

*Before Ritu Bahri, Paramjeet Singh, Naresh Kumar Sanghi,  
Rameshwar Singh Malik & Inderjit Singh, JJ.*

**AMARBIR SINGH—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 8421 of 2002**

May 31, 2013

*Reference to Full Bench on the issues:-*

- (i) Whether 23 candidates selected by PPSC in the impugned period, who are facing criminal trial, can be described as tainted?
- (ii) Whether the selection of other candidates, who are not facing criminal trial, can be described to be vitiated, in view of the detailed investigation carried out by Punjab Vigilance Bureau?
- (iii) Whether the State Government was fair in giving chance of second examination in 2003 to all the candidates?

*The following two questions added by Paramjeet Singh, J. concurring, but for himself :*

- (iv) Whether the principles of natural justice are absolute; if there is a mass scale fraud, mischief, corruption and conspiracy to pervert the course of fair selection by the Commission still the Petitioner(s) and other competing candidates were required to be given opportunity of hearing and the principles of natural justice and the service jurisprudence were required to be followed before scrapping the entire selection and consequential termination of their services when the entire selection process itself is alleged to be vitiated?
- (v) Whether the procedure adopted by the Judges' Committee is erroneous?

**RITU BAHRI, J.**

- A. *Constitution of India, 1950 - Art. 226/227, 315 to 323 - Code of Criminal Procedure, 1973 - Ss.161,164 - FIRs registered against tainted candidates and pending trial against some others - Some convicted while others acquitted - Public Service Commission - Set up as Constitutional Authority to make selection and recruitment of Public Servants on the basis of merit by open competition of Civil Servants - Selection to be immunized from all sorts of extraneous pressures of personal favoritism and to be made solely on consideration of merit.***

*Held*, that Article 315 to 323 of the Constitution lay down the procedure for creation of a public service commission with the object of making selection on the basis of merit by open competition of civil servants. It is imperative that the public service commissions are manned by persons of highest skill and persons with irreproachable integrity, so that the selections to various public posts will be immunized of all sorts of extraneous pressures of personal favoritism and are made solely on consideration of merit.

(Para 15)

- B. *Constitution of India, 1950 - Art. 226/227 & 317 - Constitutional bodies - Principles of Service Law not applicable - Opportunity of hearing before passing adverse orders against public servant not available.***

*Held*, that while exercising powers under Article 317 of the Constitution since the Public Service Commission was a Constitutional creation, the principles of service law i.e. opportunity of hearing before passing an order adverse to the public servant are not available.

(Para 15)

- C. *Constitution of India, 1950 - Art. 226/227 - Code of Criminal Procedure, 1973 - Ss.161 & 164 - Reference No.1 - Whether 23 candidates selected by PPSC facing criminal trial can be described to be tainted? - Held, yes - All candidates against whom FIRs registered carry a trace, stain or blemish that they are tainted - Evidence made available by investigating agencies to the Judges' Committee sufficient to conclude that all such candidates are tainted.***

*Held*, that all the petitioners who approached the Supreme Court and against whom FIRs have been registered definitely carry a trace, stain or blemish that they were tainted. The FIRs were registered when during investigation the Vigilance Bureau recorded statements of Ravinderpal Singh Sidhu, Jagman Singh and Randhir Singh Gill under Sections 161 and 164 Cr.P.C. The modus operandi of conducting the manipulations in the written examination was disclosed by them.

(Para 20)

*Further held*, that the High Court, in absence of any constitutional or statutory provision, could not have revived these writ petitions much less on the ground of remand order passed in appeals filed by 57 petitioners in the Supreme Court. The orders of revival of the above writ petitions of such petitioners who did not file any appeal in the Supreme Court is without jurisdiction and non-est.

(Para 68)

**D.** *Constitution of India, 1950 - Art. 226/227 & 311 - Reference No.2 - Whether the selection of other candidates by PPSC who were not facing criminal trial can be described to be vitiated, in view of detailed investigation carried out by Punjab Vigilance Bureau - Whether services of such candidates can be terminated without following service rules - Punjab Civil Services (Punishment and Appeal) Rules 1970 - PCS (Executive) Branch Class I Rules 1976, Rule 23 (3) - Held, yes - rules of natural justice have no applicability and are excluded when certain administrative actions/decisions taken by the Government are questioned on the ground of public policy/public interest or where process of selection is vitiated by fraud, manipulation, nepotism, favouritism - if a selection process is vitiated on account of not following the procedure for selection, smacks of mala fide and malpractices, the rules of natural justice are not required to be followed - Majority of candidates were part of tainted and vitiated selection process - 66 per cent of total selection found tainted - Candidates against whom FIRs not registered held not entitled to re-appointment but would be eligible for participating in any regular selection in future.*

*Held*, that the Rule of principle of natural justice is an integral part of rule of law which constitutes the touch stone of our constitutional set up. In a number of cases challenging involving challenge to termination of service, violation of rule of audi artem partem has been made a ground for nullifying the impugned decisions. This principle has been consistently followed in P.L.Dhingra v. Union of India 1958 SC 36 and Shamsher Singh's case (supra). There is a departure of applicability of rules of natural justice when certain administrative action/decisions taken by the Government are questioned on the ground of public policy/public interest or where the process of selection is found to be vitiated by fraud, manipulations, nepotism and favoritism.

(Para 28)

*Further held*, that if a selection process is vitiated on account of not following the procedure for selection, smacks of mala fide and mal practices the rules of natural justice are not required to be followed. Even if some deserving candidates suffer on account of cancellation of such selection the decision cannot be regarded as arbitrary or unreasonable. In public interest the entire selection can be nullified and the Courts cannot sit in appeal over the decision of the competent authority if tangible material was available with the Government to form a subjective opinion that the selection was tainted.

(Para 30)

*Further held*, that hence, the financial gains and property/money amassed by Shri Ravinderpal Singh Sidhu i.e. recovery of Rs.22 crores of currency, coupled with the fact that he had assumed unlimited powers in running the affairs of the Commission, which ultimately lead to giving very low marks to candidates with high marks in written examination so as to ensure that other candidates with average marks in written examination were given high marks in interview so that they could be selected, results in vitiating the entire selection process. As per the consistent view of the Supreme Court, such appointments were made by the Public Service Commission violated all rules as enunciated by the Constitution for a fair selection. The selections are being questioned at the initial stage of entry into public service. The process being vitiated with manipulations and fraud

does not give to the selected candidates, the right to personal hearing before terminating their services. They are not entitled to protection under Article 311 (2) of the Constitution and Punjab Civil Service (Punishment & Appeal) Rules 1970.

(Para 48)

*Further held*, that it would be safe to come to a conclusion that the majority of the candidates were part of a tainted and vitiated selection process. The entire exercise as directed by the Supreme Court in Inderpreet Singh Kahlon's case (supra) was to find out if whether majority candidates were tainted which would render the entire selection process as vitiated. Keeping in view that all the candidates examined by the Committee were part of a vitiated and tainted selection process it can safely be concluded that the majority of the candidates were part of the tainted selection process. The candidates against whom FIRs are not registered are thus not entitled for re-appointment. However, they shall be eligible for participating in any regular selection in future.

(Para 50 & 51)

*E. Constitution of India, 1950 - Art. 226/227 - Reference No.3 - Whether the State Government was fair in giving chance of second examination in 2003 to all the candidates? - Selection process of PCS (Executive) likened to pond filled with stinking water - State Government quashed entire selection in attempt to cleanse the pond - Re-examination held by Government in an attempt to refill the tank with clean and pure water: meant to safeguard interests of all the candidates who had worked with the Government for 3 years without complaint - No challenge to re-examination held in 2003 - Candidates who did not sit the re-examination had accepted the decision of State Government to terminate their services - Service rendered prior to termination saved for purpose of seniority for candidates successful in re-examination and re-appointed.*

*Held*, that the selection process of PCS (Executive) as per the investigations carried out can be described to be a pond filled with stinking water. The selection process had revealed that the Chairman

Shri Ravinderpal Singh Sidhu had amassed unaccounted wealth and properties as detailed in the report given by the Committee in its report dated 8.2.2007. The State Government in an attempt to cleanse the pond had quashed the entire selection. This was good for the Nation. At the same time while terminating the services the Government had taken a conscious decision to have a re-examination immediately for all the candidates who had participated in the earlier selection. The Government made an attempt to refill the tank with clean and pure water and in other words to safeguard the interest of all the candidates who had worked with the Government without any complaint for the last three years and were not facing criminal trials.

(Para 53)

*Further held*, that there was no challenge to this examination held in 2003 and hence the candidates who choose not to appear in this examination had accepted the decision of the State Government for holding fresh examinations after termination of their services. Some of the candidates who appeared in the re-examination and were successful were re-appointed. Their services rendered prior to the termination have been saved for the purpose of seniority etc. by the State Government.

(Para 54)

***F. Doctrine of prospective overruling - Device innovated to avoid re-opening of settled issues and to prevent multiplicity of proceedings - Also, a device adopted to avoid uncertainty and avoidable litigation - This done in larger public interest.***

*Held*, that the consistent view of the Supreme Court is that prospective declaration of law is a device innovated to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. The object of prospective declaration of law is that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in larger public interest.

(Para 67)

**PARAMJEET SINGH, J. (*For himself*)**

**G** *Constitution of India 1950 - Art. 315 & 320 - Selection - For Public Service Commission, every candidate is a potential public servant - Merit not to be compromised and only the best to be selected - Commission to act in transparent manner - To adopt a fair and judicious process of selection - In present case Commission adopted arbitrary standards in selection process - Candidates not selected with equal hand and uniform yardstick - Cases remanded to the Full Bench of the High Court of Punjab and Haryana by the Supreme Court of India - Judgment and termination orders of candidates set aside by the Supreme Court of India - Candidates involved segregated into 3 categories: (i) tainted candidates; (ii) candidates adversely affected by process of selection being vitiated and against rules; (iii) candidates whose petitions dismissed by the Full Bench of the High Court of Punjab and Haryana by judgment dated 07.07.2003.*

*Held*, that attracting and selecting the right candidates following the principle of 'merit' is a challenging task for the Commission. For the Commission, every candidate is a potential public servant. The Commission should ensure that every aspect that would have made a candidate suitable is taken into account and no injustice is done to anyone. In a competitive examination all cannot be selected and only the best will be successful. The Commission should act in a transparent manner and selection should be based on merit, there should never be any compromise on the integrity, efficiency, honesty of the members of the Public Service Commission.

(Para 76)

*Further held*, that when the entire selection is challenged then there is no relationship of employer and employee and it cannot be treated as a dispute relating to service under the rules. The service jurisprudence will apply when after joining the service there is inter-se dispute between the employer and the employee and basic selection is not in issue. Here is a case where entire selection by the Commission is under challenge. When the entire selection under challenge is vitiated, then procedure required to be adopted for removal of government employee from service has no relevancy nor it can be applied.

(Para 87)

**H. *Constitution of India, 1950 - Art. 315 & 320 - Public Service Commission - Complete independence secured - Higher the public office, greater the responsibility - Public accountability and transparency in functioning of institution essential for its proper governance - Credibility of an institution such as Public Service Commission founded on faith of common man in its proper functioning - Standards of performance expected to be maintained by Chairman/Members of Public Service Commission explained.***

***Judicial review - Selections made by Commission not immune from judicial scrutiny since nobody has vested right in perpetrating an illegality or hiding a scandal.***

*Held*, that the constitutional scheme contained in Articles 315 to 320 noticeably demonstrates the complete independence of the Public Service Commissions in discharge of their functions. The immunities enjoyed by the Chairman and Members of the Commission under the Constitution are far greater and cannot be impinged upon by the normal procedure. Higher the public office, greater is the responsibility. The adverse impact of lack of probity in discharge of functions of the Commission could result in defects not only in the process of selection but also in the appointments to the public offices which, in turn, would affect efficiency and effectiveness of administration. The principles of public accountability and transparency in the functioning of an institution are essential for its proper governance.

(Para 79 & 80)

*Further held*, that thus, the credibility of the institution like Public Service Commission is founded upon faith of the common man on its proper functioning. The conduct of the Chairman and Members of the Commission, in discharge of their duties, has to be above board and beyond censure. Constant allegations of corruption, misdeeds and promotion of family interests have eroded public confidence in the Commission.

(Para 81)

*Further held*, that an expert and constitutional body like the Commission are supposed to perform their duties fearlessly and carry out selections on the basis of the best merit available. However, if the aforesaid



selections are alleged to be tainted and based upon consideration other than merit, the petitioner(s) cannot claim that selection made by Commission is immune from scrutiny. Nobody has a vested right to perpetuate illegality or hide a scandal. All selections made by the Commission are supposed to be based upon competence, merit and integrity. In this case the allegations to the contrary had not only eroded the public confidence in the Commission but also resulted in reducing the merit to casualty.

(Para 99)

*I. Doctrine of legitimate expectation - Procedural fairness - Principles of natural justice - May be discarded if applying these would lead to greater injustice than justice - Exceptions to principles of natural justice: emergency, impracticability, public interest, non-infringement of right, etc. - In present case it would have been impracticable to give opportunity of hearing to all candidates - Principles of natural justice are not absolute - Inclusion and exclusion of principles of natural justice be harmoniously construed - Public interest can be allowed to override individual interest if it serves the cause of justice.*

*Held*, that public authorities are generally required to adopt the fair procedure and a person has legitimate expectation of fair hearing or procedural fairness. When the principles of natural justice are to be invoked in doing justice, but their observance leads to injustice, the same may be discarded. There are several well established limitations on principles of natural justice, existence of certain circumstances deprive the individual from availing the benefit of principles of natural justice. The Courts have been circumspect in applying principles of natural justice to situation where it would cause more injustice rather than justice, and then certainly principles of natural justice can be discarded. The other exceptions where principles of natural justice can be excluded are in case of emergency, where it would be prejudicial to the public interest, where it is impracticable to hold hearing, where no right of person is infringed, where procedural defect would have made no difference to the outcome, etc. These exclusions are only some of the examples. In the present case, numerous candidates were competing in the competition. It makes impracticable that all of them be given an opportunity of being heard by the competent authority/committee of Judges

in the present case. In such circumstances even if the Court finds that a breach of procedural fairness has occurred, administrative impracticability can still be relied upon as a reason for not following the principle of natural justice in its discretion. The summary action is justifiable when an urgent need for protecting the interest of other person arises.

(Para 92)

*Further held*, that principles of natural justice are not absolute, exception to the requirement of principles of natural justice and procedures are all circumstantial and not conclusive. Every exception is to be admissible, taking into consideration the facts and circumstances of each case. The object behind inclusion and exclusion of principles of natural justice is to be harmoniously construed taking into consideration, right of being heard and fair procedure as well as the public interest. The larger public interest allows overriding the individual's interest where the justice demands. Here in the present case, even no prejudice has been caused to the petitioners or other candidates, as special chance to appear in fresh examination was given to them. There are numerous candidates, it is administratively impracticable to give hearing to everyone since there is a large scale mal-practices, illegalities, irregularities, favouritism, fraud, mischief, corruption and deep-rooted conspiracy, in such circumstances larger public interest will override the individual(s) petitioner (s) interest as justice demands in the present case.

(Para 92)

***J. Constitution of India, 1950 - Art. 226, 315 & 320 - Selection - When entire selection challenged, there is no relationship of employer and employee and Service Rules inapplicable and procedure required to be adopted for removal of Government employee from service has no relevance nor can it be applied.***

*Held*, that when the entire selection is challenged then there is no relationship of employer and employee and it cannot be treated as a dispute relating to service under the rules. The service jurisprudence will apply when after joining the service there is inter-se dispute between the employer and the employee and basic selection is not in issue. Here is a case where entire

selection by the Commission is under challenge. When the entire selection under challenge is vitiated, then procedure required to be adopted for removal of government employee from service has no relevancy nor it can be applied.

(Para 87)

**K. *Constitution of India, 1950 - Art. 226/227 - Code of Criminal Procedure, 1973 - Ss.161 & 164 - Criminal jurisprudence - Principles of - Practice and procedure - Applicability to instant case with regard to opportunity of hearing - Norms of Criminal Law cannot be applied to Writ proceedings - Under Criminal Law proof beyond reasonable doubt is required whereas in service jurisprudence preponderance of probabilities is enough - Present proceedings sui generis and fall in neither category.***

*Held*, that the next limb of the argument is with regard to applicability of principles of criminal jurisprudence to the present proceedings in regard to opportunity of being heard, burden of proof and content of charges. The principles of criminal jurisprudence contemplate different standards of proof, language of charge and protections available to a suspect/accused. It is neither practicable nor possible to apply the norms of criminal law to the proceedings before the writ Court and the Committee consisting of Judges of this Court constituted to examine the record of selection. In criminal law, the charge should be proved beyond reasonable doubt and an accused cannot be convicted on the basis of probability. Under the service jurisprudence, a person may be found guilty even on the charge being proved on the basis of preponderance of probabilities. In this case, the proceedings relate to circumstances leading to scrapping of entire selection by the government and the examination of the entire process of selection by three Judges' Committee of this Court, the procedure adopted by the Committee to examine the process of selection, can neither be the same as applicable to the criminal proceedings nor as applicable to the employer, employee relationship. There is a clear cut distinction. In other words, the proceedings before government, before the Committee of Judges and this court are neither akin to proceedings under service law nor criminal law. In fact, they are sui generis.

(Para 93)

*Further held*, that certainly, the present case discloses illegalities and misdeeds of graver nature. On a holistic view of the matter, it is apparent that irregularities and acts of irresponsibility committed by the Commission delineated about the misdeeds, has certainly lowered the dignity of the Commission. The burden of proof applicable to such cases is not that as required under the criminal jurisprudence, i.e., to prove the charge 'beyond any reasonable doubt'. Where the facts supported by record point a finger at the Chairman and others with some certainty, it amounts to omissions and commissions in the facts and circumstances of this case. Rule of reasonable preponderance of probabilities would be the right standard to be applied.

(Para 107)

***L. Practice and procedure - Novel procedure befitting the facts and circumstances of the case adopted - Judges' Committee evolved its own procedure to suit the facts of the case - Approach not erroneous - But doctrine of proof beyond reasonable doubt cannot be made applicable to such procedure since it is sui generis.***

*Held*, that in the present case, the nature of the proceedings is such that it became necessary for the Committee of Judges and this Court to adopt a procedure befitting the facts and circumstances of this case. Thus, I also have no hesitation in rejecting the contention of the petitioner(s) that the burden of proof applicable to such cases has to be 'beyond reasonable doubt'.

(Para 95)

*Further held*, that the proceedings before the Committee of Judges of this Court was sui generis and the Committee has rightly evolved its own procedure in consonance to suit the facts of this case and to ensure that ends of justice are achieved and there is no abuse of the process nor the procedure adopted by the Judges' Committee is erroneous.

(Para 96)

Rajiv Atma Ram, Sr. Advocate with Arjun Pratap Atma Ram, Advocate, Gurminder Singh, Advocate, Akshay Bhan, Advocate, Vivek Sharma, Advocate Pradeep Kumar Bajaj, Advocate, Madhu Dayal, Advocate, R.S. Pandher, Advocate, Sanjiv Bansal, Advocate, Gaurav Sharma, Advocate, Kushaldeep S. Sandhu, Advocate, Puneet Jindal, Advocate, Rahul Sharma, Advocate, O.P. Gupta, Advocate, Kapil Kakkar, Advocate, G.S. Bal, Advocate, S.S. Rangi, Advocate, Vikram Chaudhary, Advocate, Sumer Singh Brar, Advocate, Sumeet Goel, Advocate M.C. Berry, Addl. A.G, Punjab

**RITU BAHRI, J.**

(1) This judgment shall dispose of cases of 57 petitioners who had approached the Supreme Court against the judgment of Full Bench in CWP No. 8421 of 2002 and their cases have been remanded back by the Supreme Court i.e. CWP Nos. 8423, 8434, 8585, 8587, 8592, 8595, 8740, 8741, 8742, 8954, 8957, 14429, 8889, 8447, 8446, 8739, 8591, 14187, 13943, 8449, 8594, 8440, 8431, 8441, 8442, 8430, 10796, 8540, 8422, 8590, 8587, 8596, 8421, 14358, 19062, 8593, 14189, 14188, 8587 of 2002, 1548 of 2003 as well as cases of 24 petitioners who did not approach the Supreme Court against the order dated 07.07.2003 but filed the review applications i.e. CWP Nos. 8424, 8429, 8433, 8547, 8558, 8584, 8586, 8587, 8588, 8589, 14429, 14457, 14599, 10727 of 2002, 2459 of 2003, 1246, 11362 of 2008.

(2) The following matters are for disposal which stand referred to the Full Bench on remand from the Supreme Court in the case of *Inderpreet Singh Kahlon and others versus State of Punjab (1)*. The judgment and termination orders of the candidates were set aside. Three categories of candidates can be segregated for scrutiny. The first category pertains to the candidates who are tainted. The second pertains to the candidates who are adversely effected by the process of selection being vitiated against the rules. The third set of petitioners are those whose petitions were dismissed by the Full Bench of this Court on 7.7.2003 and they did not challenge the said order before the Supreme Court. Their petitions have been revived after the remand whereby the Hon'ble Supreme Court has set aside the orders of the Government terminating the services of those who were appellants in the Supreme Court.

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(1) JT 2006 (5) SC 352

(3) In the year 1998, Punjab Public Service Commission (for short 'Commission') held examination for selecting candidates of PCS Judicial and Executive Branches. The selected candidates were appointed and completed 3 years of probation period in service. Shri Ravinder Pal Singh Sidhu was the Chairman of the Commission. About '22 crores were recovered from his possession alleged to be illegal gratification taken to help candidates in the process of holding examination/interview/selection of candidates for jobs in the state. Apart from money recovered the Investigating Agency collected evidence which was recorded in statements of the witnesses/accused under Sections 161 and 164 Cr.P.C involving some of the petitioners and the Chairman of PPSC. F.I.R's were lodged, trials proceeded and are pending.

(4) Pursuant to the directions given by the Supreme Court, Committee of three Judges of this Court was constituted. The Committee was to separate the tainted candidates from the non-tainted candidates, selected to Executive posts by the Commission, during the Chairmanship of Shri Ravinderpal Singh Sidhu. The final analysis of the report dated 8.2.2007 is as under:-

*"Firstly, it is possible to infer, that in the processes of selection to which the present investigation is limited, there were 40 tainted candidates. This inference would, however, be subject to an opportunity to be afforded to them during the course of re-hearing of the matter on the judicial side, in terms of the direction of the Apex Court in **Inderpreet Singh Kahlon's case (supra)**.*

*Secondly, the process of selection under reference (within the ambit of investigation of the Vigilance Department), can be described as fraudulent, tainted and arbitrary. The said processes of selection were clearly rife and abounding with manipulations, carried out by a well planned scheme of deception, forgery and fraud; executed for showing favour, or for consideration. And as such, the entire*

*processes of selection, to the premier executive posts, which were subject matter of investigation at the hands of the Vigilance Department, deserve to be set aside in their entirety."*

(5) Mr. M.C. Berry, Addl. A.G. Punjab has placed on record affidavit dated 08.11.2012 of Shri Rakesh Singh, IAS, Chief Secretary, Government of Punjab, stating therein that pursuant to the Full Bench decision given by this Court in **Sirandeep Singh Panag versus State of Punjab**, in C.W.P No. 1626 of 2003 relating to the selection of PCS (Judicial Branch), whereby the candidates against whom no criminal trial/FIR was pending, were ordered to be appointed. SLP Nos. 2504-2530 of 2010 titled as High Court of Punjab and Haryana vs. State of Punjab and others were filed against the said judgment. The same were disposed of by Hon'ble the Supreme Court and the candidates against whom no criminal action/trial was pending, were ordered to be reinstated in service.

(6) The matter was considered by the State and the State has no objection to appoint those candidates who are not facing the trial as stated in the affidavit.

(7) Another affidavit dated 15.01.2013 of Pritam Singh, PPS, Senior Superintendent of Police, Vigilance Bureau, Flying Squad-II, Patiala Range, Patiala has been filed in the Court. In FIR No. 65 dated 5.9.2002 under Sections 8, 12 P.C. Act 1988 read with Section 120-B IPC, Police Station Vigilance Bureau, Patiala Mr. Gurcharan Singh Pherurai, Ex- SSP Ferozepur has been convicted to undergo 2 years RI and a fine of Rs.10,000/- by the Court of Special Judge, Patiala on 26.11.2012. Apart from this, supplementary challans have been presented against Mr. Amarbir Singh, Mr. Kamal Kumar, Mr. Jiwan Kumar Garg, Mr. Sukhwinder Singh Brar, Mr. Deepak Arora, Ms. Kuljeet Kaur, Mr. Kamaljit Singh, Mr. Bharat Bhushan, Mr. Randeep Singh and Mr. Bikramjit Singh on 23.04.2010 and 16.02.2011. The cases are now fixed in the Court of Special Judge Patiala for 15.02.2013, for framing of charges.

(8) As regards to Rahul Gupta, Sukhpreet Singh and Rubinderjit Singh Brar, after detailed investigation untraced report has been filed in the learned trial court.

(8A) F.I.R. No. 67 dated 05.09.2002 u/s 8,12 of the Prevention of Corruption Act read with Section 120-B IPC registered at P.S. Vigilance Bureau, Patiala has been registered against the following candidates:-

1. Inderpreet Singh Kahlon.
2. Jasbir Singh Toor
3. H.L. Bansal
4. O. P. Verma
5. Bhupinderjit Singh
6. Parvinderpal Singh
7. Balraj Kaur
8. Jaspal Singh
9. Baljit Singh Sandhu
10. Jarnail Singh
11. Rajinder Singh Sidhu
12. Pritpal Singh
13. Gurdev Singh.

(9) Challan in this case was presented on 21.04.2004 in the Court of Special Judge, Patiala. The case is now fixed for 31.01.2013. Further proceedings in this case have been stayed by the this Court in CRM No. 9310 of 2012.

(10) F.I.R. No. 24 dated 05.09.2002 u/s 8,12 of the Prevention of Corruption Act read with Section 120-B IPC registered at P.S. Vigilance Bureau, Patiala has been registered against Parshotam Singh Sodhi. The case is now fixed for 23.01.2013.

(11) F.I.R. No. 66 dated 05.09.2002 u/s 8,12 of the Prevention of Corruption Act read with Section 120-B IPC registered at P.S. Vigilance Bureau, Patiala has been registered against BDPO candidates, Sarabvijay Singh, Daljit Singh and Harpreet Singh. Challan was put in the Court on 30.08.2004 and charges were framed on 18.05.2005. The accused Sarabvijay Singh has been convicted to undergo one year R.I. and fine of Rs.5,000/- and Daljit Singh and Harpreet Singh, BDPO have been acquitted.

(12) F.I.R. No. 68 dated 05.09.2002 u/s 8,12 of the Prevention of Corruption Act read with Section 120-B IPC registered at P.S. Vigilance Bureau, Patiala has been registered against Harshanbir Singh, Varinderbir Singh, Naresh Kumar, Gurbir Singh and Gurjit Singh. The accused Naresh Kumar, Gurbir Singh and Gurjit Singh have been acquitted on 29.07.2011 whereas Harshanbir Singh & Varinderbir Singh have been convicted to undergo 2 years RI and Rs.10,000/- fine by the Court of Special Judge Patiala on 12.07.2012. Supplementary challan in this case was presented against Kuldip Mittal (D.S.P) and second supplementary challan was presented against Sukhbir Singh Thind (Principal) and Ashish Kumar Lecturar, Patiala. The case is now fixed for 22.01.2013 for framing of charge.



(13) The candidates who were considered by the Committee in the report but no case was registered against them are;

1. Balkaran Singh
2. Yadwinder Singh
3. Shish Pal.
4. Harsuhinder P. Singh
5. Karanjit Singh
6. Haridey Pal Singh
7. Dilbagh Singh
8. Anita Darshi
9. Amandeep Bhatti

Heard counsel for the parties.

(14) The Constitution in its preamble specifies the objectives which are the basic structure of our constitution. One of the object in the preamble is "equality of status and of opportunity; and to promote among them all. The preamble of the constitution cannot be amended in exercise of powers under Article 368 of the Constitution. The "basic structure" of the Constitution has been discussed by Supreme Court in *Keshvananda Bharti Sripadagalvaru and others versus State of Kerala and another (2)*. The basic features of the Constitution, namely, secularism, democracy and freedom of individual would always subsist in the welfare state. The power to amend a Constitution as guaranteed under Article 368 of the Constitution is to fulfil the obligations imposed on the State within the limits of the basic structure of the Constitution. The power is to be exercised to make state an effective instrument for social good. The State is under an obligation under the Constitution to make available to all the citizens of the country the real benefits of freedom in a democratic way. Vigilance is the price that the citizens have to pay like any other democratic society has to pay to safeguard the democratic values enshrined in the Constitution. Every government has to exercise the power to carry out their place and programmes which they believe in public interest. The Constitution plan is to eradicate poverty without destruction of individual freedoms.

(15) Following the law laid down by Hon'ble the Supreme Court in *Keshvanand Bharti'Sripadagalvaru 's case (supra)* we shall now examine what is the scope and object of the Public Service Commission which is set up as constitutional authority to make selection and recruitment of public servants. Article 315 to 323 of the Constitution lay down the procedure for creation of a public service commission with the object of making selection on the basis of merit by open competition of civil servants. The

Supreme Court in *Ram Kamal Kashyap and others versus Union of India* (3), has observed that for the efficient functioning of a democracy, it is imperative that the public service commissions are manned by persons of highest skill and persons with irreproachable integrity, so that the selections to various public posts will be immunized of all sorts of extraneous pressures of personal favoritism and are made solely on consideration of merit. The Supreme Court was examining suspension of 8 members and Chairman of the Haryana Public Service Commission by the Hon'ble Governor of Haryana while exercising powers under Article 317 of the Constitution since the Public Service Commission was a Constitutional creation, the principles of service law i.e. opportunity of hearing before passing an order adverse to the public servant are not available. In *Ram Ashray Yadav (Dr.), Chairman, Bihar Public Service Commission* (4) has highlighted the role of Public Service Commission. The observations of Supreme Court in paragraphs 4 and 34 are as under:-

- "4. Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and members of the Commission, like Caesar's wife, must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and members of the Public Service Commissions.*
- 34. The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspect. Society*

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(3) (2009) 9 SCC 378

(4) (2000) 4 SCC 309

*expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and members of the Public Service Commission must forever remain vigilant and conscious of these necessary adjuncts. "*

(16) The report of the Committee dated 8.2.2007 is being examined in the back drop of the judicial pronouncements of the Supreme Court highlighting the importance of constitution of the Public Service Commissions, their role and their duties, responsibilities and eventually to come to the expectation of a common man who is, as per the preamble, are entitled to equality of status and opportunity.

(17) Three questions come up for consideration before this Court are as under:-

1. *Whether 23 selected candidates who are facing criminal trial can be described to be tainted?*
2. *Whether the selection of other candidates who are not facing criminal trial can be described to be vitiated, in view of the detailed investigation carried out by Punjab Vigilance Bureau?*
3. *Whether the State Government was fair in giving chance of second examination in 2003 to all the candidates?*

Question No.1

(18) The word 'taint' as per the New Shorter Oxford English Dictionary (Vol.-II) can be expressed to mean a trace, 'stain' or a 'blemish'. It denotes some evil quality, a contaminating or corrupting influence. It can lead to mean an imbue with any thing objectionable or to contaminate or infect. The word 'taint' when used as a verb means dishonest, destroy integrity, vitiate, tarnish and degenerate morally.

(19) The names of the twenty three candidates against whom FIRs have been registered are as under:-

1. Amarbir Singh.
2. Kamal Kumar.
3. Jiwan Kumar Garg.
4. Sukhwinder Singh Brar.
5. Deepak Arora.
6. Kuljeet Kaur.
7. Kamaljit Singh.
8. Bharat Bhusan.
9. Randeep Singh.
10. Bikramjit Singh.
11. Inderpreet Singh Kahlon.
12. Jasbir Singh Toor.
13. H.L.Bansal.
14. O.P.Verma.
15. Bhupinderjit Singh.
16. Parvinderpal Singh.
17. Balraj Kaur.
18. Jaspal Singh.
19. Baljit Singh Sandhu.
20. Jamail Singh.
21. Rajinder Singh Sidhu.
22. Pritpal Singh.
23. Gurdev Singh.

(20) All the petitioners who approached the Supreme Court and against whom FIRs have been registered definitely carry a trace, stain or blemish that they were tainted. The FIRs were registered when during investigation the Vigilance Bureau recorded statements of Ravinderpal Singh Sidhu, Jagman Singh and Randhir Singh Gill under Sections 161 and 164 Cr.P.C. The modus operandi of conducting the manipulations in the written examination was disclosed by them. Question Papers were given to Shri Jagman Singh to be shown to the candidates who were to appear in the

written examination conducted by the Punjab Public Service Commission. The Question Papers were to be collected from the official residence of Shri Ravinderpal Singh Sidhu from his House No. 914, Sector 39, Chandigarh and some times to be collected from the mother of Shri Ravinderpal Singh Sidhu from House No. 549, Sector 10, Chandigarh. The candidates were then shown these question papers during the night preceding the examination at the residence of Shri Jagman Singh. The above procedure was also followed at the residence of Smt. Pritpal Kaur, mother of Shri Ravinderpal Singh Sidhu. Shri Jagman Singh was deputed to the residences of influential persons for showing the question papers to the concerned candidates.

(21) The investigation showed that candidates who had been shown favour were helped by awarding excessive marks than they deserved as compared to others by the Examiners. The Examiners were under instructions to carry out strict marking for those candidates who were not to be shown any favour.

(22) Pursuant to the statements made by Shri Randhir Singh Gill and Shri Jagman Singh huge recovery of Rs.22 crores has been made. Apart from that, the modus operandi of conducting written examination, giving of excess marks in the interview, the acquisition of money, property at their instance beyond their sources had been discovered. Fictitious bank accounts were opened in the name from where an amount of Rs.22 crore was recovered. Apart from the cash recovered, information regarding shares and debentures also came to light. A company by the name of 'Time Information Service Pvt. Ltd.' with an initial investment of Rs.10 lacs was opened. The investigation found that most of the ill gotten assets and money were created in the name of this company and while executing most of the sale agreements/deeds the address of the directors was changed to conceal the same.

(23) Counsel for the petitioners have vehemently argued that all the petitioners have paid huge amount of money to secure their selection, is not founded by any direct evidence collected by the Vigilance Bureau till date. Apart from the allegations in the statements made by Shri Randhir Singh Gill, Shri Jagman Singh and Shri Prem Sagar under Sections 161 and 164 Cr.P.C., there is not sufficient material to categorize these petitioners as tainted. The petitioners have put in 3 years of service as probationers. Their services could not be terminated without following the principles of Punjab

Civil Services (Punishment and Appeal) Rules 1970. Some of the prosecution witnesses have resiled from their statements during the trial. The report of the Committee dated 8.2.2007 is not liable to be accepted.

(24) All the candidates whose cases were considered by the Committee were named by Shri Randhir Singh Gill and Shri Prem Sagar in their statements under Sections 161 and 164 Cr.P.C. Explaining the modus operandi adopted by Shri Ravinderpal Singh Sidhu to make the selections to PCS (Executive) in an unfair and vitiated manner. The details of 30 such candidates has been made who had been selected after making payment of the agreed consideration amount to Shri Ravinderpal Singh Sidhu or his mother Smt. Pritpal Kaur and in a few cases to Shri Jagman Singh.

(25) The association of Shri Amarjit Singh Sidhu, a member of Punjab Public Service Commission, in the process of interview for selecting candidates by way of direct recruitment to PCS (Executive) Branch and its allied services demonstrated an arrangement which led to selection of favoured candidates. Shri Ravinderpal Singh Sidhu and Shri Amarjit Singh Sidhu awarded same marks to virtually all the selected candidates. It can easily be described as a case of manipulation and an arrangement where one helped the other.

(26) This Court is not examining whether the evidence collected for recording FIR was sufficient to lead to conviction of all the candidates. The effect of the prosecution witnesses turning hostile would be considered by the criminal court where the trial is pending. Evidence made available by the Investigating Agencies before the Committee was sufficient to come to a conclusion that all these candidates were tainted. The standard of proof required before a Criminal Court is different from the subjective satisfaction of an Authority while taking an administrative decision. This Court has no hesitation to conclude that all these candidates are tainted as found by the Committee. The report of the Committee dated 8.2.2007 is accepted.

### Question No.2

(27) Learned counsel for the petitioners have argued that those candidates against whom no FIR has been registered and had put in three years of service without any complaint, they had completed their probation period successfully and being non-tainted have a right to be confirmed on

their posts. Reliance has been placed on the judgments in *Dipti Prakash Banerjee versus Satvendra Nath Bose National Centre for Basic Sciences, Calcutta* (5), *D.K. Yadav versus J.M.A. Industries Limited* (6), *V.C. Banaras Hindu University and others versus Shrikant* (7), *Shamsher Singh versus State of Punjab* (8) and *Constable Subhash Chander versus State of Punjab and others* (9) to contend that their services could not be terminated without following the Service Rules and as per Rule 23(3) of the PCS (Executive) Branch Class-I Rules 1976 they are deemed to be confirmed and could not be terminated without following the procedure prescribed in Punjab Civil Services (Punishment and Appeal) Rules 1970 and Article 311 of the Constitution. Their services could not be terminated as their work and performance had been satisfactory and there was no adversity in their record which could justify the extreme action. Reference has been made to judgments in *Kanpur University and others versus Samir Gupta* (10), *Manish Ujwal and others versus Maharishi Dayanand Saraswati University and others* (11), *Sanjay Singh & Another versus U.P. Public Service Commission, Allahabad* (12), *U.P. Public Service Commission versus Subhash Chandra Dixit and others* (13), *K.Channegowda and others versus Karnataka Public Service Commission and others* (14) and *Onkar Lal Bajaj Etc. versus Union of India and another etc.* (15) to contend that candidates against whom FIRs have not been registered should not suffer the order of termination and their cases should be segregated as such.

(28) The argument of the learned counsel for the petitioner is liable to be rejected. The Rule of principle of natural justice is an integral part of rule of law which constitutes the touch stone of our constitutional set up. In a number of cases challenging involving challenge to termination of

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- (5) AIR 1999 SC 983
  - (6) (1993) 3 SCC 259
  - (7) AIR 2006 SC 2304
  - (8) AIR 1974 SC 2192
  - (9) 2006 (3) SCT 197
  - (10) AIR 1983 SC 1230
  - (11) (2005) 13 SCC 744
  - (12) JT 2007 (2) SC 534
  - (13) AIR 2004 SC 163
  - (14) (2005) 12 SCC 688
  - (15) AIR 2003 SC 2562

service, violation of rule of audi artem partem has been made a ground for nullifying the impugned decisions. This principle has been consistently followed in *P.L. Dhingra versus Union of India (16)* and *Shamsher Singh's case (supra)*. There is a departure of applicability of rules of natural justice when certain administrative action/decisions taken by the Government are questioned on the ground of public policy/public interest or where the process of selection is found to be vitiated by fraud, manipulations, nepotism and favoritism. Reference can be made to Supreme Court decision in *Union Territory Chandigarh and others versus Dilbagh Singh (17)*. The Supreme Court while examining the case of selection of Conductors in Chandigarh Transport Undertaking had set aside the decision of Chandigarh Bench of Central Administrative Tribunal where the decision of the Administration had cancelled the selection list without giving them opportunity of hearing. The Supreme Court while reversing the order of the Tribunal held that action of the Administration was neither arbitrary nor lacked bona fide and there was valid reasons to cancel such dubious select list. The Supreme Court further observed that the order of cancellation was not vitiated as there was no direct evidence to prove corruption charges against the members of the selection Board in the manner of award of interview marks or because there was no opportunity of hearing afforded to the candidates included in the select list.

(29) The Supreme Court in *Krishan Yadav and another versus State of Haryana and others (17A)* had considered the challenge to the selection made by Haryana Subordinate Services Selection Board for selection of Taxation Inspector in the Excise & Taxation Department. Writ petitions were dismissed by the High Court questioning the selection on the ground of fraud and manipulations. In Supreme Court during the pendency of the appeal a CBI investigation was ordered. After going through the report of CBI the entire selection was quashed by imposing a cost of Rs.10,000/- on each member of the Selection Board. The relevant extract of the judgment is reproduced below:-

*“Public offices, both big and small, are sacred trusts. Such Offices are meant for use and not abuse. In this case fraud has reached its crescendo. The acts were motivated by extraneous considerations. From a Minister to a menial everyone has been dishonest to gain under advantages.*

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(16) AIR 1958 SC 36

(17) (1993) 1 SCC 154

(17A) (1994) 4 SCC 165 = 1994 (2) SLR 719



*The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks the Court's conscience to come across such a systematic fraud. The High Court was not justified in taking the path of least resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.*

*In the above circumstances the only proper course open is to set aside the entire selection. The plea that innocent candidates should not be penalised for the misdeeds of other I cannot be accepted. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". The entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, the selection of all Taxation Inspectors is set aside.*

*The effect of setting aside the selection would mean the appointments held by the candidates (including the respondents) will have no right to go to the office. Normally speaking, the Court should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But here a streak of sympathy has to be shown. The proper lesson would be learned by them if their appointments are set aside teaching them that dishonesty can never pay."*

(30) The Supreme Court in *Union of India and others versus Anand Kumar Pandey and others* (18), *Pritpal Singh versus State of Haryana and others* (19), *Hanuman Parshad and others versus Union of India and another* (20), *B.Ramjini and others versus State of Andhra Pradesh* (21) and *Union of India versus O.Chakradhar* (22)

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(18) (1994) 5 SCC 663

(19) (1994) 5 SCC 695

(20) (1996) 10 SCC 742

(21) AIR 2002 SC 2023

(22) (2002) 3 SCC 1119

has consistently held that if a selection process is vitiated on account of not following the procedure for selection, smacks of mala fide and mal practices the rules of natural justice are not required to be followed. Even if some deserving candidates suffer on account of cancellation of such selection the decision can not be regarded as arbitrary or unreasonable. In public interest the entire selection can be nullified and the Courts cannot sit in appeal over the decision of the competent authority if tangible material was available with the Government to form a subjective opinion that the selection was tainted.

(31) The Committee examined the cases of other candidates against whom no FIR was registered and their marks were compared with those candidates who had not been selected either by giving them very low marks in the interview. These candidates are 10 in number whose names are mentioned below:

1. Harsuhinder Pal Singh Brar.
2. Rahul Gupta.
3. Balkaran Singh.
4. Yadwinder Singh Sandhu.
5. Shish Pal.
6. Karanjit Singh.
7. Hirdepal Singh.
8. Dilbag Singh.
9. Anita Darshi.
10. Amandeep Singh Bhatti.

(32) The marks obtained by these candidates in written as well as in interview are as under:-

Name	Marks awarded in written examination	Marks awarded in interview	Educational qualifications
Harsuhinder Pal Singh	358.75	71	LLB. (Professional)
Rahul Gupta	379.62	52	
Randeep Singh	363.87	65	

Name	Marks awarded in written examination	Marks awarded in interview	Educational qualifications
Balkaran Singh	356.62	61	B.A.
Yadwinder Singh Sandhu	355.37	60	B.A.
Shish Paul	360.37	55	B.A.
Karanjit Singh	355.37	59	
Anita Darshi	342.75	72	
Amandeep Singh Bhatti	345	50	

(33) On the other hand, the committee after examining the cases of some meritorious candidates who attained very good marks in the written examination and were pulled down by giving very low marks in the interview are as under:-

Name	Marks awarded in written examination	Marks awarded in interview	Educational qualifications
Amit Talwar	411.5	13	B.E. in Electronic Engineering
Sukhpreet Singh	419	4	M.A. (History)
Jagjit Singh	400.5	22	B.E. In Electronic (Instrumentation & Control)
Gurkirat Kirpal Singh	415.75	6	B.E. In Electronic and Electrical Communication
Nitin Bansal	411.75	9	B.E. In Electronic and Electrical Communication
Deepshikha Mehtaq	402.12	14	M.A. (Pshychology)

(34) Details of some candidates who were pushed out of the selection by giving them very low marks in interview and were further selected in Indian Civil Services (1998-99) are given as under:-

Sr. No.	Name of the candidate	Marks in written examination	Marks for interview	All Indian Service to which selected
1	Gurkirat Kirpall Singh	415.75	6	IAS
2	Nitin Bansal	411.75	9	IRTS
3	Ashima	394.12	22	ICS
4	Ekroop Cour	390.25	20	IAS
5	Jeewandeeep Singh Kahlon	353.62	11.5	IRS

(35) A cursory glance of the above chart shows that low marks in the interview to the candidates who had secured very good marks in the written examination would lead to only conclusion that there was no application of mind in assessing the personality and academic qualifications of a person while giving marks in the interview. The criteria for giving marks in an interview/viva-voce has been totally ignored. For example, the case of Sukhpreet Singh Sidhu who was awarded 419 marks in the written examination was awarded 4 marks out of 75 in the interview. He was a Graduate with 69.75% marks and M.A. (History) with 61.73% marks. Awarding of 4 marks only would show that neither his educational qualifications and general knowledge have been considered nor his personality. Similar is the case of other candidates i.e. Amit Talwar, Gurkirat Pal Singh, Jagjit Singh, Nitin Bansal and Deepshikha Mehta. All of them have been pulled down by giving very low marks in the interview/viva-voce. Gurkirat Pal Singh, Nitin Banal and Jeewan Deep Singh Kahlon have subsequently been selected in the IAS, IRTS examination.

(36) Similar is the example of selection in the case of handicapped persons where three posts were reserved for handicapped persons in which Hirdepal Singh secured 315.87 in the written examination and he was

awarded 63 marks out of 75 marks in the interview and Dilbag Singh secured 316.75 marks in the written examination and he was awarded 62 marks out of 75 in the interview. In case of handicapped, as compared to these two, Manisha Bansal who had secured 364 marks and Anil Kumar who had secured 358.50 marks in the written examination were awarded 9 marks in the interview. A consistent method was adopted to give very low marks in the interview so as to keep them out of selection zone in all the categories.

(37) Another important fact which the committee has taken into consideration is that Shri Ravinderpal Singh Sidhu amended rules of the Punjab Public Service Commission to assume unlimited powers. Amended Rule 17(b) is as under:-

*"17(b) The Chairman will be responsible for the following functions:*

- (i) Fixation of interview dates, number of candidates to be summoned on each day and composition of interview Board(s).*
- (ii) Appointment of experts.*
- (iii) Allocation of secret work regarding examination. The Chairman shall specify by designation the officer/officers who shall be responsible for all matters concerning the conduct of examinations. This will involve all confidential work regarding arrangements for setting of papers and their evaluation, allotment of fictitious roll numbers, safe custody of answer sheets and result sheets after evaluation by the examiners etc.*
- (iv) General Administration and co-ordination of the Commission's Secretariat.*
- (v) Co-ordination of the Commission's working.*
- (vi) Distribution of work among the Members and staff of the Commission's Secretariat."*

(38) The above amendment clearly shows that the Chairman had used unlimited powers in conducting the process of selection when he was Chairman of Punjab Public Service Commission.

(39) The investigation process revealed that Shri Ravinder Pal Singh Sidhu took upon himself the responsibility of issuing fictitious roll numbers, the process of decoding them for compiling results and custody of evaluated answer sheets from which the veracity of exercise conducted in grading candidates could be verified. In this manner, he had free access not only to the answer sheets but also to the marks awarded to the candidates. The Investigating process also revealed that the records of the Public Service Commission had been destroyed before the expiry of 5 years as prescribed by the Act.

(40) The Committee had examined several letters of members of the Commission which revealed that Ravinderpal Singh Sidhu was being repeatedly complained of by different members of Punjab Public Service Commission that he was running the affairs of the Commission in an arbitrary manner and that the selections were not being made by a fair procedure established in accordance with law.

(41) C.W.P. No. 7952 of 2001 was filed by Smt. Harjeet Kaur Randhawa along with Shri R.C.Gupta and Shri Amarjeet Chawla (all members of the Punjab Public Service Commission during the tenure of Shri Ravinderpal Singh Sidhu) with specific assertions that they were not being consulted in the manner in which the Public Service Commission was functioning under the Chairmanship of Shri Ravinderpal Singh Sidhu. This writ petition has been rendered infructuous on 7.7.2003 in view of the Full Bench decision in *Amarbir Singh versus State of Punjab* whereby the petitioners challenged the termination orders in view of the scam which was exposed on the arrest of Ravinderpal Singh Sidhu.

(42) C.W.P. No. 14491 of 1997 was filed by four members of the Punjab Public Service Commission i.e. Shri J.S.Jhakkur, Shri GIS Bhullar, Shri T.C.Gupta and Shri A.S.Sidhu. Serious allegations were levelled against Shri Ravinderpal Singh Sidhu pertaining to the arbitrary manner of functioning and highlighted that the activities of Punjab Public Service Commission were in the hands of the Chairman of the Public Service Commission. None of the members of the Commission is associated in any decision making.

(43) Another important aspect in the process of making selection was the appointment of Paper Setters, Examiners or paper Checkers. As per the Vigilance Department Shri Ravinderpal Singh Sidhu performed the aforesaid functions individually without associating any other member of the Public Service Commission or even the Secretary of the Public Service Commission.

(44) The Public Service Commission has flouted all norms and rules as discussed above in conducting the examinations, selection, interview, of the PCS (Executive) Branch. In such a situation, can the candidates seek regularization of their probation period and secure their services? The Supreme Court in *Ashwani Kumar and others versus State of Bihar and others* (23) has noticed in paragraphs 13 and 14 as under:-

*“13. So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility. It would amount to decorating a still-born baby. Under these circumstances there was no occasion to regularise them or to give them valid confirmation. The so-called exercise of confirming these employees, therefore, remained a nullity.*

*14. In this connection it is pertinent to note that question of regularisation in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or dailywage basis by a competent authority and are continued from time to*

*time and it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of a situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment."*

(45) This decision of Supreme Court was referred to in *State of Karnataka and others versus Uma Devi (3) and others (24)*. The above principle has been followed by the Supreme Court in *State of Jharkhand and others versus Manshu Kumbhkar (25)*. In this case some appointments were made on Class-III and Class-IV posts by fabricating the signatures of Miss Surajmani Khalko. These appointments were subsequently cancelled by the Government. On inquiry by the Deputy Commissioner it was found

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(24) (2006) 4 SCC 1

(25) (2007) 8 SCC 249



that all the appointments were illegal. The writ petitions were allowed by the High Court. However, the Supreme Court allowed the SLP on the ground that the appointments were not in conformity with the rules and were illegal. Once the appointments were violative of Articles 14 and 16 of the Constitution, the employees were not entitled for hearing before terminating their services. The ratio of Supreme Court judgment in Ashwani Kumar's case (*supra*) was followed while allowing the appeal.

(46) The Supreme Court in *State of Manipur and others versus Y. Token Singh and others* (26) has considered the cancellation order passed by the State Government on the appointments given by the Commissioner, Revue Department without delegation of power as bona fide. The Supreme Court held as under:-

*"If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent therefor and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fide."*

(47) In *Ashok Kumar Sonkar versus Union of India and others* (27) was a case where the appellant had been appointed on the post of Lecturer by the Banaras Hindu University being not eligible on the date of application of form. His appointment was set aside by the 'visitor' (President of India) of the University under Section 5(7) of the University Act, 1915. The SLP was dismissed by observing as under:-

*"Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be*

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(26) (2007) 5 SCC 65

(27) (2007) 4 SCC 54

*flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application."*

(48) Hence, the financial gains and property/money amassed by Shri Ravinderpal Singh Sidhu i.e. recovery of Rs. 22 crores of currency, coupled with the fact that he had assumed unlimited powers in running the affairs of the Commission, which ultimately lead to giving very low marks to candidates with high marks in written examination so as to ensure that other candidates with average marks in written examination were given high marks in interview so that they could be selected, results in vitiating the entire selection process. As per the consistent view of the Supreme Court, such appointments were made by the Public Service Commission violated all rules as enunciated by the Constitution for a fair selection. The selections are being questioned at the initial stage of entry into public service. The process being vitiated with manipulations and fraud does not give to the selected candidates, the right to personal hearing before terminating their services. They are not entitled to protection under Article 311 (2) of the Constitution and Punjab Civil Service (Punishment & Appeal) Rules 1970.

(49) The Committee had examined the case of 40 candidates, out of whom 7 candidates against whom FIRs are registered are not part of the selection process of PCS (Executive). Against 23 candidates FIRs have been registered and they are facing criminal trials. The other candidates were awarded high marks in interview so as to surpass some deserving candidates who were given very low marks in the interview. These candidates do not suffer the blemish or taint but they have been successful in the selection process which was vitiated on account of not following correct procedure and was filled with manipulations and fraud.

(50) The Supreme Court in *Union of India and others versus Rajesh P.U., Puthuvalnikathu and another* (28) while dismissing the SLP filed by the Union of India has upheld the judgment of the High Court whereby the cancellation of select list of 134 Constables was set aside being

arbitrary and unreasonable. As per the report of a Committee appointed by the High Court, out of 134 Constables only 31 candidates had been selected who were undeserving. The total percentage of tainted candidates was very low i.e. 23%. Hence, the meritorious candidates being in majority in number were held entitled for appointment. In *Onkar Lal Bajaj and others versus Union of India and another (29)*, the Supreme Court was examining the cancellation of 3760 allotments of retail outlet dealership/distributorship of petroleum products. As per the allegations in the newspaper a total number of 413 cases were exposed by the media which were made as a result of political or other extraneous considerations. The percentage came to about 10% of the total allotments made. The Supreme Court quashed the cancellation of all the other allotments except 413 which were alleged to be tainted allotments. The orders were quashed on the ground that it deprived a large number of allottees of their livelihood and there should have been an independent probe of the alleged tainted allotments by the Government. The above said judgments of the Supreme Court do not help the petitioners in the present case as out of the 57 petitioners who had approached the Supreme Court, 33 candidates have been found to be part of a tainted and vitiated selection process. The percentage comes to about 66% of 57 candidates. Hence, it would be safe to come to a conclusion that the majority of the candidates were part of a tainted and vitiated selection process. The entire exercise as directed by the Supreme Court in *Inderpreet Singh Kahlon's case (supra)* was to find out if whether majority candidates were tainted which would render the entire selection process as vitiated. Keeping in view that all the candidates examined by the Committee were part of a vitiated and tainted selection process it can safely be concluded that the majority of the candidates were part of the tainted selection process.

(51) The candidates against whom FIRs are not registered are thus not entitled for re-appointment. However, they shall be eligible for participating in any regular selection in future.

### Question No.3

(52) The Vigilance Bureau has gathered sufficient material to come to a conclusion that the Government on a subjective satisfaction and reasons had quashed the selection of PCS (Executive) which was result of

manipulations and fraud. However, the Supreme Court in *Inderpreet Singh Kahlon's case (supra)* while remanding the case had observed that the Government had terminated the services of the selected candidates in haste.

(53) The selection process of PCS (Executive) as per the investigations carried out can be described to be a pond filled with stinking water. The selection process had revealed that the Chairman Shri Ravinderpal Singh Sidhu had amassed unaccounted wealth and properties as detailed in the report given by the Committee in its report dated 8.2.2007. The State Government in an attempt to cleanse the pond had quashed the entire selection. This was good for the Nation. At the same time while terminating the services the Government had taken a conscious decision to have a re-examination immediately for all the candidates who had participated in the earlier selection. The Government made an attempt to refill the tank with clean and pure water and in other words to safeguard the interest of all the candidates who had worked with the Government without any complaint for the last three years and were not facing criminal trials.

(54) There was no challenge to this examination held in 2003 and hence the candidates who choose not to appear in this examination had accepted the decision of the State Government for holding fresh examinations after termination of their services. Some of the candidates who appeared in the re-examination and were successful were re-appointed. Their services rendered prior to the termination have been saved for the purpose of seniority etc. by the State Government.

(55) After examining the report of the committee in detail and going through the record of the case a reasonable classification of two sets of candidates can be made. The first set consists of those 23 candidates against whom FIRs have been registered and they are facing criminal trial. They have put in about 3 years of service after their appointment and were on probation.

(56) The FIRs against these candidates were registered on 5.9.2002 and challans have been presented against them on 23.4.2010 and 16.2.2011 in FIR No.65 dated 5.9.2002. Similarly, in FIR No. 67 dated 5.9.2002 a challan has been presented on 21.4.2004 in the Court of Special Judge,

Patiala. The net result of the report of the committee can lead to only one conclusion that all these candidates were tainted and were not fit to be retained in service despite the fact that they had put in 3 years of service after their appointment. The Government was right in coming to a conclusion on the basis of subjective satisfaction to terminate the services of these candidates.

(57) The functions of Public Service Commission as per Articles 315 to 323 prescribes the manner of exercise of that power. The law insists that the power should be exercised in that norm alone, Hon'ble the Supreme Court in *Charles K. Skaria and others versus Dr. C. Mathew and others* (30), was examining a selection for the postgraduate degree course of a candidate. The applicant had applied for the course after appearing in the diploma examination. With his application, he had not annexed the certificate of diploma examination as the examination result had not been declared. As per the prospectus he was to give weightage for diploma examination and a certificate of diploma was to be attached along with the application form for admission. The supreme Court held that this provision in the prospectus was directory and not mandatory. The delay in getting the certified copies of the result should not go against the applicant if he satisfies the committee that he had completed the course. The delay in publication of the result after the last date of application would not render him ineligible for admission. The Supreme Court however had reservations that if an admission had been made by the selection committee by adopting anything dubious, shady or unfair about the procedure or any mala fide move in the official exercise it would not have been tolerated. In paragraphs 23 and 24 it has been observed as under:-

“23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection

committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures.

24..... Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations.”

(58) As far as the modus operandi of the selection process and the manner in which the Chairman of the Commission had flouted the rules and norms the entire selection process was not legally valid – it was vitiated. The selection process conducted by flouting all norms and manipulations so as to result in debarring or prohibiting clean candidates to enter into the service of a Government as public servant and have no force of law. It is a void selection and invalidated completely due to fraud.

(59) This is a first case in the history of Public Service Commission in India where such huge amount of money has been recovered from fictitious bank accounts after recording the statement of one of the accused Jagman Singh (who later turned to be an approver). Within 3 days i.e. 17.4.2002 to 19.4.2002 more than Rs. 16 crores were recovered from the lockers and bank accounts of relations of R.S.Sidhu. The cash and property worth Rs. 22 crores were recovered. The Court has accepted the report of the Committee dated 8.2.2007 and the entire selection process has been found to be vitiated filled with manipulations and fraud. The faith of common man was destroyed completely by a pious institute of Public Service Commission, whose main object as per the Preamble was to give Equality of status and opportunity and promote all citizens equally. Majority of the

candidates form part of a selection process which was vitiated. This Court has no hesitation to dismiss all the petitions.

(60) Apart from the 57 petitioners who had approached the Supreme Court against the judgment of Full Bench in C.W.P. No. 8421 of 2002 the following petitioners did not approach the Supreme Court against the decision of the Full Bench dated 7.7.2003 instead they filed review applications :-

Sr. No.	Name	C.W.P. No.
1.	Rabinderjit Singh Brar.	8424 of 2002
1.	Randeep Singh.	8429 of 2002
2.	Bhupinderjit Singh.	8433 of 2002
3.	Inderbir Kaur Mann.	8547 of 2002
4.	Dr. Rupinder Pal Singh.	8558 of 2002
5.	Capt. Moneesh Kumar.	8584 of 2002
6.	Rahul Gupta.	8586 of 2002
7.	Jarnail Singh.	8587 of 2002
8.	Rishi Pal Singh.	8588 of 2002
9.	Rajesh Dhiman.	8589 of 2002
10.	Harushinder Pal Singh Brar.	8589 of 2002
11.	Bikramjit Singh Shergil.	8589 of 2002
12.	Baljinder Singh.	14429 of 2002
13.	Nirmal Singh.	14429 of 2002
14.	Karnail Singh.	14429 of 2002
15.	Jatinder Singh Saggu.	14429 of 2002
16.	Uma Shankar Gupta.	14457 of 2002
17.	Sukh Chain Singh.	14457 of 2002
18.	Captain Charanjit Singh Lehal.	14457 of 2002
19.	Ms. Simran Aurora.	14457 of 2002
20.	Hanumant Singh.	14599 of 2002
21.	Deepshikha Mehta	2459 of 2003
22.	Dr. Akash deep Singh.	1246 of 2008
23.	Raj Singh	11362 of 2008
24.	Raj Deep Singh Brar.	10727 of 2002

(61) Vide order dated 7.7.2003 *Amarbir Singh versus State of Punjab and others*, the Full Bench of this Court dismissed all the writ petitions challenging the termination orders of PCS Executive as well as Judicial Branch Officers. Against this decision, some of the petitioners filed SLPs which were allowed by the Supreme Court.

(62) The petitioners who did not approach the Supreme Court their cases were revived by the Full Bench of this Court vide order dated 18.4.2007.

(63) The doctrine of prospective over ruling came up for consideration before the Supreme Court in *Golakh Nath and others versus State of Punjab and another (30A)*. In paragraph No. 47 and 51, it has been held as under:-

“47. Let us now consider some of the objections to this doctrine. The objections are (1) the doctrine involved legislation by courts; (2) It would not encourage parties to prefer appeals as they would not get any benefit therefrom (3) the declaration for the future would only be obiter; (4) it is not a desirable change; and (5) the doctrine of retroactivity serves as a break on courts which otherwise might be tempted to be so fascile in overruling. But in our view, these objections are insurmountable. If a court can overrule its earlier decision-there can not be any dispute now that the court can do so -there cannot be any valid reason why it not restrict its ruling to the future and not to the past. Even if the party filing an appeal may not be benefited by it, in similar appeals which he may file after the change in the law he will have the benefit. The decision cannot be obiter for what the court in effect does is to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated. An illuminating article on the subject is found in Pensylvania Law Review.

51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions (1)The doctrine of prospective overruling can be invoked only in matters arising



under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its “earlier decisions” is left to its discretion to be molded in accordance with the justice of the cause or matter before it.”

(64) Hence the Supreme Court concluded that earlier decisions of the Supreme Court could be set aside. However, the retrospective applicability of the decision was restricted. A majority view of 11 Judges in *Golakh Nath's case* is that the decision to over rule shall apply prospectively and not to the existing law.

(65) Similar view was taken by Constitution Bench of Hon'ble the Supreme Court in *Managing Director E.C.I.L, Hyderabad versus B. Karunakar, etc.* (31), that Supreme Court judgment in *Union of India versus Mohammad Ramzan Khan* (32), holding that supply of copy of enquiry report to delinquent official was necessary before punishing him after the amendment of Article 311(2) which would apply prospectively and will not effect the validity of orders passed prior to 20th November 1990 i.e the date on which Mohamad Ramzan Khan's case came to be decided. In *Saptal Bhatia versus Estate Officer Chandigarh* (33) a Division Bench of this Court has examined a case of resumption order challenged by the petitioner after 28 years. The resumption order was examined in the background that the Supreme Court had struck down Section 9 of the Act of 1952 in the case of *M/s Jagdish Chand Radhey Sham versus State of Punjab* (34), and held that it shall not invalidate the resumption orders which were passed by the Estate Officer on 27.07.1968. The Judgment of Hon'ble the Supreme Court in Jagdish Chand's case (supra) would not have the effect of automatic invalidation of all the proceedings taken under Section 9 qua the persons who were not parties in the Supreme Court.

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(31) AIR 1994 SC 1074

(32) AIR 1991 S.C 471

(33) 1998 (2) PLR 675

(34) AIR 1972 SC 2587

(66) The preposition of doctrine of prospective overruling has been considered in several other decisions as well i.e. *Ashok Kumar Gupta versus State of U.P.* (35), *M/s Raymond Ltd. versus M.P. Electricity Board* (36), *Somaiya Organics (India) Ltd. And another versus State of U.P. and another* (37), *Harsh Dhingra versus State of Haryana* (38), *M.A. Murthy versus State of Karnataka and others* (39), *Dr. Saurabh Choudhary and others versus Union of India and others* (40), *Employees State Insurance Corporation & others versus Jardine Henderson Staff Association & others* (41), *Amrik Singh Lyallpuri versus Union of India & others* (42).

(67) The consistent view of the Supreme Court is that prospective declaration of law is a device innovated to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. The object of prospective declaration of law is that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in larger public interest. According to the Supreme Court, it was a rule of "all judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly effecting the rights of people who acted upon the law adopted prior to the date of judgment overruling the previous law. There shall be no prospective overruling unless it is so indicated in the particular decision by the Supreme Court under Article 142 of the Constitution. Recently in *Bangalore City Cooperative Housing Society Ltd. versus State of Karnataka and others* (42A), the Supreme Court has upheld the quashing of the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 on the ground that there was no useful scheme approved by the State Government prior to the issue of notifications. In the absence of such approval the land could not be acquired for public purpose. The society's prayer for invoking the doctrine of prospective overruling in favour of those members of the society who had already constructed the houses may not suffer incalculable harm was declined. The Estate Agent had charged huge money from the

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(35) 1997 (2) SCT 381

(36) 2001(1) RCR (Civil) 330

(37) (2001) 5 SCC 519

(38) 2002 (2) RCR (Civil) 450

(39) (2003) 7 SCC 517

(40) (2004) 5 SCC 618

(41) (2006) 6 SCC 581

(42) (2011) 6 SCC 535

(42A) AIR 2012 SC 1395

Society for getting the notifications issued under Sections 4(1) and 6(1) of the 1894 Act and sanction of lay out plan by the BDA. The Supreme Court found no justification to invoke the doctrine of prospective overruling and legitimate the illegal acts committed by the Estate Agent.

(68) In the facts of the present case, vide order dated 18.4.2007 the writ petitions were revived which were dismissed on 7.7.2003. The revived writ petitions were ordered to be listed along with cases remanded by the Supreme Court. The Supreme Court in Inderpreet Singh Kahlon's case (*supra*) had allowed all the writ petitions pertaining to 57 petitioners as observed in para 37 of judgment and remanded their case back to this Court. Those appellants were granted liberty to file their objections to the report of the Committee constituted by the High Court. There was no direction by the Supreme Court to extend this liberty to those candidates who had not filed the SLPs in Supreme Court. It may be observed that by consent of the parties no Court/Tribunal or Statutory Authority can assume jurisdiction in the absence of any statutory provision to entertain appeal/revision etc. The decision dated 07.07.2003 dismissing the writ petitions by the Full bench of this Court in Amarbir Singh's case (*supra*) became final as order was not challenged in appeal in SLP before the Supreme Court under Article 136 of the Constitution. The High Court, in absence of any constitutional or statutory provision, could not have revived these writ petitions much less on the ground of remand order passed in appeals filed by 57 petitioners in the Supreme Court. The orders of revival of the above writ petitions of such petitioners who did not file any appeal in the Supreme Court is without jurisdiction and non-est.

(69) In view of discussion as above, the writ petitions are dismissed.

Sd/-

(RITU BAHRI)

JUDGE

(PARAMJEET SINGH)

JUDGE

Sd/-

(NARESH KUMAR SANGHI)

JUDGE

Sd/-

(RAMESHWAR SINGH MALIK)

JUDGE

Sd/-

(INDERJIT SINGH)

JUDGE

May 31, 2013

**PARAMJEET SINGH, J.**

(70) I have the benefit of reading the judgment of my learned sister Ritu Bahri, J. I concur with the conclusions and findings arrived at by her on all the issues, however, I would like to further add as under:-

(71) The purpose of constituting the Public Service Commission (for short 'Commission') is to maintain an efficient and contented public service free from any type of external interference, so that the public appointments as far as possible be on merit. The reputation of a Commission has a direct relation with the honesty and integrity of the people who man it and the impartiality displayed in its working. Dr. Ambedkar had said that *"he shall have to apply his mind to the general question of finding out who is the best and the most efficient candidate for an appointment"*.

(72) Dr. Ananthasayanam Ayyangar had observed that, *"After all, the success of an institution depends not so much on the rules and regulations that are made, though of course, rules and regulations are necessary, but on the integrity, efficiency, honesty of purpose of those persons that work"*. This, in a nutshell, is what was expected of the Commission, by the framers of the Constitution of India (in short 'Constitution').

(73) The framers of the Constitution consciously and deliberately bestowed upon the Commission a Constitutional status so as to guarantee its independence. The Chairman and Members of Commissions are the only constitutional functionaries, who are appointed by the Governor of the State but can only be removed from office by the President of India after an inquiry by a Supreme Court Judge in the manner laid down in Article 317 of the Constitution.

(74) Pandit Nehru had observed: *"In a period of dynamic growth, we want as civil servants –people with minds, people with vision, people with a desire to achieve, who have some initiative for doing a job and who can think how to do it. For the successful working of the Civil Service, however, it is not enough to have a man of ability to man the service but 'it is essential' as the Lee Commission*

*observed to protect it, so far as possible, from political and personal influence.*" The Civil Servants are the most talked about and discussed in the Country. Some visualize them as role models for youth. Others consider them crusaders for development and many more consider them as barriers for growth. In recent decades, fingers are being raised regarding their working. The civil servants in the country are to work in an extremely complex environment; since the external environment greatly impacts their working. The democracy depends upon the responsibility, accountability and responsiveness of the civil servants, so, they need conducive environment.

(75) The Commission was set up with the twin objective of recruiting the right personnel after fair and competitive selection and of providing them with the necessary security of service—the sine qua non of the efficiency and morale of public services. Articles 320 and 321 of the Constitution define the functions of the Commissions. A plain reading of these Articles would show that they have covered almost all aspects of the human resources policy of not only the Union and States but also all Public institutions created by law. In order to protect the sanctity of the purpose for which the Commission was constituted, we should not only live up to the expectations of the framers of the Constitution, but also ensure that we are not marginalized. It is therefore, our duty to ensure that we should not allow anyone to dilute the role assigned to the Commission by the Constitution. The Commission should make efforts to build and maintain the image as it is always under the scrutinizing eyes of the public.

(76) In the present case, we are examining the question, how far the Commission has been able to play its expected role. In my view, it is high time that in the light of details mentioned in the judgment of learned Sister Ritu Bahri, J., I must look into the whole issue and analyze, whether the same standards and procedures as expected from the Commission were followed in this case. Attracting and selecting the right candidates following the principle of 'merit' is a challenging task for the Commission. For the Commission, every candidate is a potential public servant. The Commission should ensure that every aspect that would have made a candidate suitable is taken into account and no injustice is done to anyone. In a competitive examination all cannot be selected and only the best will be successful. The acceptance of this fact will go a long way in ensuring quality selections on time, maintenance of public faith and reduction in unnecessary litigation

arising out of individual interest rather than public interest. In order to attract bright candidates with best talents, the Commission should act in a transparent manner and selection should be based on merit, there should never be any compromise on the integrity, efficiency, honesty of the members of the Public Service Commission.

(77) In the present case, image of the Punjab Public Service Commission has been tarnished as serious allegations of corruption, fraud, mischief, favouritism and conspiracy have been leveled. Ever increasing number of court cases against the Commission and other selecting institutions is a worrisome issue over the years.

(78) The Constitution provides for establishment of the Union and State Public Service Commissions with the primary object of providing equal opportunity to the people of India/States in matters relating to appointments. The Commission is expected to adopt a fair and judicious process of selection to ensure that deserving and meritorious candidates are inducted to the services. This should not only be done but also appear to have been done. In the case of *Ram Ashray Yadav (Dr.), Chairman, Bihar Public Service Commission (43)*, the Hon'ble Supreme Court observed as follows:

*"The Founding Fathers of the Indian Constitution relying upon the experience in other countries wherever democratic institutions exist, intended to secure an efficient civil service. This is the genesis for setting up autonomous and independent bodies like the Public Service Commission at the Centre and in the States. The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commissions and their role and functions."*

(79) A clear distinction has been drawn by the framers of the Constitution between service under the Centre or the States and in the institutions which are creations of the Constitution. The constitutional scheme contained in Articles 315 to 320 noticeably demonstrates the complete independence of the Public Service Commissions in discharge of their

functions. The immunities enjoyed by the Chairman and Members of the Commission under the Constitution are far greater and cannot be impinged upon by the normal procedure. Higher the public office, greater is the responsibility. The adverse impact of lack of probity in discharge of functions of the Commission could result in defects not only in the process of selection but also in the appointments to the public offices which, in turn, would affect efficiency and effectiveness of administration.

(80) The principles of public accountability and transparency in the functioning of an institution are essential for its proper governance. The necessity of sustenance of public confidence in the functioning of the Commission may be compared to the functions of judiciary in administration of justice which were stated by Lord Denning in *Metropolitan Properties Co. versus Lannon (44)*, in following words:

***“Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: ‘The Judge was biased’.”***

(81) Thus, the credibility of the institution like Public Service Commission is founded upon faith of the common man on its proper functioning. The conduct of the Chairman and Members of the Commission, in discharge of their duties, has to be above board and beyond censure. Constant allegations of corruption, misdeeds and promotion of family interests have eroded public confidence in the Commission. Observations of Profs. Brown and Garner in their treatise *French Administrative Law, 3rd ed. (1983)*, in this regard can be usefully referred to. They said ***“the standard of behaviour of an administration depends in the last resort upon the quality and traditions of the public officials who compose it rather than upon such sanctions as may be exercised through a system of judicial control.”*** Regrettably, the present case is one of many where serious allegations and imputations have been made against the Chairman and Members of the Commission in regard to performance of their constitutional duties, for the omissions and commissions committed in selections, amounting to misuse of power and selection of undeserving candidates. During the tenure of Mr. Ravinderpal Singh Sidhu, the Commission selected and recommended candidates for appointment to various posts in

different cadres of the State. Subsequently, it came to the notice of the Government that various irregularities and illegalities, such as acts of favouritism, discrimination, corruption and violation of rules/regulations had been committed by the Commission in the process of selection. A trap was laid and the Chairman was caught red-handed. Huge amount of unaccounted money was recovered. After conducting preliminary enquiries, the Government initiated vigilance enquiries and First Information Reports were registered for the alleged irregularities, illegalities and acts of omissions and commissions by the Chairman of the Commission and others related to it. This resulted into scraping of the entire selection of PCS (Executive) and allied services. I need not give details of alleged omissions and commissions here as my learned Sister Ritu Bahri, J. has elaborately discussed in her judgment.

(82) The State Government after noticing the irregularities and favouritism on a mass scale and on suspicion of serious charges of corruption against the Chairman of the Commission and others, scrapped the entire selection. The validity and legality of the orders of scraping the entire selection of PCS (Executive) and allied services has been considered in a number of rounds by this Court and the Hon'ble Supreme Court. It would be appropriate to mention that earlier the matter came up before Full Bench of this Court, thereafter went to the Hon'ble Supreme Court and it has been remanded to this Court. After remand by Hon'ble Supreme Court, the matter was heard by a Full Bench of this Court and the judgment was dictated by one of the learned Judges of that Bench and circulated but due to disagreement was not signed by the other members of the Bench, nor the learned Judge who authored the judgment, pronounced the same, so the matter was referred to the Chief Justice for constitution of larger Bench. Hence, this Bench has been constituted to examine the issue in view of the direction contained in para 91 of the remand order which reads as under:-

*"91. We, having regard to the peculiar facts and circumstances of the case, are of the opinion that it is necessary to direct consideration of the matters afresh. We have not been apprised whether in the criminal cases any further material had been gathered so as to implicate the appellants before us. "*



(83) In view of the observation made by the Hon'ble Supreme Court in the remand order an opportunity to file objections has been afforded to the petitioner(s) and the matter has been examined afresh.

(84) The learned counsel for the petitioner(s) vehemently raised the following main arguments:-

1. Opportunity of hearing has not been given to the petitioner(s) before terminating their services which resulted into violation of principles of natural justice and violation of Article 311(2) of the Constitution of India.
2. The procedure adopted by the Committee of Judges is erroneous and confined to the cases of the petitioner(s) only, report is ex-parte.
3. The Judges' Committee should have separated the tainted and non-tainted candidates.

(85) In the light of the arguments raised, following substantial questions need to be answered in addition to what my learned Sister Ritu Bahri, J. has discussed in the judgment.

- (a) Whether the principles of natural justice are absolute; if there is a mass scale fraud, mischief, corruption and conspiracy to pervert the course of fair selection by the Commission still the petitioner(s) and other competing candidates were required to be given opportunity of hearing and the principles of natural justice and the service jurisprudence were required to be followed before scrapping the entire selection and consequential termination of their services when the entire selection process itself is alleged to be vitiated?
- (b) Whether the procedure adopted by the Judges' Committee is erroneous?

**Re: Question (a)**

(86) The contention of the learned counsel for the petitioner(s) is that the principles of natural justice have not been followed before terminating their services by the Government. That order stands set aside by the

Hon'ble Supreme Court. Since the services of the petitioners have been terminated, the principle of service jurisprudence will apply. Departmental proceedings have to be conducted in accordance with the service rules and regulations, as well as, under Article 311(2) of the Constitution of India and adequate reasonable opportunity of hearing is required to be afforded. The argument prima facie gives an impression that present proceedings are akin to the proceeding where principles of service jurisprudence should apply, as, if there is breach of rules and regulations controlling the conditions of service of such employee and such charges are to be proved in accordance with the procedure for imposition of minor and major penalties under service rules.

(87) I am not convinced and also not in agreement with the contention raised by the learned counsel for the petitioner(s). Principles of service jurisprudence cannot be strictly applied in the present case as the entire selection process has been alleged to be vitiated for the alleged large scale omissions and commissions committed by the Chairman and others. When the entire selection is challenged then there is no relationship of employer and employee and it cannot be treated as a dispute relating to service under the rules. The service jurisprudence will apply when after joining the service there is inter-se dispute between the employer and the employee and basic selection is not in issue. Here is a case where entire selection by the Commission is under challenge. When the entire selection under challenge is vitiated, then procedure required to be adopted for removal of government employee from service has no relevancy nor it can be applied.

(88) In *Karnataka Public Service Commission versus B.M. Vijay Shankar* (45), the Hon'ble Supreme Court considered about the violation of principle of natural justice and has observed as under:-

*".....Was natural justice violated ? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even*

*though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bonafide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment. Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would have been more unfair and unjust are rare but well recognised exceptions to the rule of natural justice. It cannot be equated with where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehavior. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bonafide and honest mistake did not arise. Its consequences, even, if not provided did not make any difference in law. The action could not be characterised as arbitrary. It was not denial of equal opportunity. The reverse may be true. The tribunal appears to have been swayed by principles applied by this Court where an examinee is found copying or using unfair means in the examination. But in doing so the tribunal ignored a vital distinction that there may be cases where the right of*

*hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examinee is competing for Civil Service post. The very nature of the competition requires that it should be fair, above board and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense of equality."*

(89) In famous case of *Abbott versus Sullivan* (46) it is observed: "**Principles of Natural Justice are easy to proclaim, but their precise extent is far less easy to define.**"

(90) Hon'ble Supreme Court in *Bar Council of India versus High court of Kerala* (47) held :

*"Principles of natural justice cannot be put in a straight jacket formula, it must be viewed with flexibility and when there is complaint of violation of principles of natural justice the court may insist on proof of prejudice before interfering or setting aside an order."*

(91) In *Maneka Gandhi versus Union of India and another* (48), Hon'ble supreme court has held thus:

*"The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for*

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(46) (1952)1KB189

(47) (2004) 6 SCC 311

(48) (1978)1 SCC 248

*promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands.*

(92) In the light of above referred judgment, public authorities are generally required to adopt the fair procedure and a person has legitimate expectation of fair hearing or procedural fairness. When the principles of natural justice are to be invoked in doing justice, but their observance leads to injustice, the same may be discarded. There are several well established limitations on principles of natural justice, existence of certain circumstances deprive the individual from availing the benefit of principles of natural justice. The Courts have been circumspect in applying principles of natural justice to situation where it would cause more injustice rather than justice, and then certainly principles of natural justice can be discarded. The other exceptions where principles of natural justice can be excluded are in case of emergency, where it would be prejudicial to the public interest, where it is impracticable to hold hearing, where no right of person is infringed, where procedural defect would have made no difference to the outcome, etc. These exclusions are only some of the examples. In the present case, numerous candidates were competing in the competition. It makes impracticable that all of them be given an opportunity of being heard by the competent authority / committee of Judges in the present case. In such circumstances even if the Court finds that a breach of procedural fairness has occurred, administrative impracticability can still be relied upon as a reason for not following the principle of natural justice in its discretion. The summary action is justifiable when an urgent need for protecting the interest of other person arises. In *R. Radhakrishen and others versus Osmania University and others (49)*, where the entire M.B.A. Entrance Examination was cancelled by the University because of mass coping, the Court held that notice and hearing to all candidates not possible in such a situation, which has assumed national proportions. Thus, the Court sanctified the exclusion of the rules of natural justice on the ground of administrative impracticability. In view of the above, I hold that principles of natural justice are not absolute, exception to the requirement of principles of natural justice and procedures are all circumstantial

and not conclusive. Every exception is to be admissible, taking into consideration the facts and circumstances of each case. The object behind inclusion and exclusion of principles of natural justice is to be harmoniously construed taking into consideration, right of being heard and fair procedure as well as the public interest. The larger public interest allows overriding the individual's interest where the justice demands. Here in the present case, even no prejudice has been caused to the petitioners or other candidates, as special chance to appear in fresh examination was given to them. There are numerous candidates, it is administratively impracticable to give hearing to everyone since there is a large scale mal-practices, illegalities, irregularities, favouritism, fraud, mischief, corruption and deep-rooted conspiracy, in such circumstances larger public interest will override the individual(s) petitioner(s) interest as justice demands in the present case.

(93) The next limb of the argument is with regard to applicability of principles of criminal jurisprudence to the present proceedings in regard to opportunity of being heard, burden of proof and content of charges. The principles of criminal jurisprudence contemplate different standards of proof, language of charge and protections available to a suspect/accused. It is neither practicable nor possible to apply the norms of criminal law to the proceedings before the writ Court and the Committee consisting of Judges of this Court constituted to examine the record of selection. In criminal law, the charge should be proved beyond reasonable doubt and an accused cannot be convicted on the basis of probability. Under the service jurisprudence, a person may be found guilty even on the charge being proved on the basis of preponderance of probabilities. In this case, the proceedings relate to circumstances leading to scrapping of entire selection by the government and the examination of the entire process of selection by three Judges' Committee of this Court, the procedure adopted by the Committee to examine the process of selection, can neither be the same as applicable to the criminal proceedings nor as applicable to the employer, employee relationship. There is a clear cut distinction. In other words, the proceedings before government, before the Committee of Judges and this court are neither akin to proceedings under service law nor criminal law. In fact, they are *sui generis*.

(94) Sum and substance of the above discussion is that principles of natural justice are not absolute; exceptions to the requirement of principles of natural justice and procedures are all circumstantial and not conclusive.

Every exception is to be admissible, taking into consideration the facts and circumstances of each case. Where it is administratively impracticable to give hearing to every one and there is a large scale mal-practices, illegalities, irregularities, favouritism, fraud, mischief, corruption and deeprooted conspiracy, in such circumstances larger public interest will override the individual interest, as justice demands.

**Re: Question (b)**

(95) In the present case, the nature of the proceedings is such that it became necessary for the Committee of Judges and this Court to adopt a procedure befitting the facts and circumstances of this case. Thus, I also have no hesitation in rejecting the contention of the petitioner(s) that the burden of proof applicable to such cases has to be 'beyond reasonable doubt'. In fact, I need not deliberate any further on factual aspect of this case here. In present case proceedings are sui generis, in this regard the Hon'ble Supreme Court in case of *Smt. Sayalee Sanjeev Joshi (50)*, also took the same view, the reasoning whereof I adopt with respect and refer to paragraph 15 of the judgment which reads as under :

*"15. Learned counsel for Respondent 3 argued as if this reference was a criminal trial and the charge against the respondent has to be proved beyond reasonable doubt. Learned counsel for the Public Service Commission submitted that these proceedings were neither in the nature of a criminal trial nor in the nature of the service dispute, but that it was a question of an inquiry into the conduct of a member of the Public Service Commission who was expected to maintain the highest standards of integrity. This Court in Reference under Article 317(1) of the Constitution of India, In re while answering Special Reference No. 1 of 1983 had noticed:*

*"9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a member of the Commission is different. The latter holds a*

*constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution. In our view the decisions dealing with service cases relied upon on behalf of the respondent have no application to the present matter and the reference will have to be answered on the merits of the case with reference to the complaint and the respondent's defence."*

Further in para 143, the Hon'ble Supreme Court held as under :

*"143...As we have indicated in the beginning, what we are concerned with is the appreciation of the evidence of PW 15 examined before us in the light of his cross-examination, the other evidence and in the light of his prior statement contained in Ext. 53. So viewed, it is really a question of believing or disbelieving the evidence of PW 15 given before us. We are not dealing with a prosecution and in that context the alleged confession of a co-accused. We are on a fact-finding enquiry based on the evidence before us and the probabilities of the case."*

(96) The above reasoning persuades me to follow the law enunciated in the afore-referred case and take the view that the content and nature of the proceedings before the Committee of Judges of this Court was sui generis and the Committee has rightly evolved its own procedure in consonance to suit the facts of this case and to ensure that ends of justice are achieved and there is no abuse of the process nor the procedure adopted by the Judges' Committee is erroneous. The Government in face of the facts has passed the orders of termination considering the entire selection vitiated as a result of mass-scale fraud, favouritism, mischief, corruption and conspiracy to pervert the course of fair selection by the Commission which resulted into injustice to other competing candidates. The Government found serious irregularities and illegalities committed by the Chairman and others in various selections including selection to the Punjab Civil Services (Executive Branch) and Allied Services Examination.

(97) It needs specific mention that several complaints were received against various selections made by the Commission. Enquiries were made by the Vigilance Bureau and in furtherance to that FIRs had been registered



which are pending. The wrong and arbitrary selections had generated numerous Writ Petitions and Special Leave Petitions during the tenure of Mr. Ravinderpal Singh Sidhu, Chairman of the Commission. The conduct of the Chairman and others not only shows the omissions and commissions on their part, but administrative lapses as well. This resulted in providing employment to undeserving candidates at the cost of more meritorious candidates. The details are mentioned in the judgment by the learned Sister Ritu Bahri, J. however, I would like to quote the findings of the Committee on the role of Chairman, which reads as under:

*"It would also be pertinent to mention, that during his tenure, Shri Ravinderpal Singh Sidhu amended the Rules and Procedure of the Punjab Public Service Commission. Vide Rule 17(b) thereof, he assumed unlimited powers, in so far as the process of selections are concerned.....*

*The aforesaid rule, by itself demonstrates the unlimited powers assumed by Shri Ravinderpal Singh Sidhu in the process of selection of candidates, whereby he assumed unlimited authority to manipulate the selection process.*

*4(H)(i) The manner in which the Punjab Public Service Commission functioned and the manner in which selections and appointments were made to the PCS (EB), continued to be a matter of serious resentment amongst the other members of the Punjab Public Service Commission, during the tenure of Shri Ravinderpal Singh Sidhu. In fact, a number of writ petitions came to be filed by members of the Punjab Public Service Commission against Shri Ravinderpal Singh Sidhu....."*

(98) Virtually, the misdeeds and misdemeanours in the selection processes are apparent as even some of the members of the Commission had categorically leveled allegations that Chairman did not associate them in the process of selection, they even approached this Court by way of writ petition for the relief. The cumulative effect of all this clearly indicates that the selection process was not in accordance with law, rules and regulations and put a question mark on the integrity, honesty and the efficiency of the Chairman coupled with the fact that huge amount of unaccounted money has been recovered by the vigilance from the Chairman.

(99) It is not in dispute that the enquiries now being conducted by the Vigilance Bureau pertain to certain selections in question and past selections. From the documents produced, it appears that the action of the then Chairman, others and certain other Officers/Officials of the Commission, is under cloud. Under any circumstances, the aforesaid enquiries cannot be taken to mean any erosion of the authority of the Committee of Judges or its independence. An expert and constitutional body like the Commission are supposed to perform their duties fearlessly and carry out selections on the basis of the best merit available. However, if the aforesaid selections are alleged to be tainted and based upon consideration other than merit, the petitioner(s) cannot claim that selection made by Commission is immune from scrutiny. Nobody has a vested right to perpetuate illegality or hide a scandal. All selections made by the Commission are supposed to be based upon competence, merit and integrity. In this case the allegations to the contrary had not only eroded the public confidence in the Commission but also resulted in reducing the merit to casualty.

(100) For the reasons referred above, I find that the aforesaid contention of the learned Counsel is also without any merit.

(101) There is no dispute with the proposition of law that while exercising the power of judicial review this Court would be slow in making competitive comparison of the selected candidates vis-a-vis the unsuccessful candidates. However, I express, my inability to extend the aforesaid analogy to hold that even in the case of corruption charges, favouritism and tainted selections, no enquiry/examination in the matter of selection could be made. Accepting the aforesaid argument would be perpetuating the tainted selections.

(102) In the matter of *Dr. Ram Ashray Yadav (supra)*, the Court emphasized that keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and Members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they are expected to be role models for the persons whom they are going to select for Civil Services. The character and conduct of the Chairman and Members of the Commission, like Caesar's wife, must therefore, be above board. They occupy a unique place and position; utmost objectivity in the performance of their duties, integrity and detachment are

essential requirements for holding these high constitutional offices. Similarly, in the present case of *Inderpreet Singh Kahlon versus State of Punjab [(2006) 11 SCC 356]*, as it came up for consideration before the Hon'ble Supreme Court in the exercise of its appellate jurisdiction the Hon'ble Supreme Court was concerned with allegations against the Chairman of the Punjab Public Service Commission that in discharge of his duties, he had selected persons for extraneous as well as monetary considerations during 1996 to 2002. For such conduct and selections, FIRs had been registered in that behalf while the selection of the appointed candidates was also challenged. While dealing with these allegations, the Court held as under:

*"102. This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed), affect a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions."*

(103) In the above lines, the Hon'ble Supreme Court has explained the standards of performance which are expected to be maintained by the Chairman/Members of the Commission.

(104) The detailed reference to the witnesses produced, along with the affidavit, number of documents including compilation of results for the year 1996 to 2002 is not necessary by me as this has already been discussed by my learned Sister Ritu Bahri, J. As per the statement of the witnesses and the record, the marks of several candidates were either reduced or increased, without specifying any reason. In a most arbitrary manner marks in the interview have been given/ reduced, much less as a genuine necessity.

(105) I may also observe that there are interpolations, manipulations and alterations in the answer sheets at various places. Interestingly, the candidates who had scored very high marks in the written examination were awarded low marks in interview while the candidates who had not fared so well in the written examination were awarded very high marks in the interview. This aspect has already been dealt with in main judgment. It is clear indicative of the fact that the process of selection is induced or affected by fraud, favouritism, mischief and corruption, it will certainly fall within the excess of jurisdiction and lack of due process. It is like a stable man in saddle on unruly horse of public policy. In the present case, it has been found that there is exercise of excessive jurisdiction which depicts lack of due process and as such, is opposed to the public policy and objectives of Commission. The implied argument raised by the counsel for the parties that fraud perpetuated by Sh Ravinderpal Sidhu cannot be attributed to the petitioner(s) / selectees cannot withstand the scrutiny of law in the light of fact that Chairman has exercised excessive jurisdiction which depicts lack of due process and as such, is against the public interest and policy which affects the entire selection. This is certainly an indication of the arbitrary standards adopted by the Commission in the selection process and the fact that the candidates were not dealt with equal hand and uniform yardstick. This argument of the petitioner(s) is rendered meritless.

(106) When all these facts are examined in their correct perspective, it is obvious that tempering of record and non cooperative attitude adopted by the then Chairman with the other members of the Commission, was not for bona fide reasons and, much less, to protect the constitutional stature of the Commission. On the contrary, the image of the Commission has been lowered in the eyes of the public and the rule of fairness and merit has been substantially ignored in processes of selection for different posts. It is true, and as argued on behalf of the petitioner(s), that there is no direct evidence before us to show that these manipulations have actually been carried out by whom but it is equally true that the Chairman and others, were duty bound to exercise proper administrative control to ensure judicious and fair selection and prevent any act of omission or commission which would diminish public confidence in the functioning of the constitutional body. The non-production of documents lacks bona fide and was, primarily, intended

to withhold the records from the Investigating Agencies to cover up the irregularities, illegalities, misdeeds and misdemeanours referred in the main judgment.

(107) Certainly, the present case discloses illegalities and misdeeds of graver nature. On a holistic view of the matter, it is apparent that irregularities and acts of irresponsibility committed by the Commission delineated about the misdeeds, has certainly lowered the dignity of the Commission. The burden of proof applicable to such cases is not that as required under the criminal jurisprudence, i.e., to prove the charge 'beyond any reasonable doubt'. Where the facts supported by record point a finger at the Chairman and others with some certainty, it amounts to omissions and commissions in the facts and circumstances of this case. Rule of reasonable preponderance of probabilities would be the right standard to be applied. This Court is not called upon to record finding of guilt as if in a criminal case. The Commission was certainly in a position to prevent most of the events which have occurred in the present case and have tarnished the image of the Commission. In my view the maxims "*Qui non obstat quod obstare potest facere videtur*" (he who does not prevent what he can, seems to commit the thing) and "*Qui non prohibet quod prohibere potest assentire videtur*" (he who does not forbid what he can forbid, seems to assent', apply to acts of the Commission and would alter the equities against the petitioner(s). As stated *In Re Ram Ashray Yadav (supra)*, absolute integrity and impartiality is required to be exercised by the Chairman and Members of the Commission to maintain the dignity of their office. The Commission has been entrusted with the task of selecting candidates to various posts under the Government and, therefore, the function of the Commission is of great importance. Most appropriately the words of Shri H. V. Kamath, Member of the Constituent Assembly, can be referred at this stage: "*Whenever democratic institutions exist, experience has shown that it is essential to protect the public service as far as possible from political and personal influences and to give it that position, stability and security which is vital to its successful working as an impartial and efficient instrument by which the Government, of whatever political complexion, may give effect to their policies.*" These were the expectations of the framers of the Constitution from the Chairman and Members of the Commission.

(108) The Committee consisting of Hon'ble Mr. Justice J.S. Khehar, as he then was, Hon'ble Mr. Justice Surya Kant and Hon'ble Mr. Justice Viney Mittal in its ultimate analysis has observed as under:

*"Secondly, the processes of selection under reference (within the ambit of investigation of the Vigilance Department), can be described as fraudulent, tainted and arbitrary. The said processes of selection were clearly rife and abounding with manipulations, carried out by a well planned scheme of deception, forgery and fraud; executed for showing favour, or for consideration. And as such, the entire processes of selection, to the premier executive posts, which were subject matter of investigation at the hands of the Vigilance Department, deserve to be set aside in their entirety."*

(109) In the present case, there are allegations of fraud, cheating and other misdeeds and misdemeanours and this is to be seen in the light of mass scale manipulations and award of marks to various candidates, who had secured high marks in the written examination but have been given very low marks in the interview. There are also candidates who have not been selected in the present selection, but subsequently they have been selected by the UPSC in other examinations. The conspiracy in the present case is with regard to effect mischief, the cumulative effect of reading the report of the Committee and the examination of record clearly indicates deceitful act which caused extreme injury to the deserving prospective civil servants as a whole. Such an act can be classified as a conspiracy to defraud or conspiracy to pervert the course of justice. The objects and means of the conspiracy were in substance of such kind as have been recognized even by the criminal law. There is a mischief by doing willfully deceitful acts or agreed to procure benefits to the others by willfully deceitful acts for them with a purpose to give benefit, which has caused extreme injury to the general public as well as to the persons who had appeared in the competitive examination. I am not recording the finding of guilt here at this stage since that is to be decided by the criminal court where the parameters are altogether different. When the conspiracy is with regard to the functioning to the Public Service Commission, there is still a scope for extension in the fact situation. It should be borne in mind that conspiracies are always hatched in secrecy and rarely come to the notice. It is said that the people of same trade seldom meet together even for merriment and diversions but

the conversation and in conspiracy against the public or in some contrivance to raise the price. Some believes prices are established by supply and demand. The other believes that prices are the result of conspiracy whims or production costs. Here in this case too many players are involved in conspiracy to be plausible. Secrecy is a badge of fraud. In the present case, the circumstances as narrated above clearly indicate, where justice is denied, where ignorance prevails, where a class is made to feel that Commission in an organized conspiracy to oppress, rob and degrade has acted in such a manner, neither persons nor documents are safe. The Chairman had played a role which has resulted in unfair selection. The evidence shows, Sh. Ravinderpal Singh Sidhu was leader of the conspiracy to commit these frauds. The evidence of mass-scale corruption, huge recoveries of money and tampering in records and the answer sheets is indicative of this fact. All the conspiracies are the same taut story of men who find coherence in some criminal acts. There is no lack of plan. From the documents produced before the Committee, such conspiracy increases the elements of morbidity, paranoia and fantasy in this part of the country. In the present case there is a heinous, strong and bold hidden conspiracy, which is a tragedy without reason. So far as the petitioners are concerned, it would be relevant to quote Sophocles, who said "***Rather fail with honour than succeed by fraud***". Ferdecik Libertson said "***there are three things in the world that deserve no mercy, hypocrisy, fraud and tyranny***". In the present case, the voluminous evidence examined by the Judges' Committee as well as this Court clearly indicates that there is a large scale violation of rules and regulations, there is a lack of integrity on the part of the Commission and it committed gravest kind of misconduct in selections. There are many omissions, commissions and administrative lapses which indicate that the Chairman of the commission acted in improper and wrong manner and did forbidden acts. There is transgression of established and definite rules of conduct, it is not mere error of judgment, carelessness or negligence in performance of the duties by the Commission, rather, it appears that this has been done under a high level conspiracy. The recoveries of huge money effected from the Chairman of the Commission and the property in the name of members of his family, after becoming the Chairman clearly provide the fuel of criminal conspiracy. White Collar Crime of the present type are very complex and in the present case, there is basically a conspiracy and theft of honest services which are not expected from the Chairman, virtually it can be termed as a tool of oppression or it can be said intimidation of the honest prospective civil servants. It is a case where the selected candidates

either in person or through their wards have joined a consortium together resulting into major conspiracy wherein the selections have been made in a dishonest manner. These acts committed by the Commission are sufficient to conclude that they have committed a public fraud. In other words it can be termed as a public mischief committed by the Chairman of the Commission, others and the beneficiaries. While deciding the case of criminal conspiracy and a civil conspiracy different parameters apply. The Commission had committed such an act which is apparently a public mischief which has undermined the public justice or public moral against the purpose for which the Commission was constituted. The framers of the Constitution have expected that it will be making selections with honesty, integrity and without favour and act in an impartial manner, resultant fair and competitive selection with a purpose to bring efficiency and raise morale of public servants.

(110) It would be appropriate to mention that an ordinary man, a poor prospective candidate cannot defend himself against the persons who are acting in combination. The perusal of the Committee report and the police and vigilance report and record shown to this Court clearly indicate a strongest element of infringement of public interest. All the conspiracies are mischief by nature, so all affect a public mischief. Over the years, different types of conspiracies have been put into different pigeon holes, such as conspiracy to pervert the course of justice or conspiracy to cheat and defraud. Sometimes a conspiracy to commit a crime or a tortuous act cannot easily be put into one or other of the pigeon holes. The present is a conspiracy which can be classified with precision to affect a public mischief. This type of conspiracy is like a "suspense account".

(111) In the case of *Union of India versus O. Chakradhar (51)*, the Hon'ble Supreme Court has held as under:-

*"8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is no widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices*



*to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.*

*11. It is mentioned in the report that huge amount of money was taken for selecting the candidates but none is coming forward to indicate as to who and how much one paid for it for fear of being in trouble. It is further reported that non official Chairman of the Board made payment of printing of the examination paper etc, not to any firm but to one Gaja Raja Yadav. It may also be mentioned that according to the report a large number of applications were missing and postal orders of the missing applications were encashed and misappropriated and even before the closing date of receiving the applications, it started sending applications to the computer firm for their scrutiny. The C.B.I. has named five persons as accused in the report namely the Chairman of the Railway Recruitment Board, Bangalore, who is non-official, the Member-Secretary of the Board, an officer of the Railways, one Shri Hanumanth Bhaiya, a Senior Clerk of the Railway Recruitment Board and Gaja Raja Yadav, the private person to whom payment had been made for printing of the question paper etc."*

(112) In the light of the above discussion and also keeping in view the nature and extent of illegalities and irregularities committed in selections under a deep-rooted conspiracy, a clear case is made out that entire selection stood vitiated and it is impossible to identify and segregate tainted or non-tainted candidates as mischief played is all pervasive affecting the entire selection, as to make it difficult to pick out of the numerous candidates, the ones who have been unlawfully benefitted or wrongfully deprived of their selection. Even no prejudice has been caused to the petitioners or other candidates, as special chance to appear in fresh examination was given to them. Keeping in view the aims and objectives of the Commission only way out would be cancellation of whole selection process and consequent selections and appointments.

(113) In view of the above, writ petitions are dismissed.