
(36) In the present case, I find that there is no compatibility between the two living souls, making them live together would be asking the two strangers to share a roof. "You can take the horse to the river but you cannot make/force it to drink unless it is thirsty." This thirst is missing from both the spouses.

(37) For the foregoing discussions, I find no merit in the appeal and the same is dismissed. No costs.

R.N.R.

Before N.K. Sodhi & R.C. Kathuria, JJ

RAJ BAHADUR SINGH,—*Petitioner*

Versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 11874 of 1999

The 2nd July, 2001

Constitution of India, 1950—Art.226—Punjab Civil Service (Executive Branch) (Class I) Rules, 1976—Rl.10—Punjab Govt. instructions dated 22nd March, 1957—Circular letters dated 24th June, 1993 and 24th March, 1995—Recruitment to the 9 vacancies of P.C.S. (E.B.) from Register A-II—Commission considering the merits of all the nominated candidates and preparing a merit list on the basis of marks secured by each of them—Commission recommending first nine candidates in the merit list to the Govt. for appointment—Petitioner at Sr. No. 12 of the merit list—Govt. sending another requisition to the Commission for filling up 3 vacancies pertaining to the year 1995 from Register A-II before the declaration of the result of the earlier selection—Claim to appointment against 3 additional/subsequent vacancies on the basis of instructions dated 22nd March, 1957—Plea of applicability of the instructions dated 22nd March, 1957 negatived and claim of the candidates higher in merit than the petitioner already rejected by the High Court and upheld by the Supreme Court—Petitioner lower in merit not entitled to appointment—Rules does not permit the merit to be disturbed—Petitioner approaching

the High Court only after the decision of the Supreme Court in another case holding that the vacancies arising within six months from the receipt of the recommendations of the Commission are to be filled up out of the waiting list maintained by it—Delay & laches—Delay of about five years in filing the writ petition— Petitioner failing to explain this inordinate delay— Petition deserves to be dismissed on the ground of laches.

Held, that the petitioner alongwith other nominated candidates were interviewed by the Commission on 27th/28th September, 1994 and the result of the selection was declared on 11th October, 1994. Nine candidates were selected and their names were displayed on the notice board. Petitioner was not amongst the selected candidates. He filed the present writ petition in August, 1999 almost five years after the result of the selection was declared. No. explanation muchless satisfactory has been furnished for this inordinate delay. The petition, therefore, deserves to be dismissed on the ground of laches alone. Two candidates, who were higher in merit than the petitioner in the merit list had approached this Court making a claim to appointment to the three additional vacancies and they placed reliance on Govt. instructions dated 22nd March, 1957. Their claim was rejected and the judgments of this Court were upheld by the Apex Court. The petitioner who is lower in merit cannot, therefore, be given appointment. The Rules does not permit the merit to be disturbed.

(Paras 5 & 6)

Further held, that it was only after the decision of the Supreme Court in Virender Singh Hooda and others versus State of Haryana and another, 1999(2) SLR 191 that the petitioner thought of filing the present writ petition and by that time enough delay had been caused so as to non-suit him. It is ture that in Virender Singh Hooda's case, the learned Judges of the Supreme Court while interpreting the Govt. instructions dated 22nd March, 1957 have observed that when vacancies arise within six months from the receipt of the recommendations of the Commission they have to be filled up out of the waiting list maintained by it but this does not mean that the petitioner can approach this Court after delay of almost five years.

(Para 5)

Constitution of India, 1950—Art.226—Punjab Civil Service (E.B.) (Class I) Rules, 1976—Rl.10—Punjab Govt. instructions dated 22nd March, 1957—Circular letters dated 24th March, 1995 & 28th July, 1997—Recruitment to the 3 vacancies of PCS (EB) from Register A-II—Commission preparing a merit list of all the nominated candidates & recommending first 3 candidates—Govt. notifying 8 more vacancies for the year 1996 before the declaration of the result of the earlier selection—Claim to appointment against additional/subsequent vacancies on the basis of instructions dated 22nd March, 1957—Supreme Court in Virender Singh Hooda's case after referring to instructions dated 22nd March, 1957 holding that the additional vacancies occurring within six months from the date of the recommendations of the Commission are to be filled up from amongst the candidates found suitable in the immediate last selection—Rl. 10(3) requires the Commission to consider the merits of each nominated candidate and recommend such of them as are considered suitable for appointment — Commission recommending the candidates equal to the number of notified vacancies in a mechanical manner determining the inter se merit of all the nominated candidates— Commission not determining the suitability of the candidates as required under Section 10(3)— Commission bound to judge the suitability of all the nominated candidates on the basis of some reasonable & rational criteria— Number of candidates found suitable may be more or less than the notified vacancies—Commission directed to determine suitability of all the nominated candidates & recommend the names of all such suitable persons to the Govt. leaving it to the Govt. to make appointments in accordance with law.

Held, that the result of selection for the three vacancies notified on 24th March, 1995 was declared to by Commission on 16th March, 2000 and that by that time eight vacancies had already been notified to the Commission pertaining to the year 1996. In other words, the eight vacancies were in existence when the result of the earlier selection was declared. In this view of the matter, the petitioners are right in contending that in terms of the Govt. instructions dated 22nd March, 1957 those vacancies had to be filled up from the merit list prepared by the Commission. It is settled law that the vacancies which occur within six months from the date of the recommendations made by the Commission are to be filled up from amongst the candidates found suitable by the Commission in the immediate last selection.

(Paras 9 & 12)

Further held. that a plain reading of sub-rule (3) of Rule 10 of the 1976 Rules makes it clear that the nomination rolls of the candidates alongwith their service record is to be forwarded to the Commission which is required to consider the merits of each such candidate and recommend such of them as are considered by it suitable for appointment to the service. In terms of this Rule, the Commission is enjoined to first determine the *inter se* merits of all the nominated candidates and prepare a merit list. Thereafter, it has to undertake yet another exercise to judge their suitability. Thus, the Commission has not only to determine the *inter-se* merits of the candidates but also to judge their suitability on the basis of some reasonable and rational criteria and then recommend the names of only such persons who have been found suitable. Since the Commission has not determined the suitability of the candidates and recommended the first three candidates from the merit list against the three vacancies notified on 24th March, 1995, the procedure followed by it is not in accordance with sub rule (3) of Rule 10 of the Rules. The Commission was bound to judge the suitability of all the nominated candidates and since this has not been done, we have no hesitation in issuing a direction to it to undertake that exercise now and complete the same within three months from the date of receipt of a copy of this order. Needless to say that the candidates found suitable will be recommended leaving it for the Govt. to make appointments from amongst them in accordance with law.

(Para 15)

P.S. Patwalia, Advocate *for the petitioner.*

Gurminder Singh, D.A.G., Punjab *for respondent no. 1.*

Rajiv Atma Ram, Advocate *for respondent No. 2.*

Sanjiv Bansal, Advocate *for the intervenors.*

JUDGMENT

N.K. SODHI, J.

(1) In this bunch of 4 writ petitions similar questions of law and fact arise for our determination.

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(2) Recruitment to the Punjab Civil Service (Executive Branch) (for short the Service) is governed by the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976 (hereinafter referred to as the Rules). The Service consists of such number of posts as the Government may from time to time determine keeping in view the requirements of the Service. All appointments to the Service are made by the Government in consultation with the Punjab Public Service Commission (for short the Commission) and these appointments are made from amongst the accepted candidates whose names have been duly entered in accordance with the rules in the Registers of accepted candidates which are maintained by the Chief Secretary to the Government, Punjab. We are concerned with Register A-II in these writ petitions in which are entered the names of temporary members of Class-II and members of Class-III services serving in connection with the affairs of the State of Punjab and holding ministerial appointments. According to Rule 10 of the Rules each of the authorities specified in the table contained therein is to nominate such number of persons as specified in the second column of the table from amongst the temporary members of Class-II service and members of Class-III service holding ministerial appointments and working in its office or in the offices subordinate to it. The nomination rolls are submitted to the Government which are forwarded alongwith the service record of the candidates to the Commission which considers the merits of each such candidate and recommend such of them as are considered suitable for appointment to the service. The names of persons recommended by the Commission are then entered in Register A-II in the order in which they are recommended. The State Government proposed to fill up 50 vacancies to the service which included 9 vacancies to be filled from Register A-II and sent a requisition in this regard to the Commission on 4th June, 1993. In pursuance to this requisition, a circular dated 24th June, 1993 was issued to the concerned authorities to recommend the names of suitable and eligible candidates in the prescribed form. Petitioner who is working as a Private Secretary in the Punjab Civil Secretariat at Chandigarh since 5th July, 1995 was nominated by the then Minister of State for Rural Development and Panchayats. The names of all the nominated candidates including that of the petitioner were forwarded to the Commission for being considered for appointment to the Service and they were interviewed on 27th and 28th September, 1994. The Commission considered the merits of all the nominated

candidates and prepared a merit list on the basis of marks secured by each of them. The result of the interviews was declared on 11th October, 1994 and the list of selected candidates was displayed on the notice board. The first 9 candidates in the merit list as prepared by the Commission were recommended to the Government for appointment and the 9 vacancies as notified to the Commission were then filled up. A copy of that merit list in Annexure P-3 with the writ petition. The name of the petitioner appears at Serial No. 12 on this merit list. It will be noticed that two candidates, namely, Gurjit Singh and Harjinder Singh Sodhi are at Serial Nos. 10 and 11 of the merit list and are immediately above the petitioner. Even before the result of the selection was declared by the Commission the State Government sent another requisition on 27th September, 1994 proposing to fill up another 14 vacancies in the Service out of which 3 were to be filled up from Register A-II. The specified nominating authorities were requested to make nominations of eligible persons as per circular letter dated 24th March, 1995. These vacancies pertained to the year 1995. The contention of the petitioner is that the 3 additional vacancies having arisen within six months from the date of the recommendations made by the Commission or even before that, that State Government ought to have filled up those vacancies from the merit list prepared by the Commission on the basis of the result declared on 11th October, 1994 in regard to the earlier selection and his grievance is that this has not been done and, therefore, the Government acted in contravention of the instructions issued by the composite State of Punjab on 22nd March, 1957 which were then in force. According to the petitioner, if the State Government had filled up the additional vacancies from the earlier merit list prepared by the Commission, he would have been one of the persons who would have been selected as his name figures at Serial No. 12 of that list as is clear from Annexure P-3. Petitioner is said to have represented to the State Government on 3rd September, 1996 and again on 24th March, 1997 but there was no response from the side of the Government. Another representation was made on 19th May, 1999 bringing to the notice of the State Government the decision of the Supreme Court in *Virender Singh Hooda and others versus State of Haryana and another* (1). Since the Government did not respond favourably the petitioner filed the present writ petition on 18th August, 1999 challenging the action of the Government in not

appointing him against one of the 3 additional vacancies as, according to him, he was the 3rd on the merit list after the first nine candidates had been appointed against nine vacancies notified earlier. The writ petition came up for hearing on 24th August, 1999 when notice of motion was issued to the respondents and it was ordered that the appointments, if any, made during the pendency of the writ petition would be subject to its final outcome.

(3) Before we deal with the reply filed by the respondents, it is necessary to mention that Gurjit Singh who was at Serial No. 10 on the merit list had filed civil writ petition No. 12294 of 1996 in this court challenging the nomination of Gurdeep Singh who was appointed to the service in pursuance to his name having been recommended for appointment by the Commission. He also sought a mandamus directing the respondents to appoint him to the service against one of the three additional posts which became available even when the process of selection for preparation of the select list was going on and for which a requisition had been sent to the Commission on 27th September, 1994. As already noticed, these three additional vacancies pertained to the year 1995. He relied upon the Government circular dated 22nd March, 1957 which, according to the petitioner therein, entitled him to be considered for appointed against any additional vacancies occurring within six months which were not intimated to the Commission. The writ petition was dismissed on 16th January, 1997 by a Division Bench of this court holding that the petitioner therein did not acquire a right to be appointed against one of the three posts which became available subsequently. According to the Division Bench the right of the petitioner therein to be considered for appointment was confined to the posts for which a requisition was sent in the year 1993. The learned Judges of the Division Bench took the view that the recommendations in excess of the advertised posts could not ordinarily be made and the waiting list prepared by the Commission or other selecting agencies could be utilised only for making appointments against the posts which remain unfilled due to non-joining of the selected candidates. A Special Leave Petition filed against this judgment was dismissed by the Apex Court on 5th December, 1997 and their Lordship observed as under :—

“In the affidavit filed by Mr. Anurag Agarwal, Joint Secretary to the Government of Punjab, it is categorically stated

that the nine vacancies for which requisition had been made in 1993 alone were filled up and that so far as the subsequent three vacancies are concerned, the process for consideration of filling those vacancies is on. It is asserted that those three vacancies have not so far been filled up and in case the petitioner is found suitable, he is likely to be selected. The petitioner, therefore, cannot have grievance at this stage as admittedly he was not in the list of first 9 candidates. The special leave petition, therefore, fails and is dismissed.”

Harjinder Singh Sodhi whose name appeared at Serial No. 11 of the merit list had also filed Civil Writ Petition No. 4882 of 1995 in this court challenging the appointment of all the 9 candidates who had been selected for appointment to the service in pursuance to the circular dated 24th June, 1993. He also made a prayer in the writ petition that he be appointed against one of the three posts which had been notified to the Commission by the State Government as per its letter dated 27th September, 1994. He too relied on the Government circular dated 22nd March, 1957 and urged before this court that since the additional vacancies had occurred within six months of the recommendations made by the Commission in pursuance to the circular dated 24th June, 1993, he was entitled to be considered for appointment against one of those three additional posts. This writ petition was also dismissed by a Division Bench on 29th January, 1996, it being held by the learned Judges that the petitioner had not been nominated for the vacancies which were notified on 27th September, 1994 and, therefore, his claim could not be considered against any of those vacancies. After referring to the Government instructions dated 22nd March, 1957 the learned Judges observed that the petitioner therein could not derive any advantage from those instructions and rejected his claim for appointment against any of the three additional vacancies in the following words :—

“In the first place, the Commission has not declared the petitioner as suitable for appointment to the service. His name is not even alleged to have been included in any waiting list. Secondly, all the selected candidates have been found to be of a higher merit than the petitioner. They have already joined the service. Thirdly,

the nominations for the vacancies which had occurred in the year 1994 were invited from the respective authorities,—*vide* letter dated 24th March, 1995. Various eligible persons have a right to be considered for recruitment to these vacancies. The petitioner cannot claim a preferential right.”

A Special Leave Petition filed by Harjinder Singh Sodhi against this judgment was also dismissed by the Apex Court on 23rd September, 1996.

(4) In response to the notice of motion issued by this court, the respondents have filed their reply. Shri Satinder Pal Singh, Special Secretary to the Government of Punjab, Department of Personnel has admitted on behalf of the State Government that as per instructions dated 22nd March, 1957 a time limit of six months has been prescribed for filling up out of the names duly recommended by the Commission additional vacancies which were not intimated to it when inviting recommendations. It is stated that the time limit of six months would not apply to a case where a candidate had declined to accept the post offered to him against a vacancy which was intimated to the Commission. Such vacancy, according to the State Government, could be filled up even after the expiry of six months out of the approved list of candidates initially received from the Commission. It is pleaded that the name of the petitioner had never been recommended by the Commission and that the time limit of six months expired on 10th April, 1995 because the names of the nine selected candidates were recommended by the Commission on 11th October, 1994. It is further pleaded that since none of the selected candidates declined to accept the post the question of offering any post to the petitioner after the expiry of six months did not arise. While referring to the judgment of the Supreme Court in *Virender Singh Hooda's* case (*supra*), it is averred that the same is applicable prospectively and cannot be applied retrospectively to the recruitment process which stood finalised in the year 1994 particularly when the plea of applicability of the instructions dated 22nd March, 1957 to the said recruitment had been negatived by this court in the writ petitions filed by Gurjit Singh and Harjinder Singh Sodhi. Reference has also been made to sub rule (3) of Rule 10 of the Rules and it is stated that the Commission is required to recommend such of the candidates as are found suitable for

appointment to the service and since nine candidates were recommended it has to be presumed that the others including the petitioner were not found suitable for appointment. The Commission in its reply has stated that the petitioner was a candidate for appointment to the service from Register A-II in the year 1994 and that his name was among the candidates who had not been selected. It is submitted that two other candidates who were higher in merit than the petitioner had already urged their claim before this court and their cases were dismissed and, therefore, the petitioner is not entitled to the relief claimed by him. According to the Commission, the selection process came to an end as soon as the advertised vacancies were filled up and the vacancies which occurred thereafter have to be filled up by a separate process of selection. It is contended that if the same list was to be kept alive for the purpose of filling up the vacancies that arise later, it would amount to deprivation of rights of other candidates who would become eligible subsequently. Reliance in this regard is placed on some judgments of the Supreme Court. During the pendency of the writ petition Sarvshri Gurjit Singh and Harjinder Singh Sodhi moved civil miscellaneous No. 3426 of 2001 under Order 1 Rule 8-A of the Code of Civil Procedure seeking permission of this court to intervene and take part in the proceedings. The prayer was granted and they were allowed to intervene.

(5) We have heard counsel for the parties and are of the view that the writ petition deserves to be dismissed. Petitioner was nominated by the then Minister of Rural Development and Panchayats in pursuance to the circular dated 24th June, 1993. He alongwith other nominated candidates were interviewed by the Commission on 27th/28th September, 1994 and the result of the selection was declared on 11th October, 1994. Nine candidates were selected and their names were displayed on the notice board. Petitioner was not amongst the selected candidates. He filed the present writ petition in August, 1999 almost five years after the result of the selection was declared. No explanation much less satisfactory has been furnished for this inordinate delay. The petition, therefore, deserves to be dismissed on the ground of laches alone. To say that the petitioner was making representations is no answer to the long delay in approaching this court. Even the filing of the representations has been denied by the respondents and there is nothing on the record to show that a representation was ever made. Even otherwise, making a representation on one's own is not

a statutory remedy and that, in our opinion, is not an explanation for the delay in filing the writ petition. As already noticed, Gurjit Singh and Harjinder Singh Sodhi who were higher in merit than the petitioner in the merit list had approached this court in the two writ petitions referred to above making a claim to appointment to the three additional vacancies and they placed reliance on Government instructions dated 22nd March, 1957. Their claim was rejected and the judgments of this court were upheld by the Apex Court inasmuch as the Special Leave Petitions filed against those judgments were dismissed. It was only after the decision of the Supreme Court in *Virender Singh Hooda's case (supra)* that the petitioner thought of filing the present writ petition and by that enough delay had been caused so as to non-suit him. It is true that in *Virender Singh Hooda's case (supra)* the learned Judges of the Supreme Court while interpreting the Government instructions dated 22nd March, 1957 have observed that when vacancies arise within six months from the receipt of the recommendations of the Commission they have to be filled up out of the waiting list maintained by it but this does not mean that the petitioner can approach this court after a delay of almost five years.

(6) There is yet another reason why the petitioner must fail. According to sub rule (3) of Rule 10 of the Rules the Commission is required to consider the merits of each nominated candidate and recommend to the State Government such of the candidates as are considered suitable for appointment to the service. The names of persons recommended by the Commission are then entered in Register A-II in the order in which they are recommended and appointments are made accordingly. In terms of this Rule the Commission prepared a merit list of all the nominated candidates in which the name of the petitioner appears at serial No. 12. Gurjit Singh and Harjinder Singh Sodhi who figure at serial Nos. 10 and 11 and are above the petitioner had made a claim for appointment against the three additional vacancies for which a requisition was sent on 27th September, 1994 and they failed. Their writ petitions were dismissed and those orders have been upheld by the Apex Court. The petitioner who is lower in merit than Gurjit Singh and Harjinder Singh Sodhi cannot, therefore, be given appointment. The Rule does not permit the merit to be disturbed. In this view of the matter also the petitioner must fail.

Civil Writ Petitions No. 5982, 6354 of 2000 & 1113 of 2001

(7) By a circular letter dated 24th March, 1995 issued by the Joint Secretary to the Government of Punjab, Department of Personnel & Administrative Reforms, three vacancies in the service were proposed to be filled up from Register A-II for the year 1995 and all the nominating authorities were requested to recommend in the prescribed form the names of eligible persons from amongst the temporary members of Class-II services and member of Class-III services holding Ministerial appointments and working in their offices or in the offices subordinate to them. The nominations were required to reach the Government within one month from the date of issue of the circular letter. The last date for receipt of nominations was later extended up to 15th May, 1995. Thereafter, the State Government decided to permit relaxation in the upper age limit from 45 years as prescribed in the Rules to 48 years in respect of nominations to the service from various registers including Register A-II and a circular letter dated 15th/16th May, 1995 was issued in this regard conveying the government decision. It was stated in this letter that the nominating authorities should consider such persons as had then become eligible with the relaxation in the condition of upper age limit. The nominating authorities were informed that they could change their previous recommendations if they so desired and the last date fixed for receipt of nominations was further extended up to 25th May, 1995. The decision of the State Government to allow the nominating authorities to change their recommendation was challenged by one Khushhal Singh Thakur in civil writ petition No. 1995 of 1996 which was allowed by a Division Bench on 29th July, 1996 and the circular letter dated 15th/16th May, 1995 quashed. The respondents were directed to consider only those candidates who were nominated in pursuance to the circular letter dated 24th March, 1995. Petitioners in all these cases were nominated by different nominating authorities for appointment to the service by nomination and their names alongwith their service record were forwarded to the Commission. Petitioners alongwith other nominated candidates were interviewed by the Commission on 28th and 29th July, 1999 and the result of the selection was declared on 16th March, 2000. The Commission prepared a merit list of all the nominated candidates and after determining their *inter se* merit recommended the first three candidates against the three vacancies notified by the State Government. Soon after the declaration of the result, the

petitioners represented on 21st March, 2000 to the State Government that there were eight more vacancies in the service which were to be filled up from Register A-II and since those vacancies were existing at the time of the declaration of the result, the same should be filled up from the merit list already prepared by the Commission. They placed reliance on the Government instructions dated 22nd March, 1957 and also on the judgment of the Supreme Court in *Virender Singh Hooda's case (supra)*. It was pointed out to the State Government that the Apex Court in the aforesaid judgment had interpreted the Government instructions dated 22nd March, 1957 and held that if the Commission makes recommendations regarding a post to the Department and additional vacancies occur in the Department within a period of six months of the receipt of the recommendations, the vacancies which occur later have to be filled up from amongst the additional candidates recommended by the Commission. Since they did not receive any response from the State Government, they filed these writ petition under Article 226 of the Constitution seeking a *mandamus* directing the Commission to forward to the State Government the names of all the candidates who were considered for appointment to the service from Register A-II. A further direction has been sought to the respondents to consider the case of the petitioners for appointment to the service from Register A-II against the vacancies which occurred within six months of the declaration of the result on 16th March, 2000. In civil writ petitions No. 5982 of 2000 and 1113 of 2001, the appointment of Jasbir Singh (respondent No. 4 in these petitions) has also been challenged on the ground that he was nominated in pursuance to the circular dated 15th/16th May, 1995 which had been quashed by this court on 29th July, 1996 in civil writ petition No. 1995 of 1996 and that he had been given the benefit of relaxation in the upper age limit and he could not, therefore, be nominated.

(8) In response to the notice of motion issued by this court, the State of Punjab has filed its reply. It is admitted that eight vacancies pertaining to the recruitment process of the year 1996 was notified to the Commission on 16th December, 1996 and that the specified nominating authorities had been requested by letter dated 28th July, 1997 to send their nominations. It is also stated that the instructions dated 22nd March, 1957 have been withdrawn by the State Government as per its letter dated 15th May, 2000. It is further

submitted that the three vacancies which were sought to be filled up in pursuance to the circular dated 24th March, 1995 and which were notified to the Commission on 27th September, 1994 could not be clubbed with the eight vacancies of subsequent recruitment process of the year 1996 and that separate recruitment had to be made for the vacancies pertaining to each year. As regards Jasbir Singh respondent No. 4, it is pointed out that his application for nomination had been received in the General Administration Department on 17th April, 1995 in pursuance to the circular letter dated 24th March, 1995 and not in pursuance to any subsequent letter. It is further submitted that he was less than 45 years of age when he applied and he was, therefore, eligible for being nominated for appointment to the service. It has been denied that the application of respondent No. 4 had been received in pursuance to the circular letter dated 15th/16th May, 1995. The Commission has also filed a short affidavit stating that most of the averments made in the writ petitions relate to the State Government and that it has no concern in the matter. As regards Jasbir Singh respondent No. 4, it is submitted that he had not attained the age of 45 years on 1st November, 1994 and that he was eligible for appointment to the service.

(9) We have heard counsel for the parties in these cases as well and it is their common case that the result of selection for the three vacancies notified on 24th March, 1995 was declared by the Commission on 16th March, 2000 and that by that time eight vacancies had already been notified to the Commission pertaining to the year 1996. In other words, the eight vacancies were in existence when the result of the earlier selection was declared. In this view of the matter, the petitioners are right in contending that in terms of the Government instructions dated 22nd March, 1957 those vacancies had to be filled up from the merit list prepared by the Commission. These instructions were considered by their Lordships of the Supreme Court in *Virender Singh Hooda's case (supra)*. In this case, the Haryana Public Service Commission advertised in the year 1989 twelve posts of Haryana Civil Service (Executive Branch), seven in general category and five in reserved category. The appellants in this case submitted their applications. The Public Service Commission held the written examination and after interviewing the candidates declared the final result on 19th June, 1992. One of the appellants had secured rank at serial No. 8 in the general category but he could not be selected

as there were only seven vacancies in that category. By the time the State Government had already issued an advertisement in the year 1992 for recruitment to nine posts in Haryana Civil Service (Executive Branch) in general category. The appellants contended that they be appointed against the additional posts advertised in 1992 and placed reliance on the Government instructions dated 22nd March, 1957 issued by the composite State of Punjab and also on similar instructions issued by the State of Haryana on 26th May, 1972. The claim of the appellants was not accepted and they filed a writ petition in this court which was dismissed by a Division Bench holding that the Administrative instructions could not be read as making it obligatory for the appointing authority to appoint candidates in excess of the advertised posts and that claim for directing the State to make appointments against the posts which became available after the initiation of the process of recruitment was not justified. Feeling dissatisfied with the decision of this court, the matter was taken in appeal to the Supreme Court which was allowed. The learned Judges accepted the contention of the writ petitioners (appellants therein) and after referring to the Government instructions dated 22nd March, 1957 observed that when vacancies arise within six months from the receipt of the recommendations of the Public Service Commission, they have to be filled up out of the waiting list maintained by it. The learned Judges observed as under :—

“It is also made clear that if the Commission makes recommendations regarding a post to the Department and additional vacancies occur in the Department within a period of six months on the receipt of the recommendations, then the vacancies which occur later on can be filled in from amongst the additional candidates recommended by the Commission.”

(10) In *Suvidya Yadav and others v. State of Haryana and others* Civil Appeals No. 6976 and 6977 of 1999 decided by the Apex Court on 6th December, 1999 the Haryana Public Service Commission had advertised 18 posts of Principals in the Senior Secondary Schools and the result of the selection was declared on 1st October, 1993. The Commission recommended the names of 30 persons for appointment to the State Government. A learned single Judge of this court quashed the appointments on the ground that the selection and recommendations

of the candidates beyond the number of posts which had been advertised was illegal and the judgment was affirmed by a Division Bench in Letters Patent Appeal. The argument of the learned counsel for the writ petitioners that additional posts had become available prior to the declaration of the result and, therefore, the Commission should have recommended the names of suitable persons for appointment against the available post was rejected. The matter was taken in appeal to the Supreme Court where it was conceded that the additional vacancies had become available by the time the result of the earlier selection was declared. In this view of the matter, the learned Judges of the Apex Court allowed the appeal and dismissed the writ petition holding that the recommendations made by the Commission were in accordance with law and, therefore, all the 30 names recommended were entitled to be appointed.

(11) In *Sundeeep Singh v. State of Haryana and another* Civil Appeal No. 7422 of 1999 decided by the Supreme Court on 9th November, 2000 the Haryana Public Service Commission had issued an advertisement on 24th December, 1992 inviting applications for a certain number of posts in Haryana Civil Services (Executive Branch). The interviews were held from January to March, 1996 and between the date of the advertisement and the holding of the interviews several other posts in the service fell vacant. The Public Service Commission recommended the names for appointment equal to the number of posts initially advertised. Sandeep Singh and others who were applicants contended that the State Government should make appointments even in respect of those vacancies which had arisen after the issuance of the advertisement. They filed a writ petition in this court which was dismissed and the matter was taken in appeal to the Supreme Court. Here again, the learned Judges after referring to the Government circulars of 22nd March, 1957 and 26th May, 1972 held that the vacancies available up to the date of the interview should be filled up from amongst those selected in the earlier test rather than to carry forward the vacancies for the next test. They relied on the judgment in *Virender Singh Hooda's case (supra)* and observed as under :—

“That apart, even on first principle, it appeals to us to commend that the vacancies available in any particular service till the date of interview atleast should be filled

up from the very same examination unless there is any statutory embargo for the same. In the case in hand, no statutory embargo has been pointed out to us. In this view of the matter, the judgment of this court in 1999 (3) S.C.C. 696 should apply to the facts and circumstances.”

(12) From the above discussion it has to be accepted that it is settled law that the vacancies which occur within six months from the date of the recommendations made by the Commission are to be filled up from amongst the candidates found suitable by the Commission in the immediate last selection.

(13) Shri Rajiv Atma Ram learned counsel appearing for the Commission strenuously urged before us that the instructions dated 22nd March, 1957 do not provide for the filling up of the additional vacancies within six months from the date of the immediate last selections and that those instructions referred to some earlier letter of the Public Service Commission dated 12th July, 1937 the contents of which are neither known nor available. It was further contended that the parties were remiss in not properly presenting the case before the Supreme Court in *Virender Singh Hooda's case (supra)*. We are unable to accept this contention. The circular letter dated 22nd March, 1957 was directly under consideration before the Supreme Court and their Lordships relying on the same have held that the additional vacancies occurring within six months from the date of the recommendations of the Commission are to be filled up from amongst the candidates found suitable in the immediate last selection. We cannot take a different view.

(14) Faced with this situation, the learned counsel for the respondents then vehemently contended that the petitioners could not be appointed against the additional vacancies as their names have not been recommended by the Commission for appointment to the service. They referred to the provisions of sub-rule (3) of Rule 10 of the Rules to contend that only such candidates can be appointed to the service who have been recommended by the Commission as suitable for appointment. In order to deal with this contention, it is necessary to refer to the provisions of Rule 10 which deals with the selection of candidates to the service from Register A-II. Sub-Rule (1) authorises the specified authorities to nominate such number of persons as specified

against their names in the second column of the table contained in this sub-rule. Sub-Rule (2) lays down the eligibility conditions which are to be fulfilled by the candidates before they could be nominated for appointment to the service. Sub-rules (3) and (4) which are relevant for our purpose are reproduced hereunder for facility of reference:—

“(3) The nomination rolls submitted under sub-rule (1) alongwith the service record of the candidates shall be forwarded to the Commission which shall consider the merits of each such candidate and recommend such of the candidates as are considered suitable for appointment to the service.”

“(4) The names of persons recommended by the Commission under sub-rule (3) shall be entered in Register A-II in the order in which they are recommended by the Commission.”

(15) A plain reading of sub-rule (3) makes it clear that the nomination rolls of the candidates alongwith their service record is to be forwarded to the Commission which is required to consider the merits of each such candidate and recommend such of them as are considered by it suitable for appointment to the service. In terms of this Rule, the Commission is enjoined to first determine the *inter se* merits of all the nominated candidates and prepare a merit list. Thereafter, it has to undertake yet another exercise to judge their suitability. The persons nominated by different specified authorities may be all eligible for appointment to the service but whether they are suitable or not is to be judged by the Commission. For judging the suitability of the candidates, it may be necessary to prescribe a minimum standard on some reasonable criteria keeping in view the nature of the job for which the selection is to be made. After the Commission has judged the suitability, it will recommend the name of all those persons found suitable. The number of candidates found suitable may be less than, equal to or more than the vacancies notified to the Commission. Once the candidates found suitable are recommended, their names shall be entered in Register A-II in the order in which they are recommended by the Commission. Appointments would then follow in the same order which cannot be disturbed. In the cases before us, the Commission has determined the *inter se* merit

of all the nominated candidates by preparing a merit list which was produced before us in a sealed cover and we have perused the same. That list does not give any indication whether the Commission had further examined the suitability of any of those candidates. We, therefore, directed the Commission to file an affidavit whether suitability of any of the candidates was judged. In pursuance to our order dated 11th May, 2001, the Secretary of the Commission has filed a short affidavit stating that it recommended the candidates against the advertised vacancies and no extra name was recommended nor the result beyond the advertised posts was declared. It has referred to its earlier resolution dated 21st January, 1983 whereby it resolved not to recommend the extra names beyond the advertised vacancies. The Commission has categorically stated that after determining the *inter se* merits of the candidates the Commission does not undertake any further exercise to judge the suitability of the candidates any further and it recommends the candidates equal to the number of vacancies notified to it. This procedure, in our opinion, is not correct in the context of sub-rule (3) of Rule 10 of the Rules. As already observed, the Commission has not only to determine the *inter se* merits of the candidates but also to judge their suitability on the basis of some reasonable and rational criteria and then recommend the names of only such persons who have been found suitable. It appears that the Commission recommends the names from the merit list equal to the number of notified vacancies in a mechanical manner which is not the right procedure. In a given case a candidate on the merit list within the notified number of vacancies may be still unsuitable. Does it mean that the Commission would recommend the name of such a candidate for appointment. The answer has to be in the negative. Once the suitability has been judged and the names of suitable persons recommended, it will then be for the Government to make appointments in accordance with law. In the present case since the Commission has not determined the suitability of the candidates and recommended the first three candidates from the merit list against the three vacancies notified on 24th March, 1995, the procedure followed by it is not in accordance with sub-rule (3) of Rule 10 of the Rules. Since the recommendations made by the Commission in regard to these three candidates is not under challenge before us, it is not necessary for us to make any further comment. Be that as it may, the Commission was bound to judge the suitability of all the nominated

candidates and since this has not been done, we have no hesitation in issuing a direction to it to undertake that exercise now and complete the same within three months from the date of receipt of a copy of this order. Needless to say that the candidates found suitable will be recommended leaving it for the Government to make appointments from amongst them in accordance with law.

(16) Now coming to the challenge made to the appointment of Jasbir Singh respondent No. 4. It is alleged that he was nominated by the Chief Secretary in pursuance to the circular letter dated 15th/16th May, 1995 by which relaxation was given to the candidates in the upper age limit from 45 years to 48 years in respect of nominations to the service from various registers including Register A-II. The argument is that the circular dated 15th/16th May, 1995 had been quashed by this court and, therefore, this respondent who was given the benefit of relaxation was ineligible to be nominated. In order to verify the averments made in regard to Jasbir Singh, we directed the learned Deputy Advocate General to produce the original records before us. We have perused the same and find that the allegations made by the petitioners are without any basis. The original circular letter was issued on 24th March, 1995 by which the process for filling up three vacancies to the services from Register A-II was initiated and the specified nominating authorities were requested to send their nominations. This letter was circulated to the Heads of Offices under the Administrative control of the Chief Secretary as per letter dated 6th April, 1995. In response to the original circular letter, applications were received from various applicants including Jasbir Singh respondent No. 4. His application was received on 17th April, 1995 and the same was diarised at serial No. 2702. The last date for receipt of nominations was 23rd April, 1995 which was extended up to 15th May, 1995. It was thereafter that the Government decided to relax the upper age limit from 45 to 48 years and invited fresh nominations. As already observed, this action of the Government was quashed by this court in civil writ petition No. 1995 of 1996. It is, thus, clear that Jasbir Singh applied for appointment to the service in pursuance to the original circular letter dated 24th March, 1995. It is also clear from the record that he was 41 years of age at the time when he filed his application. He did not take the benefit of relaxation granted by the circular letter dated 15th/16th May, 1995. In this view of the matter, it cannot be said that he was ineligible for being nominated for

appointment to the service. We have, therefore, no hesitation in rejecting the contentions raised by the petitioners in this regard.

(17) In the result CWP 11874 of 1999 is dismissed whereas CWPs 6982, 6354 of 2000 and 1113 of 2001 are partly allowed and the Commission is directed to determine suitability of all the nominated candidates whose service record was sent to it and recommended to the State Government the name of all such persons who are found suitable leaving it to the Government to make appointments in accordance with law. There is no order as to costs.

R.N.R.

Before Jawahar Lal Gupta and Ashutosh Mohunta, JJ

M/S MONGA RICE MILLS,—Petitioner

Versus

STATE OF HARYANA AND ANOTHER—Respondents

C.W.P. No. 8532 of 2000

28th August, 2001

Constitution of India, 1950—Arts. 226 and 286—Central Sales Tax Act, 1956 (Act No. 33 of 1996)—Ss. 5 and 15 (ca)—Haryana General Sales Tax Act, 1973—S.12—Instructions dated 29th November, 2000 issued by the Haryana Government —Levy of purchase tax on the paddy purchased by a miller for sale of rice to an exporter—Paddy and rice—Distinction between —Separate commodities—Cl. (ca) of S. 15 of the 1956 Act treats rice and paddy as a single commodity only in respect of the transaction covered by S. 5 (3)—S. 5 (1) exempts levy of tax on the sale of rice by an exporter to a foreign buyer and S.5 (3) exempts on the purchase of rice by an exporter from a miller—The transaction of purchase of paddy by a miller for sale of rice directly to a foreign buyer covered under section 5 (3) whereas transaction of purchase of paddy by a miller for sale of rice to an exporter not covered either under section 5(3) of the 1956 Act or under section 12 of the 1973 Act—Petitioner held liable to pay tax on the purchase of paddy—State Government issuing instructions inviting the attention of the