

December 21, 1990 was passed which has been produced. In the fact stated above, the respondent was expected to pass the orders of refund on the claim of the Company which was to the tune of Rs. 13,36,329.74 and doctrine of unjust enrichment could not be pressed into service by the respondent.

(10) The contempt petition is admitted. The respondent is directed to put in appearance in person on the next date i.e., May 3, 1991, for which date the case stands adjourned for further proceedings.

P.C.G.

Before N. C. Jain & J. L. Gupta, JJ.

JATINDER KUMAR DAHIYA AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1201 of 1991.

2nd April, 1991.

Constitution of India, 1950—Arts. 14 & 16—Punjab Civil Service (Executive Branch) Rules, 1930—Rls. 5 & 6—Special Recruitment—Filling up of 21 posts to the H.C.S. by special recruitment—Procedure under proviso to Rl. 5 approved by Cabinet—Chief Secretary requesting F.Cs. for recommending eligible candidates from amongst class II and III serving officers in various departments—Screening of candidates conducted by C.S.—Final selection made in consultation with HPSC—Rl. 6 naming sources of special recruitment—Recruitment not confined to sources mentioned in Rl. 6—Resort to sources other than those specified in Rl. 6 is justified—Interpretation of proviso to Rl. 5—Harmonious and not restricted construction—State—Not restricted to sources specified in Rl. 6—Proviso to rl. 5 cannot be said to be conferring unquid and unbridled power on the State—Change in eligibility criteria not based on extraneous consideration—Claim for de-novo consideration turned down—Selection upheld.

Held, that after all, method is “the mode of operating” or “the means of attaining an object”. The object was to select the best persons out of those serving the State. For attaining that object, the State has been considering the claims of officers/officials working in different departments. In doing so, it did not violate the express provisions of the rules. We are of the view that rules 5 & 6 only

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lay down the method of recruitment to the Service and when the various provisions are harmoniously read it is competent for the State to not only lay down the procedure which has to be followed for selection but also the sources from which the selection has to be made. If the prescription of method is restricted to mean the procedure only, the State would inevitably be denied the right to consider the claims of the officers from various other services whose experience may be very useful for manning the responsible posts in the Service. If undue restriction is imposed on the power of the State it would cause avoidable impediment in using the valuable administrative and specialised experience of suitable officers for manning senior posts under the State. (Para 14)

Held, that a combined reading of the various provisions leaves no manner of doubt in our mind that the proviso to rule 5 authorised the State to not only lay down the procedure but also the sources from which Special Recruitment can be made. (Para 15)

Held, that a perusal of Punjab Civil Service (Executive Branch) Rules, 1930 shows that certain sources are specified in rule 6. If the Special Recruitment were to be confined to only these sources, persons working in various other services would be rendered totally ineligible. While members of the ministerial establishment working under various officers in different services would be eligible for appointment to the Haryana Civil Service, the officers themselves would be ineligible. Would this be fair? would this not deny equality of opportunity to such senior officers? We can visualise no administrative necessity or propriety which may have even remotely impelled the rule making authority to exclude the senior officers while their subordinates were included in the field of choice. If the interpretation as canvassed for by the petitioners is accepted, the senior persons in the service of the State would be completely denied equality of opportunity in the matter of recruitment to the H.C.S. The State would be denied the right to have the best personnel to man the posts in the Service. The personnel would be denied equality of opportunity. This would violate the guarantee enshrined in Articles 14 & 16 of the Constitution of India. It is well settled that an interpretation of a rule which can result in conflict with the provisions of the Constitution has to be avoided. If the proviso to rule 5 is given the restricted meaning, the rights of a large number of officers would be seriously prejudiced, and the State would be denied the use of their service. Such could not be the intention of the Rule 2 enacting authority. We, thus, entertain no doubt that the State was competent to resort to sources other than those specified in rule 6. We regret our inability to lean in favour of a restricted interpretations of the provision. (Para 16)

Held, that even if two interpretations were possible, the view taken by the authorities is not an impossible one. Since the view taken by the State is a possible one, no case for invoking the writ

jurisdiction and quashing the action of the State can be said to have been made out. (Para 17)

Held, that the proviso to rule 5 can be legitimately held to include the sources of services other than those contemplated under rule 6. The State, therefore, was competent to consider officers working in different departments and its choice was not restricted to the sources specified in rule 6. (Paras 19 & 20)

Held, that a perusal of the proviso to rule 5 shows that resort can be had to the method of Special Recruitment only if the State Government forms an opinion that the exigencies of service so require. Exigency means "need; imperativeness; emergency; something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy, a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition;". It has also been held to mean "something arising suddenly out of circumstances calling for immediate action or remedy or where something helpful needs to be done at once, yet not so pressing as an emergency. "(Black's Law Dictionary, 4th Edition). It thus appears that the State Government is not free to resort to the method of Special Recruitment at its whim and caprice but can only do so if the peculiar circumstances arising at a particular point of time so demand.

(Para 22)

Held, that it would thus be seen that there was detailed consideration of the entire case at different levels in the Government and in consultation with the Commission before a final decision was taken. A system which ensures all these checks, namely, forming of an opinion regarding the exigencies and consultation with the Public Service Commission, in our opinion, provides enough safeguards against arbitrary exercise of power. We are of the opinion that the rule contains checks which are a guarantee against an arbitrary exercise of power. The provision cannot be held to be leaving the Government with a totally unguided and unbridled power. Hence, it has to be held that the provision contained in the proviso is not unguided and does not leave the Government with any unbridled power. (Para 24)

Held, that once claims of the petitioners have been considered, they cannot have any legitimate claim for *de-novo* consideration of the whole matter. Still further, since the persons recommended by the Government to the Public Service Commission satisfy the requirement of a 'Very Good' record no case for directing the Government to go through the time consuming exercise all over again is made out. Hence, when the criterion of eligibility having been altered the process of consideration/screening does not have to be conducted *de-novo*. (Paras 25 & 27)

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EDITORIAL NOTE :

The Division Bench having decided the questions of law arising in a bunch of petitions, thus, went on to deal with the individual cases separately which are not being published. However, in the last individual case at the end of the judgment, the Court has made observations which are reproduced :—

Held, that in a case where contending claims of a large number of persons have to be considered, the Court cannot insist upon scientific precision or mathematical exactitude. We also cannot forget that judicial review has to be only 'judicial'. Even though, we have gone through the record in fair amount of detail, we cannot forget the warning given by the Apex Court in *D. A. Solunke v. Dr. B. S. Mahajan*, AIR 1990, SC. 434 that "the decision of the Selection Committee can be interfered with only on limited ground, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the Selection". Judged by these standards, we find no infirmity in the action of the respondents.

(Para 98)

Petition under articles 226/227 of the Constitution of India praying that :—

- (i) *the records of the case may be called for;*
- (ii) *filling of certified copies of the annexures be dispensed with;*
- (iii) *a writ in the nature of certiorari be issued quashing the decision of the respondent-Government, dated 28th November, 1990, (attached as annexure P-2 and P-3) with the petition, respectively, for the Special Recruitment of HCS (Ex. Br.) cadre pertaining to 21 posts, being illegal and without jurisdiction;*
- (v) *a writ in the nature of mandamus be issued restraining the respondent Government and respondent-Commission, to proceed with for finalising the list of the candidates for these 21 posts.*
- (vi) *to issue any other writ orders of directions which this Hon'ble High Court may deem fit under the special circumstances of this case for the benefit of the petitioners;*
- (vii) *costs of this petition be also awarded to the petitioners:—*

It is, further, prayed that during the pendency of this writ petition, the respondent-Government and the Commission be restrained in selecting any person for the 21 posts of HCS (Ex. Br.) cadre, in the interest of justice.

H. S. Hooda, Sr. Advocate with Anil Ratha, Advocate, for the Petitioner.

S. C. Mahanta, A.G., with B. S. Pawar, Sr. D.A.G. and I. P. Sood, A.A.G., Hy., for the Respondents No. 1 to 3.

A. S. Tewatia, Advocate, for Respondent No. 4.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Haryana Civil Service (Executive Branch) is a premier service in the State. It is the goal of every one. In the year 1990, the Haryana Government decided to fill up 21 posts in the Service by Special Recruitment. A large number of persons participated in the race. Those, who were eliminated in the preliminary heat(s) or were unable to reach the final stage of consideration by the Haryana Public Service Commission, have approached this Court through this bunch of 13 writ petitions Nos. 10948 of 1990, 664, 894, 999, 1011, 1129, 1200, 1201, 1221, 1246, 1269, 1560 and 1610 of 1991, which were placed before the Divisional Bench for hearing. The issues raised are partly legal and partly factual.

(2) It is necessary to make a reference to the sequence of events. In the year 1990, it was felt that a number of posts in the Haryana Civil Service (Executive Branch) (for short 'the Service') were lying vacant. Various non-H.C.S. officers were being appointed against the posts meant for the H.C.S. officers. Arrangements were being made by giving additional charge to the officers. Certain posts were even otherwise lying vacant. The strength of the H.C.S. officers was likely to be further reduced by retirement as also by promotion of certain officers to the I.A.S. cadre. Certain vacancies of the year 1985 and 1989 had also not been filled up due to pendency of court cases or postponement of examination etc. As a result it was proposed that 21 posts in the service be taken out of the purview of the Haryana Public Service Commission (for short 'the Commission') and be filled up by Special Recruitment,——— as envisaged under the proviso to rule 5 of the Punjab Civil Service (Execution Branch) Rules, 1930 (for short 'the Rules'). A proposal in this behalf was placed before the Cabinet after obtaining permission from the Chief Minister, Haryana. The necessary approval having been accorded by the Cabinet, the Chief Secretary to Government, Haryana issued a circular to all the Financial Commissioners and Secretaries to Government, Haryana,—*vide* his letter of July 17, 1990. The list attached with this letter shows that the circular was sent to all the Departments and the District & Sessions Judges in the State. In this letter, it was observed that the State Government was considering to make Special Recruitment to the Service from amongst the Class II officers excepting those who had a channel of promotion and

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those belonging to technical services like Engineers, Doctors, Veterinary Surgeons, Police Officers etc. It was, therefore, desired that the name(s) of the Class II officers to the extent indicated in Annexure I to the letter who fulfilled the conditions of eligibility may be recommended to the Government by July 31, 1990. The following conditions of eligibility which had to be fulfilled as on January 1, 1990 were prescribed :—

- (i) should at least be a graduate of recognised University;
- (ii) should not have attained the age of more than 48 years;
- (iii) should have rendered atleast five years' continuous Government service in regular capacity in Haryana;
- (iv) should have overall record of "Very Good" category or better than that during the last 5 years (i.e. from 1985-86 to 1989-90).

This order was conveyed to various authorities,—*vide* letter of January 25, 1991. The information was sought from the respective authorities in the proformas mentioned in this letter. This was followed by another letter of November 13, 1990, which was sent by the Chief Secretary to the various Financial Commissioners, Secretaries to Government Haryana and all Heads of Departments. The field of choice was widened. It was pointed out that the matter had been reconsidered and it had been decided that the District Revenue Officers/Tahsildars/Naib Tahsildars, Block Development and Panchayat Officers and members of Class III services, who had regular channel for appointment to the H.C.S. (Executive Branch) may also be considered in addition to the Class II officers in various Departments. It was further desired that the name(s) of the officers/officials to the extent indicated in the Annexures to the letter who fulfilled the conditions stipulated therein may be forwarded to the Government by December 4, 1990. The conditions of eligibility were as under :—

- (i) should atleast be a graduate of recognised University;
- (ii) should not have attained the age of more than 48 years;
- (iii) should have rendered atleast 5 years' continuous Government service in regular capacity in Haryana;
- (iv) should have record of 'Very Good' category or better than that during the last 5 years (i.e., from 1985-86 to 1989-90).

It was further pointed out that such employees as were officiating in Class I posts but held lien on Class II posts would be eligible in the category of Class II officers. This was followed by yet another letter of December 20, 1990. In this letter it was observed that the exigencies of the Service required that Special Recruitment should be made to the Service in accordance with provisions of proviso to rule 5 of 1930 Rules. The Government had accordingly ordered that Special Recruitment to the Service for filling up 21 vacancies of the year 1990 shall be made from the following sources and in accordance with the method as set out hereinafter :—

- (i) Class II officers in various departments and District Revenue Officers/Tahsildars/Naib-Tahsildars, Block Development and Panchayat Officers and members of Class III services who have regular channel for appointment to the H.C.S. (Executive Branch), will be considered for the special recruitment. The number of candidates to be recommended by each department from amongst Class II officers and District Revenue Officers/Tahsildars/Naib-Tahsildars will be as decided by the State Government. The criteria in respect of number of recommendations to be invited from amongst members of Class III services will be as prescribed for regular recruitment to the H.C.S. (Executive Branch) under the provisions of rule 8 of the P.C.S. (Executive Branch) Rules, 1930.
- (ii) The eligibility conditions for the candidates as on 1st January, 1990, will be that the candidate :
 - (a) should atleast be a graduate of recognised University;
 - (b) should not have attained the age of more than 45 years;
 - (c) should have rendered atleast 5 years' continuous Government service in regular capacity in Haryana; and
 - (d) should have record of 'Very Good' category or better than that during the last 5 years (i.e., from 1985-86 to 1989-90).
- (iii) The recommendations of all the eligible candidates received from various departments will be forwarded to to Haryana Public Service Commission for drawing up a merit list of persons considered suitable for appointment to the H.C.S. (Executive Branch) and the persons so

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selected will be appointed to the H.C.S. (Executive Branch).

(3) Condition (ii) (d) as mentioned above was modified by an order passed by the Chief Minister on January 14, 1991 (as apparent from the record produced before us by the learned Advocate General) to provide as under :—

“should have overall record of ‘Very Good’ category i.e., atleast 3 ‘Very Good’ or better reports and 2 reports of not less than ‘Good’ category, during the last five years (from 1983-86 to 1989-90).”

(4) In response to these circular letters, the recommendations made by different officers were screened by the Chief Secretary to Government Haryana. The names of the persons considered suitable were finally forwarded to the Commission. From the records of the Government, it has been pointed out to us by the learned Advocate General that the names of a total of 75 officers were forwarded by the Chief Secretary to the Commission. Some of the persons who had failed to cross the hurdle of screening at the level of the Chief Secretary and were unable to make it to the level of the Commission have approached this Court through the present writ petitions. These petitions can be divided into two sets. The first category amongst the petitioners in these petitions is of persons who belong to the services from which regular recruitment is made through different Registers. These categories include the cadres of District Revenue Officers, Tahsildars, Naib-Tahsildars, members of Class III Services and Block Development and Panchayat Officers. Civil Writ Petitions Nos. 10948 of 1990, 894, 1246 and 1269 of 1991 have been filed by members of the above Cadres. Second set of petition viz., Civil Writ Petitions Nos. 664, 999, 1011, 1129, 1200, 1201, 1221, 1560 and 1610 of 1991 have been filed by members of other services viz., those (from services like) the Agriculture Department, Employment, Education and Municipal Services of the State.

(5) The arguments were initially addressed by the learned counsel for the petitioners in the first set of cases. It was contended by Mr. R. K. Malik and Mr. H. S. Hooda learned Counsel for the petitioners that the Special Recruitment to the Service under the proviso to rule 5 had to be confined to only those sources which had been specified in rule 6 viz., the District Revenue Officers, Tahsildars,

Naib Tahsildars, Members of Class III Ministerial establishment and Block and Development and Panchayat Officers, and that the rules did not permit the authorities to consider the claims of members of other services. It was their case that the action of the respondent-State in considering the members of other services for Special Recruitment was totally contrary to the provisions of the rules and was thus legally untenable. In the alternative, it was submitted that in case it was held that Special Recruitment could be made from sources other than those specified in rule 6, the provisions contained in the proviso to rule 5 would attract the wrath of Articles 14 and 16 of the Constitution inasmuch as no guide-lines etc. had been laid down in the rule itself regarding the services from which Special Recruitment could be made. It was thus maintained that the provision would be vitiated by the vice of excessive delegation. General conditions which would be applicable to both sets of petitions were also raised to contend that it was incumbent upon the respondents to carry out the process of screening *de-novo* in view of the fact that the criteria as laid down in the letter of December 20, 1990 had been modified by the subsequent decision incorporated in the letter of January 25, 1991. It was further suggested that the change in the criteria had been made with the oblique motive of making certain favourites eligible and was thus *malafide*. Since the change was actuated by extraneous considerations, the whole process of screening was vitiated. It was also contended that the number of candidates to be recommended by different Departments was fixed without any regard to the strength of personnel in the Department.

(6) Besides, the above mentioned contentions, submissions were made in petitions on the peculiar facts of the respective cases. Reference to the contentions regarding individual cases shall be made while dealing with the petitions individually.

(7) It may be appropriate to first consider the general submissions referred to above.

(8) Inevitably, for considering the submissions a reference to the provisions of the rules is essential. The relevant provisions are contained in rules 5, 6, 7, 8, 12, 17 and 20. These rules read as under :—

“5. Members to be appointed by the Governor of Haryana from among accepted candidates—Members of the Service shall be appointed by the Governor of Haryana from time

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to time as required from among accepted candidates whose names have been duly entered in accordance with these rules in one or other of the registers of Accepted Candidates to be maintained under these rules :

Provided that if in the opinion of the State Government the exigencies of the Service so require, the State Government may make special recruitment to the service by such methods as it may by notification specify, after consultation with the Public Service Commission.

(6) Registers to be maintained — The following Registers of Accepted Candidates shall be maintained by the Chief Secretary, namely:—

- (a) Register A-I of District Revenue Officers Tahsildars and Naib-Tahsildars accepted as candidates ;
- (b) Register A-II of members of Class III Services accepted as candidates;
- (c) Register B of persons accepted as candidates on the result of a competitive examination; and
- (d) Register C of Block Department and Panchayat Officers.

7. Selection of candidates for Register A-I.

(1) The Financial Commissioner Revenue shall, by a date to be determined by the State Government, prepare a list of District Revenue Officers/Tahsildars/Naib-Tahsildars and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers as members, as may be nominated by the State Government from time to time; provided that unless the Government otherwise directs, the name of a person shall not be submitted who,—

- (a) (i) has not completed five years' continuous Government service;
- (ii) has attained the age of forty-five years; on or before the date on which the names are required to be submitted before the committee; and

(b) is not a graduate of recognised University.

(2) The committee mentioned in sub-rule (1) shall consider all such names and prepare a list, equal to twice the number of vacancies of persons considered suitable for being entered in Register A-I. This list shall be sent to the Haryana Public Service Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register A-I, and thereafter the names of the persons so selected shall be entered in the Register A-I.

8. Selection of candidates for Register A-II.

(1) Each of the authorities specified in the first column of the table below may, by a date to be specified by the State Government, submit, to the State Government in Form 1 attached to these rules the recommendations regarding such number of persons as is specified in each case in the second column of the said table from amongst persons who are members of Class III services in his office or in the offices subordinate to him:—

TABLE

Recommending authority	Number of recommendations
1	2
1. Chief Secretary to Government, Haryana	3
2. Financial Commissioner, Revenue. Haryana	2
3. All the remaining Heads of Departments in Haryana	1 (each)

Provided that any nomination already submitted by any of the aforesaid authorities in accordance with the existing rules shall be deemed to be a recommendation validly made.

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- (2) Unless the State Government otherwise directs, the name of a person shall not be submitted under the provisions of sub-rule (1) who—
- (a) (i) has not completed five years' continuous Government Service; and
 - (ii) has attained the age of forty-five years; on or before the date by which the State Government has asked for the recommendations.
- (3) All the recommendations received from the recommending authorities specified in sub-rule (1) above shall be forwarded to the Haryana Public Service Commission for recommending, in order of merit and equal to the number of vacancies, the names of persons considered most suitable for being selected as candidates for entry into Register A-II and thereafter the name of the persons so selected shall be entered in Register A-II."

12. Selection of candidates for Register C.

The Secretary to Government in the Development and Panchayat Department shall, by a date to be determined by the State Government, prepare a list of Block Development and Panchayat Officers and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers as members, as may be nominated by the State Government from time to time; Provided that unless the State Government otherwise directs, the name of a person shall not be submitted who—

- (a) (i) has not completed five years continuous Government service;
 - (ii) has attained the age of forty-five years on or before the date on which the names are required to be submitted to the Committee; and
 - (b) is not a graduate of a recognised University.
- (2) The Committee mentioned in sub-rule (1) shall consider all such names and prepare a list equal to twice the number of vacancies of persons considered suitable for

being entered in Register C. This list shall be sent to the State Public Service Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register C, and thereafter the names of the persons so selected shall be entered in the Register C.

17. Appointment of registered candidates to Service—

The Governor of Haryana shall ordinarily make appointments to the Service in pursuance of rule 5 amongst candidates whose names are entered in the various registers in rotation as follows :—

From Register B	two candidates
From Register A-I	one candidate
From Register B	two candidates
From Register A-II	one candidate
From Register B	three candidates
From Register A-I	one candidate
From Register B	two candidates
From Register A-II	one candidate
From Register C	one candidate
From Register B	three candidates
From Register A-I	one candidate
From Register B	two candidates
From Register A-II	one candidate
From Register B	two candidates
From Register A-I	one candidate
From Register B	three candidates
From Register C	one candidate

and thereafter in the same rotation beginning again from Register B.

20. Seniority of members of Service (1)—The seniority of members appointed to the Service shall be determined in accordance with the rotation prescribed in rule 17, irrespective of the

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fact whether or not this rotation is actually followed while making appointments:

Provided that the order of merit determined by the Selection Committee or the Public Service Commission as the case may be in respect of persons appointed from various registers shall not be disturbed :

Provided further that in the case of an ex-emergency commissioned officer, an ex-short service commissioned officer, or an ex-serviceman appointed to the service, benefit of seniority on account of military service may be given with due regard to the provisions of the Punjab Government National Emergency (Concessions) Rules, 1963:

Provided further that :—

- (a) If the name of any candidate is removed from the register of accepted candidates or the list of special recruits or the order of his appointment is cancelled under the provisions of rule 19, and such candidate is subsequently appointed to the Service, his seniority shall be fixed keeping in view the date of his actual appointment.
- (b) In the case of members appointed to the Service through Special recruitment under the proviso to rule 5, the seniority shall be fixed by the State Government in the order of merit determined by the Selection Committee or the Public Service Commission, as the case may be, and they shall be placed below the members appointed through regular registers against vacancies in respect of the same year in which the special recruitment is made. The seniority *inter se* of persons appointed through special recruitment from various sources shall be fixed in blocks arranged according to descending order of pay scales of the posts from which recruitment is made, in which atleast one person from each source shall be included, but if the number of persons appointed from a source is four or more, two persons from that source shall be included in the block. The second and subsequent blocks shall, if necessary, be repeated to include all available persons from various sources. If the pay scales of two or more posts from which recruitment is made are

the same then the seniority of such members shall be determined by the length of their service in such posts and if the length of their service is also the same the older member shall be senior to the younger member.

- (2) If there are any cases which are left uncovered by the principles enunciated above they would be decided by the Government on just and equitable grounds.

(9) The first question that arises is as to whether or not the special recruitment as envisaged under the proviso to rule 5 is confined to the sources mentioned in rule 6. Mr. R. K. Malik and Mr. H. S. Hooda learned counsel for the petitioners have contended that under the proviso the State Government is competent to make Special Recruitment "by such methods as it may by notification specify". The sources for such a Special Recruitment can be only those which are specified in rule 6. On the other hand, the contention of Mr. Sushil Mohanta, the learned Advocate General, who appeared for the respondents is that under the Rules it was within the competence of the State to not only lay down the procedure for making Special Recruitment but also the sources from which recruitment could be made. According to him, a harmonious reading of the various rules leaves no doubt that Special Recruitment could be made not only by following the method as laid down in rule 6 but also by resorting to sources other than those specified in rule 6. He further contended that if a restricted meaning was given to the proviso to Rule 5 and services other than those mentioned in rule 6 were excluded the action of the State may attract the challenge on the basis of Article 16 inasmuch as various categories of employees who may even be higher in rank than Naib-Tahsildars, etc. would be denied equality of opportunity. He also pointed out that ever since the introduction of the proviso to rule 5, the State had interpreted the rule in the manner, as it had been done now. Records were also produced to show that the intention of the Government even at the time of introducing the proviso in the year 1970 was to make members of various other services eligible for consideration for Special Recruitment to the service.

(11) It is useful to refer to the historical background of the introduction of the proviso. The matter appears to have been considered by the Government initially in the year 1970. It was mentioned that in the erstwhile State of Punjab as it existed prior to the formation of State of Haryana on November 1, 1966, Special

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Recruitment had been made by introducing temporarily a proviso to rule 5. It was further pointed out that even in the I.A.S. (Recruitment) Rules, a provision to the following effect existed:—

“Notwithstanding anything contained in sub rule (1), if in the opinion of the Central Government the exigencies of after consultation with the State Government and the services so require, the Central Government may, Commission, adopt such methods of recruitment to the service other than those specified in the said sub-rule as it may by regulations made in this behalf prescribe.”

(12) Thereafter, it was also considered as to how many vacancies be filled up by the Special Recruitment and the sources from which the recruitment be made. It was pointed out that it would be in the fitness of things if members of other Services were made eligible for Special Recruitment. It was also considered as to whether or not a specific quota be allowed to different sources considered suitable for Special Recruitment. After a thorough consideration, it was considered appropriate to introduce the proviso in its present form and it was duly notified in the year 1971. Since then, the State Government has made Special Recruitment on a number of occasions. In the written statement filed on behalf of the respondents by the Joint Secretary to Government Haryana (Political and Services Department) in C.W.F. No. 894 of 1991 (Rajeshwar Dayal & others vs. State of Haryana & others), details have been furnished to show that ever since the year 1971 Special Recruitment had been made from sources other than those specified in rule 6. By way of illustration, it may be mentioned that in the year 1971 itself, 4 persons had been appointed by following the method of Special Recruitment. Out of these four, two were from the cadre of Block Development & Panchayat Officers and the other two were from the Cadres of Excise & Taxation Officers and Assistant Excise & Taxation Officers. Similarly, in the year 1973, four persons out of eight were appointed from sources other than those mentioned in rule 6. These were from the Cadres of Assistant Registrars of Cooperative Societies, Treasury Officers and District Industries Officers. In the year 1973 all the persons appointed by way of Special Recruitment were from sources other than those mentioned in rule 6. Similar was the position in the year 1976.

(13) An examination of the historical perspective clearly brings out the intention of the State Government. An intention to consider members of various Services under the State including those who did not belong to the services contemplated under rule 6 is clearly borne out. The proviso was introduced on the pattern of the provision in the I.A.S. (Recruitment) Rules, 1954 whereunder members of various Services under the State were eligible for being considered. In practice this intention has been duly carried out. On all occasions when Special Recruitment was made, members of various Services under the State were considered. The consideration was never limited to the sources contemplated under rule 6.

(14) Did the State act in violation of the rule? We think it did not. After all, method is "the mode of operating", or "the means of attaining an object". The object was to select the best persons out of those serving the State. For attaining that object, the State has been considering the claims of officers/officials working in different departments. In doing so, it did not violate the express provisions of the rules. We are of the view that rules 5 and 6 only lay down the method of recruitment to the Service and when the various provisions are harmoniously read it is competent for the State to not only lay down the procedure which has to be followed for selection but also the sources from which the selection has to be made. If the prescription of method is restricted to mean the procedure only, the State would inevitably be denied the right to consider the claims of the officers from various other services whose experience may be very useful for manning the responsible posts in the Service. If undue restriction is imposed on the power of the State it would cause avoidable impediment in using the valuable administrative and specialised experience of suitable officers for manning senior posts under the State.

(15) The proviso to rule 5 authorises the State to make Special Recruitment by "such methods as it may by notification specify". In rule 20(b), the method of determination of seniority of persons recruited from "various sources" has been prescribed. These sources have to be other than those mentioned in sub-clause (a) (viz. those mentioned in Rule 6), whose seniority has to be determined in accordance with the roster prescribed in rule 17.

A combined reading of the various provisions leaves no manner of doubt in our mind that the proviso to rule 5 authorises the State to not only lay down the procedure but also the sources from which Special Recruitment can be made.

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(16) There is another aspect of the matter. A perusal of the rules shows that certain sources are specified in rule 6. If the Special Recruitment were to be confined to only these sources, persons working in various other services would be rendered totally ineligible. While members of the ministerial establishment working under various officers in different services would be eligible for appointment to the Haryana Civil Service, the officers themselves would be ineligible. Would this be fair? Would this not deny equality of opportunity to such senior officers? We can visualise no administrative necessity or propriety which may have even remotely impelled the rule making authority to exclude the senior officers while their subordinates were included in the field of choice. If the interpretation as canvassed for by the petitioners is accepted, the senior persons in the service of the State would be completely denied equality of opportunity in the matter of recruitment to the H.C.S. The State would be denied the right to have the best personnel to man the posts in the Service. The personnel would be denied equality of opportunity. This would violate the guarantee enshrined in Articles 14 & 16 of the Constitution of India. It is well settled that an interpretation of a rule which can result in conflict with the provisions of the Constitution has to be avoided. If the proviso to rule 5 is given the restricted meaning as the learned counsel for the petitioners want as to, the rights of a large number of officers would be seriously prejudiced, and the State would be denied the use of their service. Such could not be the intention of the Rule 2 enacting authority. We, thus, entertain no doubt that the State was competent to resort to sources other than those specified in rule 6. We regret our inability to lean in favour of a restricted interpretation of the provision as suggested by the learned counsel for the petitioners.

(17) The historical background of the rule and the consistent interpretation placed by the State thereon also support this view. The official record produced before us shows that the Rule making authority had always intended that members of various services would be eligible for 'Special Recruitment'. Ever since its introduction in the year 1971, the State has resorted to sources other than those which had been originally included in the rules. Detailed reference to the factual position which has already been made above shows that the authorities have understood the rule to mean that officers working in different departments of the State were

eligible for appointment to the Service. Even if two interpretations were possible, the view taken by the authorities is not an impossible one. Since the view taken by the State is a possible one, no case for invoking the writ jurisdiction and quashing the action of the State can be said to have been made out.

(18) It was also suggested that the proviso is always an exception. It cannot be used to enlarge the scope of the substantive provision. Reference in this behalf was made to the decisions of different courts. On the other hand, relying on the dictum of their Lordships of the Supreme Court in the case *Commissioner of Commercial Taxes Board of Revenue v. Ram Kishan, Siri Kishan Jhaver*, (1), it was contended by the learned Advocate General that the proviso can itself contain a substantive provision.

(19) For considering the submission it is useful to consider the context in which the proviso has been enacted in the present case. Rule 5 provides that the Governor shall appoint members of the service from amongst the accepted candidates whose names have been duly entered in various registers. Even if the proviso was to be read as exception, it would mean that there is a departure from the normal rule. The Governor shall not only be entitled to make appointments from amongst the accepted candidates but also by way of Special Recruitment. Such Special Recruitment without anything more, cannot be confined to the categories from which the accepted candidates are brought on the Registers. It would in the normal course of events be from sources besides those contemplated under rule 5 itself. Further as held by their Lordships of the Supreme Court in *Commissioner of Commercial Taxes Board of Revenue vs. Ramkishan, Siri Kishan Jhaver*, A.I.R. 1968, S.C. 59, the proviso itself can contain a substantive provision. If so viewed, the proviso in the present case can be legitimately held to include the sources of services other than those contemplated under rule 6.

(20) We, thus conclude that the State was competent to consider officers working in different departments and its choice was not restricted to the sources specified in rule 6.

(21) It is next contended that the proviso to rule 5 gives totally unguided and unbridled powers to the State Government. It is suggested that the State Government is left free to choose the source and lay down the procedure for selection. As such, the provision

(1) A.I.R. 1968 S.C. 59.

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is totally arbitrary and is violative of Articles 14 and 16 of the Constitution. On the other hand, the learned Advocate General points out that the provision has in-built safeguards. The State Government is competent to resort to Special Recruitment only if the 'exigencies' of service so require. It is not free to resort to this method at its whim and caprice. He further points out that the decision has to be taken in consultation with the Public Service Commission. These, according to the learned Advocate General constitute sufficient safe-guards and it is not fair to contend that the power is totally unguided or unbridled. He also points out that in the present case, the factual position clearly shows that a large number of posts in the service having remained unfilled from the normal sources for a long time, it was considered necessary to make Special Recruitment so that posts did not remain unfilled. It was also his contention that besides consideration by the Cabinet, the matter was considered in consultation with the Commission, which is a constitutional body. He also pointed out that similar procedure had been followed in the past.

(22) A perusal of the proviso shows that resort can be had to the method of Special Recruitment only if the State Government forms an opinion that the exigencies of service so require. Exigency means 'need; imperativeness; emergency; something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy, a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition;'. It has also been held to mean "something arising suddenly out of circumstances calling for immediate action or remedy or where something helpful needs to be done at once, yet not so pressing as an emergency." (Black's Law Dictionary, 4th Edition). It thus appears that the State Government is not free to resort to the method of Special Recruitment at its whim and caprice but can only do so if the peculiar circumstances arising at a particular point of time so demand. In the present case, in May, 1990 the matter was placed before the Council of Ministers. In the Memorandum placed before the Council of Ministers, it was stated as under :—

MEMORANDUM

Minister-in-Charge

...Chief Minister, Haryana.

Administrative Secretary

...Chief Secretary to Government,
Haryana.

Subject : Special recruitment to the H.C.S. (Executive Branch) from Class II officers for the year 1990—Taking posts of HCS (Executive Branch) out of the purview of Haryana Public Service Commission.

The existing authorised cadre strength of HCS (Ex. Br.) is 200, against which only 155 officers are in position and, thus, there is gap of 45 officers. Due to shortage of HCS (Ex. Br.) officers in the State, non-HCS officers have been appointed against the HCS (Ex. Br.) posts. In some cases, arrangements to carry on the work of vacant posts has been made by entrusting additional charge to other officers. Even then, a number of posts are lying vacant due to non-availability of HCS (Ex. Br.) officers. Some posts have been created in the HCS (Ex. Br.) for the newly created District/Sub Divisions and in other Government Departments. As a result of retirement of officers and promotion of HCS (Ex. Br.) officers in the IAS during the year, the shortage of HCS (Ex. Br.) officers will further increase and the vacancy position in the cadre will be to the extent of 31 by the end of 1990 (excluding pending recruitment to fill-up 25 vacancies for the year 1985 and 1989).

Regular recruitment to the HCS (Ex. Br.) to fill-up 25 vacancies for the years 1985 and 1989 has not materialised so far due to various reasons such as — stay order of the Court, deferring of competitive examination etc., etc. Since regular recruitment for the years 1985 and 1989 is likely to take considerable time and also in view of the above stated exigencies of the HCS (Ex. Br.) cadre, it is considered expedient that special recruitment be made to fill-up proviso to rule 5 of the PCS (Ex. Br.) Rules, 1930 by taking 21 vacancies in the HCS (Ex. Br.) cadre for the year 1990 under the proviso to rule 5 of the PCS (Ex. Br.) Rules, 1930 by taking these posts out of the purview of Haryana Public Service Commission as one time measure. This will, however, not affect the regular recruitment for 1989 and subsequent years. Government has already decided to recruit officers in a phased manner and accordingly 20 vacancies for 1989, and 14 each for 1990 and 1991 will be filled by regular recruitment, including recruitment through Haryana Public Service Commission.

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The Haryana Public Service Commission has been requested accordingly to give their concurrence for making the proposed special recruitment to the HCS (Ex. Br.).

Meanwhile, the matter is placed before the Council of Ministers in accordance with the provisions contained in item at serial No. 2 of the Schedule referred to in rule 5 and 11 of the Rules of Business of the Government of Haryana, 1977, for according approval to take 21 posts of HCS (Ex. Br.) out of the purview of Haryana Public Service Commission as a special case.

Permission of the Chief Minister, for placing the matter before the Council of Ministers, has been obtained.

(Sd./-)

Dated, Chandigarh
the 14th May, 1990.

(KULWANT SINGH)
Chief Secretary to Government, Haryana.

(23) A perusal of the above Memo shows that the State Government was faced with a situation where it could not proceed to finalise recruitment to the service by the normal method. A number of posts were lying vacant. It was considered necessary to proceed to make Special Recruitment. It was in view of this situation that the Council of Ministers had accorded its approval for the making of Special Recruitment. Only thereafter, the letter of July 17, 1990 was circulated to various departments for inviting recommendations. Simultaneously detailed correspondence took place between the State Government and the Public Service Commission. The Commission expressed the opinion that special Recruitment should not be made by the State Government exclusively but even the Commission should be involved. Accordingly, the matter was reconsidered by the Government and on November 28, 1990 a Memo was prepared for being placed before the Council of Ministers. In this Memo, it was, *inter-alia*, observed as under :—

“2. The Haryana Public Service Commission was requested to give their concurrence for making special recruitment to the H.C.S. (Executive Branch) under the proviso to rule 5 of the P.C.S. (Executive Branch) Rules, 1930, which provides as under :—

“If in the opinion of the State Government the exigencies of the Service so require the State Government may

make special recruitment to the Service by such methods as it may by notification specify, after consultation with the Haryana Public Service Commission."

The Commission was not in favour of making Special recruitment as per method proposed by the State Government but was of the view that the Commission should also be involved in the process."

(24) This proposal was considered by the Cabinet and it was decided to authorise the Chief Minister to take final decision in the matter. The necessary approval having been accorded by the Chief Minister, the matter was considered by the Public Service Commission, whereafter, the letter dated December 20, 1990 was issued. Simultaneously, the State Government had received recommendations from different departments which were screened by the Chief Secretary and ultimately,—*vide* letter of January 8, 1991 a list of 75 persons along with their record was forwarded to the Public Service Commission for making the necessary selection. It would thus be seen that there was detailed consideration of the entire case at different levels in the Government and in consultation with the Commission before a final decision was taken. A system which ensures all these checks namely forming of an opinion regarding the exigencies and consultation with the Public Service Commission, in our opinion, provides enough safeguards against arbitrary exercise of power. We are of the opinion that the rule contains checks which are a guarantee against an arbitrary exercise of power. The provision cannot be held to be leaving the Government with a totally unguided and unbridled power. This view has been further fortified on a perusal of the official records which were produced before us by the learned Advocate General. The records reveal a thorough examination of the case at different levels. We, therefore, hold that the provision contained in the proviso is not unguided and does not leave the Government with any unbridled power. It contains sufficient checks on the exercise of power by the State Government. It does not leave the State as free as the petitioners contend. Consequently, the contention raised on behalf of the petitioners is rejected.

(25) It was next contended that the criterion of eligibility having been altered the process of consideration/screening had to be conducted *de novo*. It was alleged that the criterion had been

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originally laid down by letter of December 20, 1990 and was altered in January, 1991. Since the requirement of 'Very Good' reports for the last five years was changed to 'Very Good' and "Good" reports, more persons would have become eligible and their cases deserved to be considered.

(26) A perusal of the records indicates that originally the State Government had decided that the Officer should have an "over-all record of 'Very Good' category or better than that during the last five years i.e., from 1985-86 to 1989-90". In the letter issued in December, 1990 the word "over-all" did not occur. The learned Advocate General points out that the intention of the Government basically was that a person who had an overall 'Very Good' record for the last 5 years was to be considered eligible. Lest this should be interpreted to mean that a person who had earned one 'Good' report was to be excluded in spite of the fact that the remaining four reports were 'Outstanding', a clarification had been issued by the Government in pursuance to the orders passed by the Chief Minister in January, 1991. Thereafter the letter of January 25, 1991 was issued in view of the orders passed by the Chief Minister on January 14, 1991. He further points out that in fact the officers/officials whose record is 'Very Good' have been selected. It is also the contention of the learned Advocate General that the claims of all the petitioners had been considered and consequently they could have no grievance which could be remediable by resort to the present proceedings.

(27) Having given the matter our utmost consideration we find that the claims of all the petitioners were duly considered. The records produced on behalf of the Government before us clearly bear out this fact. Once their claims have been considered, they cannot have any legitimate claim for *de novo* consideration of the whole matter. Still further, since the persons recommended by the Government to the Public Service Commission satisfy the requirement of a 'Very Good' record no case for directing the Government to go through the time consuming exercise all over again is made out.

(28) There is another aspect of the matter. Supposing an officer has earned one 'Good' report and four 'Outstanding' reports, he cannot, in our view, be held to be ineligible for consideration. The

learned Advocate General appears to be right in suggesting that the letter issued on January 25, 1991 was only calculated to dispel doubts regarding the eligibility of such persons.

(29) We are equally of the view that such hair splitting and niceties have to be left to the Government alone. It is not unknown that certain officers are known to be strict while grading their subordinates. Equally well known is the fact that certain officers are liberal while recording reports. The Government is aware of all such situations. As against this, the Court is not in a position to know the exact situation. Even if the Government has chosen to issue the clarification and say that even an Officer with two 'Good' reports and three 'Very Good' reports shall be eligible, the Court cannot hold that the whole process of selection has to be gone into *de novo*, especially when the petitioners who are before it have been duly considered. A large number of employees have been considered before the final recommendation regarding 75 persons was made. The process is time-consuming. We do not find any justification for ordering the Government to go through the whole exercise *de novo*.

(30) Equally untenable is the suggestion that the change in the criteria was actuated by extraneous considerations. Firstly, no specific instance in support of this contention was brought to our notice. Secondly, on perusal of record we are satisfied that the action was not actuated by any extraneous consideration and all the persons whose names have been recommended fulfil the criteria as originally made out. The question of extraneous consideration could crop up only if it was proved that some person(s) who did not fulfil the original criteria had been recommended. No such case was pin-pointed. We are also of the opinion that there was no substantial change in the criteria. We consequently reject any suggestion of extraneous consideration.

(31) It was next contended that while seeking recommendations, different departments were asked to recommend different number of officers/officials without any definite criteria. The argument is that while certain departments were asked to recommend only one name, others have been asked to recommend more than one. This, according to the petitioners, was done arbitrarily. In the petition before us, no precise date of specific averments were made. Vague allegations which were not supported by any factual data have been made during the course of arguments. It is well settled that the burden

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of proving the charge of discrimination lies heavily on the person who alleged it. In the present case, the petitioners have not been able to discharge this burden at all. The petitioners are lacking in material particulars. Even at the stage of arguments, nothing concrete was pointed out.

(32) The learned Advocate General pointed out that number was fixed by the Government on a variety of considerations. Firstly, the strength of department/services from which nomination was sought and secondly, the likelihood of suitable persons being found from that particular source are the dominant considerations while fixing the number of persons to be recommended by each department. These considerations were, to our mind, neither extraneous nor arbitrary. We thus reject the suggestion on behalf of the petitioners that the number was fixed arbitrarily.

(33) The broad submissions on the questions of law having been disposed of stage is now set for dealing with the individual cases.

R.N.R.

Before A. L. Bahri & S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

versus

PREM CHAND,—Respondent.

Criminal Appeal No. 615-DBA of 1982.

9th April, 1991.

Prevention of Food Adulteration Act, 1954—Ss. 7 & 16—Prevention of Food Adulteration Rules, 1955—Rls. 28 & 29—Sample of Gajarpak contained coal tar dye—No opinion expressed by Public Analyst with respect to type of coal tar dye used—Permitted and prohibited types provided under rules—Acquittal upheld.

Held, that the public Analyst gave the opinion that the contents of the sample were a yellow non-permitted acid coal tar dye. The Rules show that some colour dye can be used in preparing sweets. Use of permitted coal tar in any food other than those enumerated in Rule 29 is prohibited. Rule 29 of the Rules allows use of permitted coal tar dye in the sweets as mentioned in Item(e). The report of the Public Analyst does not show that the coal tar dye used was not