseded by Rules, 2019.

4.13 At this stage, he has also drawn the attention towards Rule 3(1) of the Rules, 2019 and has submitted that the said Rule provides conditions for eligibility. He has submitted that according to this rule, the petitioners have completed three years on the last date of application. He has submitted that the word 'regular appointment' would not be applicable to the petitioners *qua* the post in question. He has also submitted that the authority has kept silent as far as Government Resolution dated 18.01.2017 is concerned. He has submitted that while appointing the petitioners, the authority has promised to give benefits of this very Government Resolution dated 18.01.2017. He has submitted that in this background, these petitions may be allowed.

5.1 Learned senior advocate Mr.Shalin Mehta for learned

advocate Mr.Rusi B. Trivedi for some of the petitioners has submitted that all the petitioners are direct recruits on the post of Assistant Sub-Inspector of Police in the year 2016 / 2017.

5.2 He has submitted that the new Rules, 2019 are declared by the Authority vide Notification dated 27.01.2020. He has drawn the attention towards Rule 1(3) of the said Rules, 2019 and has submitted that the petitioners are the direct recruits.

He has further drawn the attention of this Court towards Clause 3(1) of the said Rules, 2019 and has submitted that the only requirement is three years on the last date of accepting the application.

He has submitted that the applications are invited on 26.06.2020 from the eligible ASIs for the post in question i.e. PSI under these Rules. The last date for application was 15.07.2020. Therefore, all the persons, who are appointed before 15.07.2017, are eligible to appear in the examination for the post in question.

He has submitted that in the present case, the petitioners are appointed before 15.07.2017 in disputably and therefore, the petitioners are eligible to appear in the examination for the post in question. He has submitted that there is no clarification in the advertisement regarding ad-hoc, fixed pay, temporary, etc.

5.3 He has also drawn attention towards affidavit in reply filed by the respondent authority regarding Rule 3(2) of the Rules as the same is illegal and perverse. He has submitted that these petitions may be allowed.

6.1 Learned advocate Mr. N.K. Majmudar for the applicant/s, who intends to join as party petitioner/s in this group, has drawn the attention of this Court towards the communication dated 26.06.2020, more particularly Clauses 3 & 5(4) thereof and has submitted that there is a limitation of three years from the date of appointment. He has also drawn the attention towards rejoinder filed by the petitioners, more particularly, the appointment order of one of the petitioners attached therewith and has submitted that the authority has, while issuing the appointment order, referred to the said Government Resolution dated 18.01.2017.

6.2 He has submitted that the applicant/s - proposed petitioner/s have completed more than prescribed tenure of service. He has also submitted that the respondent authority has not clearly mentioned in the advertisement that the said five years should be in regular service. He has submitted that this application for joining party may be allowed and the applicants may be joined as party petitioners in this litigation.

7.1 To the above, learned senior advocate Mr.S.I. Nanavati has submitted that unless and until the applicants are impleaded

as party, he cannot have any locus to address the Court. He has submitted that the applicants are the group of persons who have not completed three years at the time of advertisement and rightly rejected their petition by this Court. If the benefits of the G.R. dated 18.01.2017 is extended to the persons, then also the present petitioners are eligible for the exam / post in question and not the applicants of the civil application. Further, he has submitted that the said applicants are not the affected parties at all.

7.2 So far as Civil Application for joining party is concerned, learned advocate for the petitioners has drawn the attention of this Court to the order dated 02.02.2022 passed by this Court in Special Civil Application No.19220 of 2018 and allied matters as well as the order dated 05.05.2022 passed by the Division Bench of this Court in Letters Patent Appeal No.429 of 2022 and allied matters and has submitted that the issue here is completely different and therefore, the said application for joining party may not be allowed.

8.1 *Per contra*, learned AGP Mr. Krutik Parikh for the respondent State has submitted that the appointment of the petitioners in the post of Assistant Sub-Inspectors is made in the year 2016/2-017 on a fixed term contractual basis for an initial period of five years. There are various conditions stipulated in the appointment order i.e. CCC+ examination, ACRs, Training, etc. and after completion of all the eligibility criteria / conditions by such ASIs, they would be appointed as regular ASIs. Accordingly, the

petitioners are appointed as regular ASIs in the year 2021 / 2022.

He has submitted that advertisement was dated 26.06.2020 and the last date of eligibility was 15.07.2020. He has submitted that this petition would be viewed considering the date of advertisement and last date of application qua the post in question. The petitioners are the employees working as ASIs not having five years experience in this cadre as regular ASIs and are aspiring promotion to the post of PSI, without having sufficient experience.

He has submitted that it is a legal settled position of law that the Court has to consider the eligibility as on the date of advertisement.

8.2 He has submitted that there are two Rules; (i) Police Sub Inspector (Unarmed) Recruitment Rules, 2020 and (ii) Police Sub Inspector (Unarmed), Class-III (Departmental Examination) Rules, 2019.

He has submitted there are three modes; (i) direct selection (ii) by special competitive examination and (iii) departmental promotion examination.

He has submitted that the present petitioners fall in mode third i.e. departmental promotion examination.

He has submitted that the reading of the Rules is

very narrow. He has submitted that in the facts of the present case, the only Rules cannot be read in isolation, but the same can be read as a whole, by taking into consideration of the facts and circumstances of the present case. He has submitted that only reading of the Rules is not relevant in the facts of the present case.

8.3 In this background, on the aspect of maintainability of these petitions, he has submitted that the petitioners have sought for the relief to quash the list of such candidates who have participated in the physical test. They have not challenged anything else / anything more. Their case is to the extent let them permit to appear in the physical test as on the date of 01.12.2020 and 16.12.2020. Those affected candidates are not joined as party respondents being the concerned / affected parties. He has submitted that they have not challenged the rules etc., except the list of the candidates as stated above. Therefore, he has submitted that in the year 2020, whether they were eligible to appear for the physical test. Notwithstanding the interim order, as it is without creating equity, their case may not be maintainable in this background because they are not eligible at all.

8.4 So far as the experience part is concerned, he has drawn the attention to one of the appointment orders attached to the petitions. He has submitted that their appointments are on temporary basis and for five years. According to the conditions of the said appointment order, their period of five years is a

probation period and not regular service and after successfully completion of five years service, their services would be regularized, that means after completion of five years probation period and if their service will be found satisfactory, their appointment in the cadre of ASI will be regularised in the post of ASI itself. All these petitioners are the *ad-hoc* ASIs and not the regular ASIs.

8.5 He has submitted that the Government Resolution, by which they are claiming their right, is of the year 2017 and the Rules are framed in the year 2019. The advertisement came in the year 2020 and the said Rules 2019 is not challenged by the petitioners before any forum/Court.

He has further submitted that the petitioners are appointed in the year 2016/2017 and they have successfully completed five years probation period in the year 2021/2022 and thereby they are appointed as regular ASIs in the year 2021/2022 itself and therefore, they have not completed five years regular service in the cadre of ASI at the time of advertisement and therefore, they are not eligible.

8.6 He has further drawn the attention of this Court to the reply filed by the respondent Authority. He has submitted that Rule 3(1), Rule 3(2) and Rule 3(3) of the Rules, 2019 are interpreted and understood by conjoint reading in a harmonious way and one cannot be read in exclusion of another. He has

submitted that whole Rule 3 should be read in its entirety. He has submitted that the relevant recruitment rules are at page 119 (Annexure R1) i.e. Police Sub-Inspector (Unarmed), Class III, Recruitment Rules, 2020. He has submitted that we have to read both these Rules in conjunction with each other. In the said Rules, it is clarified that the person should be completed five years regular service. He has submitted that the person has to fulfill all the criteria mentioned in the said Rules. He has submitted that keeping this in mind, Rule 3(1) provides in terms of additional rule as a whole not in part.

8.7 In support of his submissions, learned AGP has relied on the decision of this Court in the case of *Bhaveshkumar Sooryakant Shah versus Gujarat Public Service Commission* reported in *2016 SCC OnLine Guj 7126*, more particularly paras 11, 24 to 26 thereof.

He has also relied on the decision of the Apex Court in the case of *Surjit Singh versus Mahanagar Telephone Nigam Limited* reported in *(2009) 16 SCC 722*, more particularly paras 22 & 23 thereof.

He has submitted that purposive interpretation of the Rules may be made by this Court.

8.8 He has submitted that these petitions may be dismissed.

9. Having heard learned advocates for the respective parties and having gone through the material on record, the only question for determination before this Court would be that whether ad-hoc period of three years should be considered for eligible to appear in the departmental examination and five years should be considered for purpose of promotion or not.

10. For this limited controversy, the following facts need to be considered.

10.1 The petitioners are appointed in the post of ASI temporarily for a period of five years in the year 2016/2017 on various terms. One of the conditions is that if the ad-hoc employee completes five years successfully as an ASI, he will be considered for the regular ASI.

10.2 The advertisement for the post of Police Sub Inspector was published on 26.06.2020 and the last date for submitting the application was 15.07.2020.

10.4 The petitioners have completed five years ad-hoc service in the post of ASI.

10.5 After five years of ad-hoc service, the petitioners got regular appointments in the said post i.e. ASI.

10.6 Since the applications are invited by the authorities from the ASI who have completed five years' service. Therefore, the petitioners have applied for the post of Police Sub Inspector (Unarmed), since they have completed five years ad-hoc service as ASI.

10.7 The authority has firstly accepted the forms and then rejected the names of the petitioners as they have not completed five years regular service in the post of ASI.

10.8 Therefore, the petitioners are before this Court with the Rules relied upon by him, which is contested by the respondent authority.

10.9 This Court has, vide interim order, permitted the petitioners to appear in the physical examination, but subject to outcome of these petitions.

11. In view of above facts and circumstances as well as subsequent development of the case, now the question for determination before this Court is as to whether the temporary appointed ASIs can appear and participate for the promotional post of PSIs or not and their temporary services can be treated as regular services for the post in question or not.

12. Thus, keeping in mind the undisputed facts as noted above, the following aspects need to be evaluated for determining

the issue involved in these petitions :

12.1 The petitioners were appointed as Assistant Sub Inspector (Unarmed) Class III on purely temporary / ad-hoc basis in the year 2016/2017.

12.2 While appointing the petitioners, there were certain conditions stipulated in the appointment orders. One of the conditions is that the person will be appointed as regular ASI after successfully completion of five years temporary / ad-hoc service.

12.3 Soon after completion of five years ad-hoc service successfully by the petitioners, they are appointed as regular ASI in the year 2021/2022.

12.4 The petitioners have neither challenged the said ad-hoc appointment nor challenged any of the conditions of the appointment order nor challenged the regular appointment order before any forum.

12.5 On 26.06.2022, the applications were invited by the respondent authorities for the post of Police Sub Inspector (Unarmed) from the Assistant Sub Inspector (Unarmed), who have completed five years of service.

12.6 The last date of the said advertisement was

15.07.2022.

12.7 As averred, since the petitioners have completed five years' service (though ad-hoc) in the post of ASIs, they have applied for the said promotional post of PSIs.

12.8 At this juncture, it is required to be referred to the Police Sub-Inspector (Unarmed) Class-III (Departmental Examination) Rules, 2019 as well as the Government Resolution dated 18.01.2017 to clear the controversy on hand.

12.8.1 Learned advocates for the petitioners are harping on the Government Notification dated 18.01.2017, more particularly paragraph 2 thereof, which reads as under :

“2. At present, the period of five years of service put in by the employees appointed under this scheme with the lump sum pay is not taken into consideration for any service related matter. State Government has considered this aspect also and decided that the service of these five years put in by the employees appointed with fix pay under the policy of Finance Department resolution dated 16.02.2006 shall be treated service for the purpose of promotion, seniority and higher pay scale and also for retirement benefits at the time of superannuation.”

On plain reading of the Government Notification dated 18.01.2017, which suggests that the petitioners should be eligible to appear in the examination and for the promotional post

of PSI.

12.8.2 However, at this stage, Rule 3 of the Police Sub-Inspector (Unarmed), Class III (Departmental Examination) Rules, 2019 is relevant to take into consider in view of the facts of the present case, which reads as under :

“3. Conditions for eligibility and availability of chances:-

(1) The candidate possessing the requisite requirements under the relevant recruitment rules of Police Sub-Inspector (Unarmed), Class III, shall eligible for admission to the Examination:

Provided that, Assistant Sub-Inspector (Unarmed), Class III, who has completed three years in the Gujarat State Police Service on the last date of accepting the application form shall be eligible to appear in the Examination.

(2) To be eligible for promotion to the post of Police Sub-Inspector (Unarmed), Class III, a person shall be required to pass the Examination within a period of three years and within three chances from the date of his completing three years continuous service after his regular appointment to the lower post:

Provided that, in case of person who has a last chance, if the period for passing the examination as provided in these rules, expires before the date of holding of the next Examination, the said period shall be deemed to have been extended until the date of the declaration of the result of the Examination so held :

Provided further that, a person belonging to the Scheduled Castes or Scheduled Tribes may be given one more chance which shall have to be availed of within a period of one year from the date of the expiry

of the specified period.

(3) If a person fails to pass the Examination referred to in this rule within the specified period and specified chances, he shall, notwithstanding such failure, be eligible to appear at any time in the Examination on payment of an examination fee as may be determined by the Government from time to time and if he passes the said Examination, he shall be eligible for promotion:

Provided that person shall not be entitled to claim seniority over those persons who have passed the Examination earlier than him and also have been promoted regularly to the higher post before he became eligible for such promotion on passing the Examination.”

12.8.3 It is noted that such Rules are framed by the State Government in exercise of the powers conferred by clause (b) of section 5 of the Gujarat Police Act, 1951 (Bom. XXII of 1951) and in supersession of all the rules made in this behalf, to provide for regulating the conditions of service of persons appointed to the post of the Assistant Sub-Inspector (Unarmed), Class III, in the Gujarat State Police Service, in so far as they relate to passing of the departmental examination, for promotion to the post in question. Said Section 5 of the Gujarat Police Act, 1951 reads as under :

“5. Subject to the provisions of this Act-

(a) xxx

(b) the recruitment pay, allowances and all other conditions of service of the Police Force shall be such as may from time to time be determined by the State Government by general or special order :

Provided that (i) the rules and orders governing the recruitment, pay allowances and other conditions of service of the members of the Police Force constituted under any of the Acts mentioned in Part I or II or Schedule I and deemed to be the members of the Police Force under section 3, shall continue in force until altered or cancelled under clause (b); but in the case of members of Police Force; constituted under any of the Acts mentioned in Part II of that Schedule such alteration or cancellation shall be subject to the proviso to sub-section (7) of section 115 of the State Reorganisation Act, 1956.

(ii) nothing in this clause shall apply to the recruitment, pay allowances and other conditions of service of the members of the Indian Police and Indian Police Service.

xxx”

12.8.4 At this stage, the Notification of the Home Department dated 03.03.2020 is required to be referred to by this Court, more particularly Clause 2(a)(i) thereof, which reads as under :

“2 Appointment to the post of Police Sub-Inspector (Unarmed), Class III, in the subordinate service of the Police Department shall be made either ;

(a) by promotion of a person who possess “good” benchmark for being considered fit for promotion within the zone of consideration as laid down in the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 from amongst the persons, who, -

(i) have worked for not less than five years in the cadre of Assistant Sub-Inspector (Unarmed), Class III,

in the subordinate service of the Police Department;”

12.8.5 It is required to be clarified here that the general meaning of the word ‘*in the cadre of Assistant Sub-Inspector (Unarmed), Class III*’ means regular appointed persons in the cadre of Assistant Sub-Inspector (Unarmed), Class III. As averred, the word ‘temporary / ad-hoc’ is not mentioned. Since there is no mention about the word ‘temporary’ and/or ‘ad-hoc’ in the Rules, that does not mean that the temporary / ad-hoc ASI can be eligible for the post in question. In general terms, since the word ‘*in the cadre of Assistant Sub-Inspector (Unarmed), Class III*’ is mentioned, it is applicable for the regular appointed ASIs and not for temporary / ad-hoc appointees.

12.9 On conjoint and harmonious reading of the Police Sub-Inspector (Unarmed), Class III (Departmental Examination) Rules, 2019 as well as the Police Sub-Inspector (Unarmed), Class III, Recruitment Rules, 2020 suggest that the petitioners cannot be considered as eligible for the consideration of promotion for the post in question as prayed for in these petitions.

12.10 In addition to the judgments cited by learned AGP Mr.Parikh, which is helpful to his submissions, at this stage, it is fruitful to refer to the decision of the Hon’ble Apex Court in the case of *State of Uttar Pradesh versus Atul Kumar Dwivedi* reported in AIR 2022 SC 973, more particularly paras 48 to 50, which reads as under :

“48. It is relevant to note that the ineligibility referred to in Rule 15(b) is as against 'recruitment'. The criteria for eligibility is not just confined to the stages upto 15(c) and 15(d) but must be fulfilled all through i.e. upto recruitment. Rule 15(e) makes specific and clear reference to - marks obtained by each candidate in written examination under clause (b). The verb used is 'obtain' at both the places i.e. in Rule 15(b) and in Rule 15(e). At both the stages the marks 'obtained' in written examinations referable to clause (b), are the relevant criteria for (i) being eligible for recruitment in terms of Rule 15(b) and for (ii) preparing the select list under Rule 15(e). Adopting a different yardstick as suggested by the learned counsel for the respondents will certainly lead to incongruent situations as stated above.

49. It is true that the same expression appearing at different places in a statute has, on some occasions, been construed by this Court differently, depending upon the context in which such expressions appear. For instance, in *Commissioner of Income Tax, Bangalore v. Venkateswara Hatcheries (P) Ltd.*, this Court relied upon the earlier decision of this Court in *Shamrao Vishnu Parulekar v. The District Magistrate, Thana* and found the expression "Articles of things" could not be assigned the same meaning as was used in Fifth Schedule to Sections 32A and 80J of the Income -tax Act. The discussion on the point was:"

18. It was then urged by the learned counsel for the assessee that the Act uses the words "articles or things" at several places and the meaning assigned to them in other places of the Act should also be assigned under Section 32-A and Section 80-J of the Act. The Fifth Schedule of the Act sets out a list of items

which are treated as articles or things manufactured or produced for the purpose of Section 33(1)(b) of the Act. In this Schedule we find that processed seeds which are products of plants have been shown as "articles or things". Similarly, Item (30) of the said Schedule is "fish", which is an animate object, but it has been shown under the heading "articles or things". On the strength of the meaning assigned to articles and things in the Fifth Schedule of the Act, it was urged that hatching of chicks is also production of "articles or things". It is, no doubt, true that processed seeds and fish have been described under the heading "articles or things" in the Fifth Schedule. Generally, the same words in a statute have the same meaning whenever used in that statute, but they may also have a different meaning in different provisions of the same statute. In Shamrao Vishnu Parulekar v. Distt. Magistrate, Thana:

“But it is contended by Mr Chatterjee that the expression 'grounds on which the order has been made' occurring in Section 3(3) is, word for word, the same as in Section 7, that the same expression occurring in the same statute must receive the same construction, that what Section 3 requires is that on the making of an order for detention, the authority is to formulate the grounds for that order, and send the same to the State Government under Section 3(3) and to the detenu under Section 7, and that therefore it was not sufficient merely to send to the State Government a report of the materials on which the

order was made. Reliance was placed on the following passage in Maxwell's Interpretation of Statutes, Edn. 10, p. 522:'

'It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.'

The rule of construction contended for by the petitioners is well settled, but that is only one element in deciding what the true import of the enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute. 'The presumption', says Craies, 'that the same words are used in the same meaning is however very slight, and it is proper "if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act"'. (Statute Law, Edn. 5, p. 159) And Maxwell, on whose statement of the law the petitioners rely, observes further on:

'But the presumption is not of much weight. The same word may be used in different senses in the same statute, and even in the same section.' "

19. *The same word, if read in the context of one provision of the Act, may mean or convey one meaning and another in a different context. The legislature in its wisdom had*

chosen to place processed seeds and fish under the heading articles or things in the Fifth Schedule as the legislature is competent to give artificial meaning to any word. We are, therefore, of the opinion that the meaning assigned to the words "articles or things" in the Fifth Schedule cannot be assigned to the words "articles or things" used in Sections 32-A and 80-J of the Act.

20. *Learned counsel for the assessee relied upon several decisions under the Sales Tax Acts, Central Excise Act and the provisions of other statutes for the contention that "article" includes goods and goods could be an animate object and, viewed in this light, the hatching of eggs would come within the meaning of the word "produce" which is of a wider import than the word "manufacture". No doubt, several Sales Tax Acts have included animate things for the purpose of levying tax on sales. But the meaning assigned to a particular word in a particular statute cannot be imported to a word used in a different statute.*

21. *We, therefore, reject the submissions of the learned counsel for the assessee. For the aforesaid reasons, we hold that the decision by the Andhra Pradesh High Court in the case of CIT v. Sri Venkateswara Hatcheries (P) Ltd.¹⁸ does not lay down the correct view of law, whereas we approve the decision of the Bombay High Court in the case of CIT v. Deejay Hatcheries¹⁹.*

22. *The result of the aforesaid discussion is that the assessee is neither an industrial undertaking nor is it engaged in the business of*

producing "articles or things". Consequently, the assessee is not entitled to investment allowance under Section 32-A of the Act and deductions under Sections 80-HH, 80-HHA, 80-I and 80-J of the Act."

50. *Thus, it is the context which must determine whether the same expression occurring at two different places must be considered differently or in the same light."*

12.11 Recently, the Hon'ble Apex Court in the case of *Vivek Narayan Sharma versus Union of India* reported in (2023) 3 SCC 1, more particularly paras 133 to 137, 139, 148 and 156, has held as under :

"Purposive interpretation

133. *We find that for deciding the present issue, it will also be necessary to refer an important principle of interpretation of statutes i.e. of purposive interpretation.*

134. *"Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose [Some Reflections on the Reading of Statutes, 47 Columbia LR 527, at p. 538 (1947)]." This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation.*

135. *It is thus necessary to cull out the legislative policy from various factors like the words in the statute, the preamble of the Act, the statement of objects and reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then*

the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it.

136. Francis Bennion in his treatise Statutory Interpretation, at page 810 described purposive construction in an equally eloquent manner as under:

“A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).”

137. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent.

139. The learned Judge emphasized that purposive interpretation is the most proper system of interpretation. He observed that this system is proper because it guarantees the achievement of the purpose of law. The proper criterion for interpretation is the search for law’s purpose, and that purposive interpretation best fulfills that criterion.

148. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances

the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or 121 confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction.

156. As discussed hereinabove, the policy underlining the provisions of Section 26 of the RBI Act is to enable the Central Government on the recommendation of the Central Board, to effect demonetization. The same can be done in respect of any series of bank notes of any denomination. The legislative policy is with regard to management and regulation of currency. Demonetization of notes would certainly be a part of management and regulation of currency. The legislature has empowered the Central Government to exercise such a power. The Central Government may take recourse to such a power when it finds necessary to do so taking into consideration myriad factors. No doubt that such factors must have reasonable nexus with the object sought to be achieved.

If the Central Government finds that fake notes of a particular denomination are widely in circulation or that they are being used to promote terrorism, can it be said, for instance, that out of 20 series of bank notes of a particular denomination, it can demonetize only 19 series of bank notes but not all 20 series? In our view, this will result in nothing else but absurdity and the very purpose for which the power is vested shall stand frustrated. An interpretation which, in effect, nullifies the purpose for which a power is to be exercised, in our view, would be opposed to the principle of purposive interpretation. Such an interpretation, in our view, rather than advancing the object of the enactment, would defeat the same.”

13.1 In view of above, this Court finds that the Government Resolution is of the year 2017 (dated 18.01.2017), whereas the Police Sub-Inspector (Unarmed) Class-III (Departmental Examination) Rules, 2019 is of the year 2019 (published in the year 2020). The instructions in the Government Resolutions are the administrative instructions. The Rules framed by the authorities are in supersession of all the rules made in this behalf and in exercise of the powers conferred by Clause (b) of Section 5 of the Gujarat Police Act, 1951. Thus, the Rules, 2019 would prevail on the Government Resolution dated 18.01.2017.

13.2 At this stage, it would also be fruitful to refer to the decision of the Hon'ble Apex Court in the case of *Ashok Ram Parhad versus State of Maharashtra* reported in *2023 SCC OnLine SC 265*, more particularly paras 25, 28 to 31, which are as under

:

“25. In service jurisprudence, the service rules are liable to prevail. There can be Government resolutions being in consonance with or expounding the rules, but not in conflict with the same. On having set forth this general proposition, we now examine the scenario of the Rules as prevalent. If we turn to the statutory Rules framed under Article 309 of the Constitution, i.e., the 1984 Rules, Rule 2 refers to the appointment to the post of the DFO and the same to be made by promotion from amongst officers of the Maharashtra Forest Service and also by appointment directly. The Proviso to Rule 2 of the 1984 Rules is unambiguous and quite clear, i.e., the period spent on training at Government Forest Colleges and other period of probation including extended period of probation, if any, “shall not be counted towards the requisite period of service.” Thus, what is envisaged is that the appointment is different from the recruitment process, which starts with the commencement of training. There can be possibilities of a candidate not completing the training satisfactorily, thereby resulting in the candidate’s removal on probation. Such probation period can also be extended to see whether a candidate improves in performance. (Hence, even if the Government Resolution dated 25.01.1990 upgraded the post of ACF from Class II to Class I, the Proviso to Rule 2 of the 1984 Rules will continue to hold valid in determining the period of service.)

28. It appears to us that the High Court’s view is the correct view. The resolutions have been passed in the context that the person who successfully completes the training effectively gets the monetary compensation for his training period and is not deprived of the same. This cannot amount to giving seniority from the date of

initial recruitment process to determine inter se seniority, when the Proviso to Rule 2 of the 1984 Rules makes the date of appointment for direct recruits clear. This is also in the background that while the direct appointees have no experience in the field having been freshly recruited, the promotees have been doing the task.

29. *We fail to appreciate how the judgment in Prafulla Kumar Swain⁸ case can be distinguished in this behalf merely by reason of the regulation therein containing the expression “only”. It is not necessary to (supra). Refer to factual scenarios of different judgments and different rules or general definition of what would amount to be on “duty”, when the rule in question is quite clear. We say so even in the context of the judgment in R.S. Ajara & Ors.⁹ case as in any service, whether on the issue of appointment or promotion, it is what the rule says, which will matter. One cannot derive general principles to decide such issues. We do appreciate that there can be scenarios where the rule specifically states to the contra. But, in the present case, the very factum of Proviso to Rule 2 of the 1984 Rules being inserted in the rule has to be assigned a meaning, as otherwise, it would imply that the Proviso has become otiose. It cannot be said that the Proviso is not to be read in the context of the aspect of promotion.*

30. *We also find that Rules 3B and 6 of the 1988 Rules also leave no ambiguity in this behalf and in fact read in consonance and the period of probation has to be necessarily excluded from period of service. As already stated, the grant of monetary benefit is a different aspect.*

31. *On having come to the conclusion that the Government resolutions cannot override statutory rules,*

and the resolutions neither speaking about (supra). Promotion to the post of DFO nor about seniority conclusively, the Proviso would operate with full force.”

14. The petitioners were initially appointed as Assistant Sub Inspector (Unarmed) on temporary period of five years vide appointment order dated 18.05.2017. One of the conditions in the appointment order was that if the employee will not complete satisfactory service during the said five years, the services of the said employee will be terminated and he will not be liable to be appointed as regular ASI. The employee who was getting said ad-hoc appointment knows that his appointment is temporary / ad-hoc and not permanent. Soon after completion of temporary /ad-hoc period of five years satisfactorily, the petitioners are appointed on the regular post of ASIs. It is noted that after getting appointment as regular ASIs, the petitioners have neither challenged the original appointment order of temporary appointment nor challenged the order of giving regular appointment in the post of regular ASIs before any authority or Court of law. Further, the petitioners are appointed temporarily in the year 2017 and the Rules are framed by the Authorities in the year 2019. Even the said Rules of 2019 are not challenged by the petitioners before any authority or Court earlier.

15. When the respondent authority has invited applications from the post of ASI who have completed five years of service does not mean that the employees who have completed five years of service as ad-hoc / temporary, it means the regular employees

in the post of ASI.

16. The department has therefore rejected the applications of those who have completed five years service as ASI but as ad-hoc. The department has not rejected the applications of those who have completed five years of service as regular ASI. The petitioners are the fresh, new and young persons without having sufficient experience as ASIs than the regular ASIs. Therefore, since the petitioners have not completed five years regular service as ASIs, the case of the petitioners needs to be rejected.

17. In view of above, the following order is passed.

17.1 All these petitions are dismissed.

17.2 Rule is discharged. Interim relief, if any, stands vacated.

18. In view of disposal of main matters, the civil applications for joining party would not survive and are disposed of.

Sd/-
(SANDEEP N. BHATT,J)

M.H. DAVE