
(2003) 07 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 8421, 8422, 8423, 8429, 8430, 8431, 8433, 8440, 8441, 8442, 8446, 8447, 8449, 8540, 8547, 8558, 8584, 8585, 8586, 8587, 8588, 8589, 8590, 8591, 8592, 8593, 8594, 8595, 8596, 8739, 8740, 8741, 8742, 8889, 8954, 8957, 10727, 10796

Amarbir Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 ILR (P&H) 611 : (2003) 135 PLR 661

Hon'ble Judges : Binod Kumar Roy, C.J;N.K. Sodhi, J;G.S. Singhvi, J

Bench : Full Bench

Advocate : H.L. Sibal, Rita Kohli, Rajiv Atma Ram, Madhu Dayal, P.S. Patwalia, Vivek Sharma, Ashok Aggarwal, Vikram Aggarwal, M.L Sarin, Ajay Tewari, H.S. Mattewal, Gurminder Singh, Balram Gupta, Sachin Jain, Surjit Singh, Jagdev Singh, Satish Chander, V. Balaji, Sarwan Singh, A.S. Parmar, P.N. Lekhi, Jatin Salwan, G.S. Ghuman, R.N. Raina, Narender Singh Panwar, Puneet Jindal, Sanjeev Bansal, Sanjeev Gupta, N.S. Bawa, Amit Chopra, R.S. Virk, Sudeep Mahajan and Kapil Kakkar, for the Appellant; P.P. Rao, Rajive Bhalla, Rakesh Dwivedi, Charu Tuli and Anupam Gupta, for the Respondent

Judgement

1. The petitioners, who were appointed to Punjab Civil Service (Executive Branch) and Allied Services (for short. PCS (Executive Branch) and Allied Services) and Punjab Civil Services (Judicial Branch) (for short, PCS (Judicial Branch) on recommendations made by the Punjab Public Service Commission (for short, the Commission) during the tenure of Sh. Ravinderpal Singh Sidhu as its Chairman have prayed for quashing orders dated 23.5.2002, 24.8.02 and 27.9.2002 issued by the State Government terminating their services.

2. For deciding the issues arising in these petitions, we may briefly notice the facts relating to selection made between 1998 and 2001 for appointment to the three services.

PCS (Executive Branch) and Allied Services (Direct Recruitment).

By an advertisement issued in February, 1998, the Commission invited applications for recruitment against 28 vacancies in PCS (Executive Branch) and 63 vacancies in Allied Services. In all, 13094 candidates appeared in the preliminary examination held on 29.3.1998. Out of them, 1097 candidates were declared successful. The main written examination was held between 2.7.1998 and 2.8.1998 and the result was declared on 25.1.1999. 273 candidates were called for interview which were held between 20.4.1999 and 22.6.1999. The final result was declared on 11.7.1999 and the successful candidates were appointed to PCS (Executive Branch) and Allied Services in September, 1999 and thereafter.

Recruitment to PCS (Executive Branch) by nomination made in terms of Rules 8 to 11 and 15 of the Punjab Civil Services (Executive Branch) (Class-I) Rules 1976 (for short, the 1976 Rules)

For the Year 1994.

There was three vacancies for Register A-1 which were to be filled from amongst Tehsildar/Naib Tehsildars. There were two vacancies for Register A-II which were to be filled from amongst Civil Secretariat Ministerial Staff. There was one vacancy for Register A-III which was to be filled from amongst the Excise and Taxation Officer/Block Development Officers/ District Development and Panchayat Officers. There was one vacancy for Register "C" which was to be filled from amongst the officer/officials working in subordinate offices. Interviews for selection for the vacancies to be filled from the four registers were held on 6.4.1999, 28.7.1999 and 29.7.1999, 4.1.1999 and 7.4.1999 respectively.

For the year-1996

3. There were five vacancies for Register A-1. There was no vacancy for Register A-II. There were two vacancies for Register A-III and there was three vacancies for Register "C". Interviews for selection for appointment to Register A-I were held on 26.5.1999. Interviews for selection for appointment to Register A-III for amongst District Development and Panchayat Officers were held on 29.5.1999. For selection from amongst Excise and Taxation Officers, interviews were held on 29.6.1999. For Register "C" interviews were held on 4.6.1999 and 7.6.1999.

PCS (Judicial Branch) made in terms of Punjab Civil Service (Judicial Branch) Rules, 1951 (for short, the 1951 Rules).

In all, four selections were made for recruitment to PCS (Judicial Branch) during the tenure of Shri Ravinderpal Singh Sidhu as Chairman of the Commission. The details of the vacancies for which the selections were made are as under:-

Year Number of vacancies 1998 21 1999 14 2000 8 2001 21

The candidates selected on the recommendations made by the Commission except those recommended in 2001 were appointed to the service after obtaining approval of the High Court on administrative side.

4. We may now notice the facts (as borne out from the pleadings and record produced by the respondents during the course of arguments) relating to registration of the criminal cases against Shri Ravinderpal Singh Sidhu and others and the ultimate decision taken by the State Government to terminate the services of the petitioners.

a) On 25.3.2002, FIR No.7 was registered at Police Station, Vigilance (Mohali) u/s 7 read with Section 13(2) of the Prevention of Corruption Act, 1998 in relation to the trap organised in which Shri Ravinderpal Singh Sidhu was caught red-handed accepting the bribe of Rs. 5 lacs from one Shri Bhupatjit Singh for ensuring his selection to PCS (Executive Branch). He was arrested and is reported to be still in Jail.

b) On 30.4.2002, another FIR bearing No.24 was registered against Shri Ravinderpal Singh Sidhu and Shri Prit Pal Singh, the then Secretary of the Commission and others in the context of large scale fraud committed in the selections made by the Commission.

c) the statement of one of the accused, namely, Sh. Jagman Singh who later on turned as approver, were recorded u/s 164 of the Code of Criminal Procedure on 24.1.2002 and 24.4.2002. The statement of Shri Randhir Singh, who also, later on, turned as approver, was recorded on 15.5.2002. The statement of two other persons, namely, Shri Prem Sagar and Sh. Paramjit Singh were recorded on 13.5.2002. Their statements revealed that a number of candidates paid money to Shri Sidhu for getting selected for appointment to PCS (Executive Branch) and Allied Services and PCS (Judicial Branch). Shri Jagman Singh revealed the manner in which the money was stacked in the lockers and put in the bank accounts of the relatives of Sh. Sidhu, namely, his brother-Shri Reetinder Singh, mother Smt. Pritpal Kaur (also named as Smt. Gursharan Kaur) and sister-in-law Smt. Harjinder Kaur. Even fictitious accounts were opened for this purpose.

d) Between 17.4.2002 and 19.4.2002, more than Rs. 16 crores were recovered from the lockers/bank accounts fixed deposits standing in the name of the relatives of Sh. Sidhu. A sum of Rs. 1.28 crores was also recovered from the house of Sh. Jagman Singh.

e) The result sheets showing the marks awarded to the candidates in 1998 examination was recoverable from the commission on 17.5.2002. The answer sheets of PCS (Executive Branch) and Allied Services candidates were recovered from the Commission on 22.5.2002. The result sheets of the nominated candidates were also recovered on 22.5.2002.

f) On the basis of examination of the material collected during the investigation, Sh. A.P. Pandey, Additional Director General of Police-cum-Chief Director, Vigilance Bureau, Punjab sent D.O. letter No. 1/Spl./CD/VB dated 21.5.2002 to the Chief Secretary, Punjab with the observation that most of the examinations conducted by the Commission during the tenure of Shri Ravinderpal Singh Sidhu were tainted. He noted that there is clear evidence about the acceptance of huge

bribe by Shri Ravinderpal Singh Sidhu from the candidates selected for PCS (Executive Branch) and Allied Services and four examinations conducted for recruitment of PCS (Judicial Branch) and various other examinations/selections conducted by the Commission for recruitment of Lecturers/Doctors and other Class-I and Class-II Officers. Shri Pandey concluded that integrity and credibility of the Commission had been totally compromised during the tenure of Shri Sidhu and spirit of the Constitution of India providing safeguards for independence and fairness to the Commission for recruitment of higher services of the State had been totally violated. On 22.5.2002, Shri Pandey sent DO letter No. 2/Spl./CD/VB alongwith the documents running into 90 pages.

g) After examining the material placed before it, the State Government decided to terminate the services of 46 candidates appointed to PCS (Executive Branch) who were still on probation in pursuance to that decision, orders dated 23.5.2002 were issued terminating the services of some of the petitioners.

h) After about 15 days, Shri O.P. Pandey sent DO letter No. 3/Spl./CD/VB dated 7.6.2002 to the Chief Secretary, Punjab alongwith progress report prepared on the basis of further investigation carried out by the Vigilance Bureau in the case registered vide FIR No.24. The report was also accompanied by large number of documents. In that report the Vigilance Bureau highlighted the following irregularities committed by the Commission:

"(i) The screening of answer sheets of competitive examination reveals that the favoured and tainted candidates were helped in written tests in one way or another. For instance some selective candidates were helped by giving question papers one night before the date of examinations and if the candidates could not perform well in the written examination, the examiners (Makers) were asked to give maximum marks to the favoured candidates, irrespective of the matter contained in the answer sheets and the hand writing being not legible.

(ii) The interview marks were tailored to help the favoured and trained candidates. This was the main criterion used by the Chairman of the Commission for selection of desired candidates. During the investigation of the case, this factor has emerged very clearly and is a strong evidence in the case file. The favoured candidates have been given marks in the interview and the candidates coming in the way of favoured candidates have been given less marks in the interview to keep them way down in the merit list.

(iii) While pursing the list of the candidates who were interviewed by the Chairman and the Members, the most astonishing feature which attracts the eyes is that in more than 95% cases, Chairman and the Members have allotted similar marks to the candidates after interview which is impossible as all the Members and the Chairman were supposed to test the capability of the candidates in their individual capacities. It could never have been a consensus gradation.

iv) In many of the selections there was a one Member Board.

The petitioners have generally averred that their academic record is very good and they were selected for appointment to PCS (Executive Branch) and/or Allied Service and PCS (Judicial Branch) on the basis of their excellent performance in the viva-voce and they have nothing to do with the illegalities/irregularities committed by Shri Ravinderpal Singh Sidhu during his tenure as Chairman of the Commission. Those appointed to PCS (Executive Branch) from Registers A-I, A-II, A-III and "C" have averred that they were selected on the basis of their outstanding service record and the taint, if any attached to the selections made for appointment by direct recruitment cannot affect their selections. The candidates belonging to the reserved categories of Scheduled Castes, Backward Class, Ex-servicemen, Freedom Fighters and handicapped have averred that they have nothing to do with the selection made by Shri Ravinder Pal Singh Sidhu by taking bribe from the candidates or on account of "Sifarish" and their services could not have been terminated on the basis of reports of the Vigilance Bureau.

5. The petitioners have challenged the impugned orders mainly on the grounds of violation of the provisions of Article 14, 21 and 311 of the Constitution of India and rules of natural justice. Some of the petitioners have pleaded that after successful completion of three years probation, they will be deemed to have been confirmed in terms of Rule 23 of the 1976 Rules and their services could not be terminated without holding regular enquiry in accordance with Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, the 1970 Rules) read with Article 311 of the Constitution of India and in any case, Rule 23 could not have been invoked for dispensing with their services because their work, conduct and performance has remained satisfactory during the period of probation. Another ground on which the petitioner have challenged the impugned orders is that no definite material was available with the State Government on the basis of which it could form a bona fide opinion that selections were trained and the reports prepared by the Vigilance Bureau could not be relied upon for terminating their services because the same are entirely based on the statements of approvers recorded u/s 164 of the Code of Criminal Procedure.

6. The case set up on behalf of the State of Punjab is that during his tenure as Chairman of the Commission from September, 1996 to March 26, 2002, Shri Sidhu completely usurped the powers of the Commission unto himself to the exclusion of all other members and manipulated the system for ensuring the selection of those who had paid money or came with the recommendations. In separate but almost identical written statements filed on behalf of the State, reference has been made to the statement of Shri Jagman Singh, confident and tout of Shri Ravinderpal Singh Sidhu who disclosed the modus operandi adopted by the latter. According to Shri Jagman Singh, Shri Sidhu made larger number of selections by accepting bribe from the prospective candidates. During the investigation of FIR No. 7 dated 25.3.2002 and FIR No. 24 dated 30.4.2002, it was revealed that question papers and answer scripts were smuggled out of the Headquarter of the Commission. At times, blank answer-sheets were given to the prospective candidates and special instructions were given to the examiners

towards higher marks to favoured candidates and at the same time, award less marks to more meritorious candidates. According to respondent No. 1, Shri Ravinder Pal Singh Sidhu amassed assets worth Rs. 22 crores during his Chairmanship by adopting illegal means. It has been further averred that the entire selection process was completely vitiated and it was not possible to separate the meritorious candidates from others and, therefore, a decision was taken to terminate and opportunity will be given to all the candidates to compete in the selection once again.

7. In the written statement filed on behalf of the High Court in CWP No. 16870 of 2002, which has been adopted in other cases, it has been averred that services of the petitioners were terminated because it came to light that the recommendations made for appointment to PCS (Judicial Branch) during the tenure of Shri Ravinder Pal Singh Sidhu were manipulated, unfair and vitiated due to fraud. In the course of written statement, reference has been made to the facts leading to constitution of two sub-committees to look into the illegalities and irregularities committed in the selection. The reports of the two sub-committees were accepted by the Full Court and recommendations were made to the State Government to terminate the services of all those who were appointed on the basis of the recommendations made by the Commission. It was also recommended that selections made against the vacancies of 2001 may not be acted upon for the purpose of giving appointment. The State Government accepted the recommendations of the High Court and issued orders dated 27.9.2002.

Arguments

8. Learned counsel for the petitioners advanced the following arguments :

a) The FIRs registered against Shri Ravinder Pal Singh Sidhu and others and statements made by Shri Jagman Singh and Shri Randhir Singh Gill u/s 164 of the Code of Criminal Procedure do not have any evidentiary value and the reports prepared by the Vigilance Bureau on the basis of such statements could not be made basis for forming an opinion that the entire selection was tainted. In support of this argument, learned counsel relied on the decisions of Sarwan Singh Vs. The State of Punjab, , State of Rajasthan Vs. Kartar Singh, ; Ram Kishan Singh Vs. Harmit Kaur and Another, ; Ram Narain Vs. State of Rajasthan, ; Ravinder Singh Vs. State of Haryana, ; George and Others Vs. State of Kerala and Another, ; and Ramprasad Vs. State of Maharashtra, .

b) Even if some candidates had manipulated their selection, the State Government was not justified in ordering en masse termination of the services of all the appointees. They submitted that the government should have made an enquiry to identify the candidates who had paid bribe or were selected due to extraneous reasons and taken action only against them leaving out the petitioners who were selected on their merit. They further submitted that with the registration of FIR Nos. 64 to 68 against some of the candidates, the culprits

stand identified and, therefore, termination of the services of other candidates is liable to be nullified. In support of this argument, learned counsel relied on the judgment of the Supreme Court in Onkar Lal Bajaj etc. etc. v. Union of India and Anr. etc. etc. 2002(9) Scale 501 and order dated 24.12.1999 passed in Letters Patent Appeal No. 431 of 1998. The Haryana State Cooperative Land Development Bank, Chandigarh v. Sunil Dutta and Ors. and others connected appeals.

c) The decision taken by the State Government to terminate the services of all the selected candidates is liable to be nullified because it was not preceded by any enquiry made in consonance with the rules of natural justice by giving opportunity of hearing to the effected persons. In the same breath learned counsel argued that the petitioners were not associated with the enquiry conducted by the Vigilance Bureau and they were not given copies of the report prepared by the Vigilance Bureau and yet they have been condemned by placing reliance on the observations made by the Vigilance Bureau. They further argued that even though the impugned orders appear to be innocuous, the same are liable to be quashed on the ground of violation of Article 311 of the Constitution and the rules of natural justice because the government's decision is founded on the reports prepared by the Vigilance Bureau suggesting that selections for appointment to PCS (Executive Branch) and Allied Services and PCS (Judicial Branch) were made due to extraneous reasons and by paying illegal gratification to the Chairman of the Commission.

d) Learned counsel relied on the judgments reported in Samsher Singh Vs. State of Punjab and Another, ; Anoop Jaiswal Vs. Government of India and Another, ; Rajinder Kaur v. Punjab State 1986(3) S.L.R. 78; Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, ; and AIR 2000 1706 (SC) to contend that the Court will discover punitive character of the impugned action while lifting the veil of innocuousness.

e) The petitioners who had completed the period of probation will be deemed to have been confirmed by virtue of Rule 23(3) of the 1976 Rules and their services could not be terminated without following the procedure prescribed in the 1970 Rules and Article 311 of the Constitution. The learned counsel supported the theory of deemed confirmation by placing reliance on the judgments of the Supreme Court in State of Punjab v. Dharam Singh 1997(7) S.C.C. 520. They submitted that even though confirmation of the petitioners had been stayed by virtue of interim order dated 29.4.2002 passed in CWP No. 6615 of 2002 Common Cause Forum v. State of Punjab and Ors. the same was liable to be ignored because this Court did not have the jurisdiction to pass such an order in contravention of Rule 23(3) of the 1976 rules. Shri Rajiv Atma Ram supported this argument by citing the decision of the Supreme Court in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another,

f) Shri Rajiv Atma Ram and Shri P.S. Patwalia further argued that termination of the services of the petitioners amounts to their removal from the registers

maintained under Rule 8 of the 1976 Rules and such an action could not have been taken by the State Government without giving them notice and opportunity to make representation as required by Rule 17 of the said Rules.

g) Shri Rajiv Atma Ram then relied on the judgment of the Supreme Court in *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, and argued that services of the petitioner could not have been terminated before the end of the period of probation.

h) Shri Rajiv Atma Ram, Shri P.S.Patwalia and some other learned counsel they argued that services of the petitioners could not have been terminated by invoking Rule 23 of the 1976 Rules because their work and performance had throughout been satisfactory and there was no adversity in their record which could justify this extreme action.

i) Learned counsel appearing for the candidates selected by nomination against the vacancies of Registers A-I, A-II, A-III and "C" and those appointed against the reserved categories of Scheduled Castes, Backward Class, Ex-servicemen and Handicapped argued that their clients had been selected purely on the basis of merit determined on the basis of assessment of their service record and performance in the interview and as there has been no concrete allegation of any irregularity in their selection, the State Government could not have terminated their services by placing reliance on the reports of the Vigilance Bureau.

j) Shri Puneet Jindal, learned counsel appearing for some of the petitioners argued that the decision taken by the government to terminate the service of the petitioners should be quashed on the ground of violation of Article 320 and 323 of the Constitution, inasmuch as, the Commission had not been consulted before cancellation for the selections process and the report was not laid before the Legislative Assembly.

k) Shri P.N. Lekhi, Senior Counsel for some of the candidates appointed to PCS (Judicial Branch) argued that the recommendations made by the High Court could not have been acted upon by the government for dispensing with the services of the petitioners because copies of the recommendations made by the sub-committee and the resolutions passed by the Full Court were not made available to the affected candidates and they were not given opportunity of making representation against the proposed action. He submitted that the action against the petitioners is founded on mere suspicion and such suspicion could not be made basis for terminating their services. In support of this argument, Shri Lekhi relied on the judgments of the Supreme Court in *Hanumant Vs. The State of Madhya Pradesh*, and *Suresh Budharmal Kalani @ Pappu Kalani Vs. State of Maharashtra*, . He then argued that even in such cases, the rules of natural justice are required to be observed and failure of the government and the High Court to comply with the rule of *audi alteram partem* has the effect of vitiating the impugned action. Shri Lekhi support this argument by placing reliance on the

judgments of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ; *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . He then relied on the judgment of the Supreme Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, and argued that the High Court should correct the grave illegality committed by it on the administrative side by recommending the termination of the appointment of the members of PCS (Judicial Branch).

l) In the end, learned counsel argued that the so-called irregularities pointed out by the learned counsel for the State in the answer-scripts of the candidates cannot justify a conclusion that the entire selection was tainted due to bias, manipulations or fraud and the petitioners cannot be denied the right to be heard. In mis respect, learned counsel relied on the judgment of the Supreme Court in *Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another*, .

Arguments of learned counsel for the respondents.

Learned counsel for the respondents argued the impugned orders cannot be held as vitiated due to violation of the provisions of the Constitution of India or the recruitment rules and the principles of natural justice because after considering the reports of the Vigilance Bureau and other relevant material, the State Government decided to cancel the entire selection which was tainted by fraud and manipulations. Shri P.P. Rao, learned senior counsel appearing for the High Court emphasised that law makes a distinction between condemnation of a selection as a whole on the round of unfairness and individual misconduct of one or more candidates and argued hat when the entire selection process is vitiated, it is not necessary to give opportunity of hearing to the affected candidates. In support of this argument, Shri Rao relied on the decisions of the Supreme Court in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, ; *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, ; *Union of India and Others Vs. Anand Kumar Pandey and Others*, ; *Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others*, ; *Hanuman Prasad and Others Vs. Union of India (UOI) and Another*, ; and *Union of India v. O. Chakradhar (2002)3 S.C. 146*. He submitted that when the entire selection is set aside, some deserving candidates may suffer but public interest out weights their individual interest and the Court cannot nullify the action take by the State only on the ground of denial of opportunity of hearing - *Pritpal Singh and others Vs. State of Haryana and others*, .

9. Shri Rao relied on the judgments of the Supreme Court in *High Court of Judicature at Bombay through ite Registrar Vs. Udaysingh Nimbalkar and Others*, ; *High Court of Judicature at Bombay v. Sirish Kumar (1997)6 S.C. 339* *High Court of Judicature at Bombay v. Shashi Kant S. Patil (2001)1 S.C.C. 416* and argued that on the judicial side, the court should be slow to interfere with the administrative decision taken by the Full Court and that there cannot be any compromise with the standard of selection of Judicial Officers, else confidence of

the litigant public will be shaken. Shri Rao further argued that an appointment based on tainted selection is void and once the process of selection is found to be tainted. Such appointment is liable to be nullified without attracting Article 311 of the Constitution or the Rules of natural justice Shri Rao relied on Rule 7(2) of the 1951 Rules which permits dispensing with the services of a subordinate Judge during the period of probation without assessing any cause and argued that so long as the decision taken by the competent authority is not proved to be arbitrary or mala fide, the Court will not interfere with the termination of service of a probationer.

10. Shri Rakesh Dwivedi, who appeared on behalf of the State of Punjab and the Commission argued that the scope of Judicial review of action taken by the State in such matter is extremely limited and unless the impugned decision is found to be vitiated due to mala fides or total non-application of mind to the relevant factors, the Court should not nullify the same. Shri Dwivedi highlighted the malfunctioning of the Commission under the Chairmanship of Shri Ravinderpal Singh Sidhu and argued that the decision taken by the Government to cancel the selections and terminate the services of the petitioners cannot be invalidated on the ground of violation of Articles 14, 21 and 311 of the Constitution and the rules of natural justice. He pointed out that in his capacity as Chairman of the Commission, Shri Ravinder Pal Singh Sidhu gave a go by to Rule 16(b) of the Rules of Procedure and unilaterally took decisions with regard to the manner, dates and venue for holding examinations; the secret work of conducting the examinations was not allocated to any designated officer and he did not convene the meetings of the Commission despite requests made by the members and in this manner, he exercised and later on, he got the rules amended vide resolution dated 12.5.1999, Shri Dwivedi pointed out that the members of the Commission filed two writ petitions bearing No. 1449 of 1997 and 7952 of 2001 highlighting the arbitrary functioning of Shri Ravinder Pal Singh Sidhu and the issue was sorted out only after this Court intervened. He also referred to order dated 13.8.2001 passed in CWP No. 7952 of 2001 appointing Shri D.V. Sehgal, a retired Judge of this Court as an observer in the meeting of the Chairman and the Members of the Commission which was held on 4.8.2001 and there it was decided that all the members will be associated in the conduct of examinations. Shri Dwivedi then referred to the statements made by Shri Jagman Singh and Shri Randhir Singh Gill recorded u/s 164 of the Code of Criminal Procedure, in which they gave the details of the modus operandi adopted by Shri Ravinderpal Singh Sidhu for ensuring selection of those who paid money or came with "Sifarish", the details of the cash recovered from the lockers, bank accounts and fixed deposits of the relatives of Shri Ravinder Pal Singh Sidhu, the property acquired by him at various places in the country, the secret methodology adopted by him for selecting the examiners who were instructed to give particular marks to the chosen candidates, usual identify in marks given by the Interview Boards which comprised of the Chairman and one Member and argued that the decision taken by the State Government in the light of the report

submitted by the Vigilance Bureau along with other relevant material cannot be dubbed as arbitrary or vitiated due to non-applicant of mind. Shri Dwivedi referred to the various cases and produced the answer books of some of the petitioners to highlight the manipulations made by the examiners to upgrade the merit of the particular candidates. He also produced charts to show that interviewers awarded marks with a view to ensure the selection of particular candidates who had paid money to the Chairman. Shri Dwivedi submitted that cancellation of selection does not cause any stigma on any particular candidate because the impugned decisions is not founded on any individual misconduct committee by individual selectee. He countered the argument of Shri Rajiv Atma Ram, Shri P.S. Patwalia and other learned counsel that some of the petitioners will be deemed to have been confirmed on the expiry of maximum period of probation and submitted that in view of the interim order passed by the High Court in CWP No. 6615 of 2002, the theory of deemed confirmation cannot be pressed into service. He further submitted that if the Court had not- passed the restraint order, the government would have taken appropriate decision keeping in view the serious allegations of corruption levelled against the Chairman of the Commission and the grave irregularities found in the process of selection. On the issue of denial of opportunity of hearing to the petitioner in terms of Rule 17 of the 1976 Rules, Shri Dwivedi submitted that the provisions contained in the said rule can be invoked at the pre-appointment stage and not after the appointment has been made and in any case, that rule cannot be invoked in a case, like the present one where the very selection on the basis of which the names of the candidate were brought on various registers is tainted by fraud, corruption and manipulations. Both Shri Rajiv Atma Ram and Shri Dwivedi submitted that it was impossible for the government to separate the tainted candidates from untainted ones because the entire process of selection had been manipulated by Shri Ravinder Pal Singh Sidhu by ensuring the selection of those who had paid money or had brought "Sifarish" and for this purpose, instructions were given to the examiners to give higher marks to other candidates who may be more meritorious. They further submitted that even in the interviews, higher marks were given to certain candidates with a view not only to ensure their selection but also to ensure particular slots to them in the merit list and for this purpose, very low marks were given to other candidates. To substantiate this, Shri Dwivedi referred to the charts produced during the course of arguments. In the end, Shri Dwivedi argued that even if reference made to Rule 23 of the 1976 Rules in orders dated 23.5.2002 is considered inappropriate, the Court may not nullify the decision of the government keeping in view the fact that the entire process of selection has been proved to be tainted by unfairness, manipulations and corruption. He submitted that the government possess inherent power to cancel such type of selections. Shri Dwivedi supported his arguments by placing reliance on the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Tarun K. Singh and Others*, ; *B. Ramanjini and Others Vs. State of Andhra Pradesh and Others*, ; *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, ; *Afzal Ullah Vs. The State of Uttar Pradesh*, ; *Titagarh Paper Mills Ltd. v.*

Orissa State Electricity Board, (1975) 2 SCC 436; State of Sikkim Vs. Dorjee Tshering Bhutia and others, ; Union of India and Another Vs. Tulsiram Patel and Others, ; and State of Punjab v. Sukhraj Bahadur 1998(3) S.L.R. 234.

11. We have given our thoughtful consideration to the arguments of the learned counsel on both sides and perused the written submissions tendered by them and also the records produced by the learned State Counsel which include the copies of FIRs registered against Shri Ravinder Pal Singh Sidhu and others, the statements of Shri Jag-man Singh, Shri Randhir Singh Gill and others, the details of the cash recovered from the lockers, bank accounts and fixed deposits of the relatives of Shri Ravinder Pal Singh Sidhu, the details of the properties acquired by him during his tenure as Chairman of the Commission, compilation the marks awarded to the candidates who were interviewed for selection for appointment by direct recruitment and by nomination, the answer-sheets of the petitioners and some other candidates showing over-writing and cutting on the marks originally awarded to the candidates, report and documents submitted by the Vigilance Bureau.

12. Before dealing with the respective arguments, we deem it necessary to observe that copies of the records by the State counsel were made available to the learned counsel for the petitioners. The individual candidates were given liberty to inspect their answer sheets. Reports dated 30.5.2002 and 18.10.2002 of the sub-committee of the Court were also read out in the open Court on 6.2.2003 and opportunity was given to the learned counsel for the petitioners to peruse the same.

13. The rules of natural justice are multidimensional. They form integral part of the concept of rule of law which constitute the corner stone of our constitutional set up. The applicability of the various facts of the rules of natural justice on administrative, quasi-judicial and judicial actions and decisions has been accepted by the Court of this country State of Orissa v. Dr. (Miss) Binapani Dei and Ors. (supra); A.K. Kraipak v. Union of India (supra); Sayeedur Rehman Vs. The State of Bihar and Others, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; S.L. Kapoor Vs. Jagmohan and Others, ; Swadeshi Cotton Mitts v. Union of India (supra); and Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, .

14. Courts have also invoked the rules of natural justice for invalidating administrative actions taken and orders passed by the State and its agencies/instrumentalities in relation to service conditions of employees. In a number of cases involving challenge to the termination of service, the violation of the rule of audi alteram partem pattern has been made a ground for nullifying the impugned decision/action/order- Parshotam Lal Dhingra Vs. Union of India (UOI), ; Shamsher Singh v. State of Punjab (supra), Anoop Jaiswal v. Government of India and Anr. (supra) etc.etc. The same rule has also been invoked for quashing the decision taken by the State and its functionaries to cancel the selection made by the competent authority- Benny T.D. v. Registrar (supra) and Haryana State

Cooperative Land Development Bank v. Sunil Dutta and Ors. (supra), However, the Courts have neither tried nor it is desirable to lay down a straight-jacket formula for dealing with the cases in which the administrative action/decision taken by the government is questioned on the ground of violation of the rules of natural justice and in appropriate cases, the applicability of such rules has been ruled out on the grounds of public policy/public interest or where the process of selection is found to be vitiated by fraud, manipulations, nepotism, favoritism- Bihar School Education Board v. S.C.Sinha (supra); Union Territory, Chandigarh v. Dilbagh Singh (supra); Union of India v. Anand Kumar Pandey (supra)" Biswa Rajan Sahu v. Sushanta Kumar (supra); Union of India v. O. Chakradhar (supra); Pritpal Singh v. State of Haryana (supra); B. Ramajini and Ors. v. State of Andhra Pradesh (supra); Hanuman Parshad v. Union of India (supra) and Pramod Lahudas Meshram Vs. State of Maharashtra and Others, .

15. In Bihar School Education Board v. S.C. Sinha (supra) which involved challenge to the cancellation of examination held at one particular centre on the ground of large scale copying, their Lordships of the Supreme Court drew a distinction between the case of any particular individual being charged with adoption of unfair means and large scale manipulation and observed:

"This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

Their Lordships of the Supreme Court rejected argument that wholesale cancellation of examination could not have been ordered without holding detailed enquiry into the matter and observed - "If there is sufficient material on which it can be demonstrated that the University was right in its conclusion that the examinations ought to be cancelled, then academic standards require that the University's appreciation of the problem must be respected. It would not be for the Court to say that you should have examined all the candidates or even there representatives with the view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury." Their Lordships then held:

"We are satisfied that no principle of natural justice was violated in this case. The Board through its Chairman and later itself reached the right conclusion that the

examinations at this Centre had been vitiated by practicing unfair means on a mass scale and the Board had every right to cancel the examination and order that a fresh examination be held. There was no need to give the examiners an opportunity of contesting this conclusion because the evidence in the case was perfectly plain and transparent."

In *Union Territory, Chandigarh v. Dilbagh Singh* (supra), the Supreme Court considered the issue involving cancellation of the selection made for appointment to the post of Conductors in Chandigarh Transport Undertaking. After the select list had been announced, the Chandigarh Administration got examined the same with reference to the marks awardable to the candidates for their educational qualifications and the marks awarded by the members of the Selection Board. It was then revealed that in the garb of awarding marks to the candidates for their performance at the interview, the members of the Board had selected the least qualified candidates. Accordingly, the Administration concluded that the select list had not been prepared fairly and judiciously and cancelled the same, although there was no clinching evidence of corruption attributable to the members. Chandigarh Bench of the Central Administrative Tribunal quashed the decision of the Administration on the ground of violation of the rule of *audi alteram partem*. While reversing the order of the Tribunal, the Supreme Court held that action of the Administration was neither arbitrary nor lacked bona fides and there were valid reasons for cancelling such dubious select list. Their Lordships further held that the order of cancellation is not vitiated because no direct evidence was made available to prove corruption charges against the members of the Selection Board in the matter of award of interview marks or because there was no opportunity of hearing afforded to the candidates included in the select list.

16. In *Krishan Yadav v. State of Haryana* (1994)4 S.C. 165, the Supreme Court considered challenge to the selection made by Haryana Subordinate Services Selection Board for Taxation Inspectors in the Excise and Taxation Department. The High Court dismissed the writ petitions filed for questioning the legality of the selection on the ground of fraud and manipulations. During the pendency of the appeal before the Supreme Court, their Lordships ordered a CBI investigation. After going through the report of the CBI, the Supreme Court quashed the entire selection and also imposed costs of Rs. 10,000/- on each member of the Selection Board. The relevant extracts of that judgment are reproduced below;

"Public offices, both big and small, are sacred trusts. Such officers 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 undue advantages. 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 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 it 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."

In *Union of India v. Anand Kumar Pandey* (supra), the Supreme Court upheld the cancellation of the result of selection made by the Railway Recruitment Board, Patna for appointment to various posts of non-technical popular categories in Eastern Railway. While rejecting the argument based on the violation of the rules of natural justice, the Supreme Court observed;

"The rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different from an examination held by college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case, the railway authorities have rightly refused to make appointments on the basis of the writ examination wherein unfair means adopted by the candidates. No candidate had been debarred or disqualified from taking the examination. To make sure that the deserving candidates are selected, the respondents have been asked to go through the process of written examination once again. Hence there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case."

In *Pritpal Singh v. State of Haryana* (Haryana), the Supreme Court confirmed the orders passed by this Court dismissing the writ petitions filed by the successful candidate questioning the legality of the decision taken by the State Government to cancel the selection made by Haryana Subordinate Service Selection Board for appointment of Assistant Sub Inspectors of Police. In paragraph 15 of the judgment, their Lordships referred to the record produced by the Solicitor General and held-" It is in the public interest that members of the police force should be selected objectively and fairly. The irregularities found in the instant

case show that the selection made by the Board was not objective and fair. It is, therefore, in public interest that selections and appointments made consequent thereon be quashed forthwith". The Supreme Court also rejected the argument that some deserving candidates would suffer adversely on account of quashing of the entire selection and observed-" It may be that there are among those selected some who deserved selection and who will, consequently, suffer as a result of this order. There is, considering the state of selection records, no way in which such man can be identified. The public interest out weights their interest."

17. In *Biswa Ranjan Sahu v. Sushanta Kumar and Ors.* (supra), the Supreme Court upheld the order passed by Cuttack Bench of the Central Administrative Tribunal which had quashed the selection made for appointment of Chargeman "B; in Mechanical and Electrical Division of the Railways and rejected the argument of violation of the rules of natural justice in the following words:

"In a case of mass malpractice, like the instant case, nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given appointment."

In *Hanuman Parshad v. Union of India* (supra), their Lordships of the Supreme Court relied on the report of the CBI which had found that malpractice had been committed in the examination and negated the argument of violation of the rules of natural justice by observing that no prior opportunity was required to be given in the case of mass copying.

18. In *Union of India v. O. Chakradhar* (Supra) the question considered by the Supreme Court was whether the selection made by the Railway Recruitment Board for appointment to the post of Junior Clerk-cum-Typist was vitiated due to manipulations and irregularities. Their Lordships took into consideration the report of the CBI and upheld the cancellation of selection by recording the following observations:

"The nature and extent of illegalities and irregularities committed in conducting a selection 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 so 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, 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.

As per the report of CBI the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances, it may not be

possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or action upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. The present case, therefore, is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selection and seek his explanation in regard to the large-scale widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The Railway Board's decision to cancel the selection cannot be faulted with and the order of termination of services of the respondent is upheld."

In *B. Ramjini v. State of Andhra Pradesh* (supra), the Supreme Court reversed the order of the learned Singh Judge of Andhra Pradesh High Court who quashed the cancellation of the examination on the ground of violation of the rules of natural justice. In the course of the judgment, their Lordships observed:

"These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centres. It is clear that so far as the center at the Anantapur District is concerned, there was enough reason for the Government to cancel the examinations. We have no doubt in our mind that what has weighed with the Government is the letter of the Collector accompanied by the report of the Superintendent of Police, though unfortunately the same does not seem to have been made available to the High Court, which was the basis for making the order on 15.5.1998 concealing the examination and holding of the fresh examination.

Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a fore-knowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the court should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the government to act one way or the other." The propositions which can be culled out from the above noted decision are:

(i) The rules of natural justice are not required to be followed in cases of

cancellation of selection which is vitiated due to fraud, manipulation, corruption or large scale irregularities and illegalities committed by those responsible for conducting the selection.

(ii) Even if some deserving candidates suffer on account of cancellation of such selection, the decision taken by the competent authority cannot be castigated as arbitrary or unreasonable.

(iii) The Court sustain the selection of some persons where the process of selection is vitiated due to manipulations, fraud etc. and it is in public interest that the entire selection is nullified.

(iv) The Court cannot sit in appeal over the decision of the competent authority. If some tangible material is available with the government for forming an opinion that the selections tainted, the court cannot interfere with its decision.

In the present case, the State Government had sufficient material for forming an opinion that the selections made during the tenure of Shri Ravinderpal Singh Sidhu were tainted by corruption, manipulations and large scale irregularities. The reports and documents submitted by Vigilance Bureau revealed the following features:

(a) Either question papers were leaked to the candidates or instructions were given to the examiners to give higher marks.

(b) In some cases, the marks awarded to the candidates were manipulated and upgraded.

(c) The result-sheets recovered from the Commission revealed that most of the candidates who paid money had been given very high marks in the interview.

(d) Those candidates who secured high marks in the written examination were given poor marks in the interview either because they were not to be selected and they had not paid money or for shunting them to the Allied Services.

(e) The procedure for appointment of examiners was entirely controlled by Shri Ravinder Pal Singh Sidhu and he gave instructions for award of specific marks to the chosen candidates.

(f) The irregularities found in the answer-books of some of the candidates selected for direct recruitment are detailed below by way of illustration:

1. Rahul Gupta (son of then member of PPSC) Paper Punjabi Marks originally awarded 46, increased by overwriting to 67.

2. The English answer sheets of two candidates namely Kuljeet Kaur (the Topper and daughter of Pherurai) and Deepak Arora, are verbatim identical. Further the answer sheets of both these candidates have been examined by the same examiners, Sh. Nirmal Kumar. However, the examiner has awarded 82 marks to Kuljeet Kaur and 62 to Deepak Arora. Efforts to trace this examiner are on.

Both are named by Randhir Singh in his statement as having paid Ravi Sidhu for their selection.

3. Kuljeet Kaur, the Topper has secured 75 marks in the Criminal Law paper, a subject of which she was never a student. After her B.A, in History she did M.A. in Sociology. Keeping in mind the fact that she did not have a background in law, the contents of the answer sheet are highly suspicious. It is also interesting to note that the examiner has simply awarded marks and there is no other marking by him in the entire answer sheet. In this paper the corrections carried out in the answer sheet, purportedly by the candidate, itself arouse suspicion.

4. The Criminal Law answer sheet of two candidates namely Kuljeet Kaur (the Topper and daughter of Pherurai) and Deepak Arora, are more or less identical. Further the answer sheets of both these candidates have been examined by the same examiner, Sh. Gurpal Singh. The examiner was also arrested.

Both are named by Randhir Singh in his statement as having paid Ravi Sidhu for their selection.

5. Amarbir Singh-Public Administration Paper, no marks awarded in the body of the answer sheet. Marks only appearing on the front page. He is named by Shamsher Singh in his interrogation as having paid Ravi Sidhu for his selection.

6. Rupinderjit Singh-in the Punjabi Literature paper has uniformly been awarded 15 marks in all the five questions attempted by him.

7. Two brothers, Jeewan Kumar Garg and Kamal Kumar Garg both sat for the same examination giving different sir names and address and variation in the name of their father, clearly with a view so that it does not appear that two brothers have been selected.

Both are named by Randhir Singh in his statement as having paid Ravi Sidhu for their selection.

8. Bharat Bhushan was awarded 72 out of 75 marks in the interview so as to ensure his selection. As a result of these unusually high marks he secured 431.75. The total marks of the last selected candidate were 422.50.

He is named by Randhir Singh in his statement as having paid Ravi Sidhu for his selection.

9. Hasuhinder Pal Singh Brar, (close relative of a sitting member), has been awarded extraordinarily high marks of 71 in the interview so as to ensure his selection. In the order of merit for the written examination he appeared at Sr. No. 102 so as to be propelled into the zone of selection. It may also be noted that only the Chairman sat in his interview Board.

10. Anita Darshi, belonging to the Scheduled Caste (OP) category and who was at Sr. No. 20 in the order of merit in the written examination was selected by being awarded extraordinarily high marks of 72 out of 75 in the viva voce. It is to

be noted that for these were extraordinary high marks given in the interview she would not have been selected.

11. Sukhwinder Singh Brar, ESM, who was at Sr. No. 20 in order of merit in the written exam, was awarded 65 marks to of 75 marks in the interview to facilitate his selection into PCS (EB). He is also named in the statement of Randhir Singh Dheera.

12. Randeep Singh, who was at Sr. No. 75 in the order of merit in the written exam, was awarded 65 marks out of 75 in the interview to facilitate his selection into PCS (EB). He is also named in the statement of Randhir Singh Dheera.

13. Yadavindra Singh, was at Sr. No. 123 in the order of merit in the written examination, was awarded 60 marks out of 75 in the interview.

Illustrations of potentially deserving candidates who were denied selection to PCS (EB) by giving unusually low marks in the interview. :

1. Gurkirat Pal Singh, who was fifth in the merit list in the written examination was awarded only 6 marks in the interview. It is worthwhile to note that this candidate subsequently was one of the Toppers in the IAS examination conducted by the UPSC, where he secured 236 out of 300 in the interview.

2. Aikrup Kaur who was 23rd in the merit list in the written examination was awarded only 20 marks in the interview. It is worthwhile to note that this candidate subsequently was selected to the IAS where she secured 216 out of 300 in the interview.

3. Nitin Bansal who was 8th in the merit list in written examination was awarded only 9 marks in the interview.

4. Baldev Singh who was 12th in the merit list in the written examination was awarded only 10.5 marks in the interview. He was also selected by UPSC where he secured 210 out of 300 in the interview.

5. Munish Markan who was 17th in the merit list in the written examination was awarded only 15 marks in the interview.

6. Rajiv Gupta who was 20th in the merit list in the written examination was awarded only 10 marks in the interview.

7. Anjali, who was 2nd in the merit list in the written examination in the S.C. category and who secured 11 marks more than Ms. Anita Darshi (the candidate selected) was awarded only 20 marks in the interview as against the 72 marks awarded to Ms. Anita Darshi so as to keep her away from the selection.

8. Karnail Singh, the Toppers in the ESM category which has one reserved seat and who had secured 38 marks more than the selected candidates was eliminated from PCS (EB) by the PPSC which gave him 16 marks in the interview as against 65 to the selected candidates,

9. Manisha Bansal, in the handicapped category almost 50 marks above the next candidate, was eliminated by being awarded only 9 marks in the interview as against 62 and 63 for the 2nd and 3rd selected candidates. It may be noted that she has been selected in the allied services by UPSC where she secured 165 out of 300."

(g) The details of the irregularities revealed in the recruitment made for appointment to PCS (Judicial Branch), as highlighted in the written arguments of the State are as under:

"1. Maninder Singh appeared in PCS (JB) Examination in the year 1999. He is alleged to have paid Rs. 50 Lakhs as bribe to Shri Ravinder Pal Singh Sidhu, Chairman, PPSC, through Randhir Singh Gill. His marks were increased by the Examiner Gural Singh by cutting and over-writing in his Civil-I Law-I Paper. The examiner Gural Singh has been arrested.

2. Miss Amol Gill was the topper in PCS (JB) Examination, 2002. She was awarded extra ordinarily high marks in the written examination. Her marks in the English paper have been increased from 65 to 127. Similarly, there have been many cuttings and over-writings in the marking of her Civil Law-I Answer Sheets.

3. Miss Monika Sethi who appeared for PCS (JB) in 2001 is alleged to have paid Rs. 33 lakhs through Randhir Singh Gill to Sidhu. Her marks have been increased from 102 to 162 by cutting and over-writing in her Criminal Law Paper by Examiner, Gural Singh.

4. Anil Kumar Jindal appeared for the PCS (JB) in 2001. His marks in Civil Law-II Paper were increased from 81 to 164 by cutting and over-writing by the Examiner, Gural Singh. Similarly, his marks in English Paper have also been ? increased by the examiner Jagdish Kalra. He is also alleged to have paid Rs. 30 lakhs to Sidhu, through Randhir Singh, tout. It is pertinent to mention that Anil Kumar Jindal appear for the post of DBPO in 1994, for the post of PCS (JB) in 2000 and for the post of Deputy Superintendent of Police in 2001 but he could not clear even one of the preliminary exams.

5. Navdeep Singh who appeared for the PCS Examination, 2001 also alleged to have paid Rs. 25 lakhs to Sidhu, through the tout, Randhir Singh Gill. It is pertinent to mention here that this candidate appeared twice in the Civil Services Examination in the years 1994 and 1995 but could not clear even the Preliminary stage. He also appeared in the PCS (Executive) Examination in the year 1999 and PCS (JB), 2001 but could not clear even the preliminary stage.

6. Mandeep Kaur who is the real sister of Purshotam Singh Sodhi, a tainted candidate in PCS (Executive) appeared for the PCS Examination 2001, is also alleged to have paid Rs. 25 lakhs to Sidhu, through Randhir Singh Gill. She was awarded extraordinarily high marks in the Examination. It is interesting to mention that this candidate had appeared of the Probationary Officers examination and the Clerical Cadre of he Banking Services Recruitment Board,

but she could not pass even the written part of these two examinations. (The above mentioned Navdeep Singh is her real nephew). It has been found the examiner of Civil Law-I Paper had pre-determined and allotted the marks on the title sheet of her answer script. He indicated 33 marks for Q.No. 3 (which contained 3 parts) on the title page but he awarded 33 marks for the two parts and left the third part of the answer unmarked but later on he distributed the 33 marks as shown by him on the title page to the three parts of the answers.

7. Preetinder Singh, who appeared in the PCS (JB) 2001 Examination is also alleged to have paid Rs. 2 lakhs to Sidhu, through the tout Randhir Singh Gill. He was awarded extraordinarily high marks in the written examination. It is pertinent to mention here that he appeared in PCS (JB) Examinations in the years 1998, 1999 and 2000 as well but could not clear any one of them.

8. Rajinder Bansal, candidate for PCS (JB) 2001 is also alleged to have paid Rs. 32 lacs to Sidhu through Randhir Singh Gill. He also appeared in the PCS (Judicial) Examination conducted by the Haryana PCS but could not clear the same.

9. Ram Saran, a candidate for PCS (JB) 2001 is also alleged to have paid Rs. 32 lakhs to Sidhu, through Randhir Singh Gill. He also appeared in PCS (Examination) in the year 1998 and in PCS (Judicial) in the year 2000 but could not clear any one of them.

10. Harvinder Singh appeared in PCS (Judicial) Examination, 2000. On perusal of his answer sheets, it has been found that his marks in Civil Law-II Paper, English Paper and Criminal Law Paper have been increased by cutting and over-writing."

h) Identity of interview marks

(Direct Recruitment): Out of 263 candidates interviewed selection for direct recruitment to PCS (Executive Branch) and Allied Services, 172 candidates were given identical marks by the interviewers. 20 candidates had difference of one mark and 58 candidates had difference of two marks. Thus, there was similarity of marks in almost 95% cases.

Nominated:

(1) In Register A-I and Register C (year 1996) pertaining to nominated candidates, there is 100% identity for both selectees and non-selectees. In case of Register A-2 for the year 1994, there is 100% identity in case of award of marks to 3 selectees. Considering the overall position of 18 selectees, there is a difference of 1 mark of 1 out of 3 interviewers in the marks of one candidate. Thus, same number of marks were awarded to more than 95% candidates.

(2) Even if all the 141 nominated candidates are considered there is a difference of 1 mark in 22 out of 25 cases. Larger difference is in only 3 cases. Then in 9 cases only one interviewer differs by 1 mark and in 1 case one interviewer differs by 2 marks. This again indicates an unusual pattern showing pre-planning and manipulation. Here also, some number of marks were awarded to more than

98% candidates.

3. OTHER FEATURES:

(1) Barring S.N.2 and 6 in the Direct Recruit (General Category), generally candidate at No. 75 and beyond in merit have been given 55 to 72 marks out of 75 have as without such high marks, they would not have got selected. They are S.N.7, S, 10, 11, 22, 27, 28 and 31. Those at S. No. 50 to 53, 59, 60, 76 and 94 are given very low marks to push them out.

(2) ESM

S. No. 1 in ESM category was 20th and second last in merit and is placed at the top of the merit by granting 65 marks out of 75 marks in interview. He is the only person to get such high marks. His academic record with 44% in BA is the poorest.

(3) Freedom Fighter Mandeep Singh Mann in category of freedom Fighter (1 post) was given 39 marks to go past the candidate above him in the written test.

(4) Handicapped.

In this category, the candidates in merit position at Sr. Nos. 2 to 5 were pushed out by giving low marks in interview and candidates at Nos. 6 and 7 were brought in by giving them exceptionally high marks. It is interesting to note that the candidates at Sr. Nos. 2 and 3 of the merit list got 42 and 46 marks more in the written test than the candidates at Sr. Nos. 6 and 7 who have been selected and they have better academic record being first divisioners in B.A. and M.A., whereas the selected candidates are only second divisioners.

(5) SCOP (Scheduled Castes of Punjab)

(1) S. No. 1 was very low in written test and gets 72 out of 75 in interview so that she tops. S. No. 2 tops in written but is given lowest in interview. This is incredible and indicates slot fixing.

(2) S. No. 4 and 5 not only get high marks in interview but same 50 marks by both interviewers and their written marks are also same 345.

From the above discussion and examination of the aforesaid illustrative cases and looking into the record including the statements of the alleged touts as made in Court u/s 164 of the Code of Criminal Procedure, there is no manner of doubt that it is not in a few cases only that corrupt means were adopted to secure the selection of candidates but the same modus operandi was being adopted in all the selections which vitiated the entire process of selections and that large scale corruption, irregularities, manipulation of marks and other illegalities are writ large in making selections by the Commission during the tenure of Shri Ravinder Pal Singh Sidhu. We have perused the statement of the alleged touts who have given the details of the modus operandi adopted by Shri Sidhu. The examiners were instructed to award specific number of marks to the chosen candidates and

pull down the other which resulted in the ouster of many meritorious candidates. The entire selection process during the tenure of Shri Sidhu was indeed a one man show. He appointed the examiners of his confidence who were playing to his tunes and whom he could trust in carrying out his nefarious plans. He could, indeed, get any one selected who could approach him either through money or through "Sifarish". It is difficult to say if one could be selected on merit during the tenure of Shri Sidhu and may be some were selected on merit as well but the whole process of selection having been polluted with corruption, it is not possible to identify them. The statement as made by the alleged touts were cross checked by the Vigilance Department and the government and it was found that corruption was all pervasive in the selection of candidates to different services during the tenure of Shri Sidhu. In the case of selection of PCS Judicial officers, the High Court on its administrative side had also examined the records including the answer sheets and noticed that the answers sheets of some of the non-selected candidates were qualitatively better than those selected and that the performance of most of the selected candidates was below average and that the marks given to them were disproportionate to their answers which even by the most liberal standards could not be justified. The High Court also found that there had been large scale tampering of marks in some of the answer sheets and that selections had not been made on merit. During the course of arguments, the record was produced before us including the answer sheets. We perused quite a few of them and found that the irregularities as pointed out in the earlier part of the judgment are there. Some of the answer sheets show that there are interpolations with the marks originally allotted by the examiners and this was obviously done with a view to ensure the selection of those candidates. The State Government was, therefore, justified in cancelling the selections in entirety and no fault can be found with its decision in this regard because in these circumstances grain could not be separated from the chaff and the meritorious candidates had also to suffer.

19. However, it may be noted that in order to mitigate the hardship of the deserving candidates who have been thrown out of employment the State Government has, while cancelling the selections decided, in all fairness to the candidates, to give to all of them another chance to get selected on merit by participating in the selections to be made afresh. The learned senior counsel - Shri Rakesh Dwivedi appearing for the State of Punjab also gave an assurance to the Court that all the candidates who participated in the earlier selections which have been declared null and void will be allowed to take part in the selection process to be held afresh no matter some of them may have by now crossed the age limit. He further assured us that such of the candidates who get selected again to the same service will be given their seniority with retrospective effect as if they had joined the service on their earlier appointment/selection. This is a very fair offer by the government and no candidate should have any grievance.

20. Before parting with this aspect of the case, we consider it proper to deal with the three judgments, on which considerable reliance was placed by the learned

counsel for the petitioners. In *Onkar Lal Bajaj v. Union of India* (supra) the Supreme Court quashed order dated 9.8.2002 issued by the Government of India for cancellation of all allotments made with respect to retail outlets, LPG distributorship and SKO-LDO dealerships awarded on the recommendations of the Dealers Selection Boards (DSBs) since 1.2.2000. Their Lordships noted that the selection made by 59 different DSBs were cancelled by one order simply because the allegations had been made in the newspapers about irregular allotments of 160 dealerships/distributorships. Their Lordships observed that the decision taken by the government which effected 3760 persons was vitiated due to total non-application of mind. In our opinion, that decision is squarely distinguishable on facts, inasmuch as, before ordering enmass cancellation of allotments made by 59 different DSBs, majority of which were headed by retired Judges of the High Court, the Government of India did not make any enquiry whatsoever and there was no application of mind. The Court also found that the decision taken by the Government of India was politically motivated because the name of the Prime Minister's relative was being involved. In paragraph 43 of the judgment, their Lordships observed as under:

"The mere reason that a controversy has been raised by itself cannot clothe the Government with the power to pass such a drastic order which has a devastating effect on a large number of people. In governance, controversies are bound to arise. In a given situation, depending upon facts and figures, it may be legally permissible to resort to such en mass cancellation where executive finds that prima facie a large number of such selections were tainted and segregation of good and bad would be difficult and time consuming affair. That is, however, not the case. Here the controversy raised was in respect of 5 to 10% as earlier indicated. In such a situation, en mass cancellation would be unjustified and arbitrary, it seems that the impugned order was a result of panic reaction of the Government. No facts and figures were gone into. Without application of mind to any of relevant consideration a decision was taken to cancel all allotments. The impugned action is clearly against fair play in action. It cannot be held to be reasonable. It is nothing but arbitrary."

In L.P.A. No. 431 of 1997 - *Haryana State Cooperative Land Development Bank v. Sunil Dutt*, the Division Bench found that the entire selection was not vitiated due to fraud or manipulations and the defects pointed out qua particular candidates did not justify wholesale annulment of selections and appointments.

21. In *Benny T.D. v. Registrar* (supra), the Court found that cancellation of the selection was not done by the employer but the Registrar in exercise of his power under Rule 176 of the Cooperative Societies Act, 1969 which required the giving of notice to the affected parties.

22. None of the three decisions can be relied upon for sustaining the petitioners challenge to the cancellation of selections made during the tenure of Shri Ravinderpal Singh Sidhu.

23. Having disposed of the petitioners challenge to the cancellation of selection and termination of their services on the ground of violation of the rules of natural, justice, we shall now deal with the other contentions of the learned counsel for the petitioners.

(i) The argument of the learned counsel that the First Information Reports registered against Shri Ravinder Pal Singh Sidhu and others and the statements of his touts, namely, Shri Jagman Singh and Randhir Singh Gill could not be relied upon for coming to the conclusions that the process of selection is tainted, is based on a misconceived assumption that the impugned decision visits them with criminal liability in fact, in these cases, we are not called upon to determine whether or not the particular candidates have committed any offence by paying money to Shri Ravinder Pal Singh Sidhu for ensuring their selection. Rather, we are only concerned with the legality of administrative decision taken by the State Government to cancel the selection on the ground that it is vitiated due to fraud, manipulations and corruption. Therefore, the decisions relied upon by learned counsel "for the petitioners laying down the proposition that the approver's testimony cannot be relied upon for recording conviction in a criminal case do not have any bearing on the issue raised before us and cannot be made basis for invalidation of the decision of the Government. Moreover, we find that the State Government had taken into consideration not only the First Information Reports registered against Shri Ravinder Pal Singh Sidhu and others and the statements of his touts but other records which revealed that the entire system of examination had been manipulated by Shri Sidhu by selecting the particular examiners; giving instructions to them to award specific marks to the favoured candidates; to award very high marks to some candidates in the interview and less marks to other candidates; leakage of question papers; manipulation of answer scripts and up gradation of marks of less meritorious candidates at the costs of more meritorious candidates. Thus, we do not find any justification to nullify the cancellation of selection on the ground that the decision of the Government is based on weak evidence.

(ii) The next question which needs consideration is whether the orders cancelling the appointment of those appointed to the PCS (Executive Branch) are vitiated due to violation of Rule 17 of the 1976 Rules, A perusal of that Rule shows that the Government can, for reasons to be recorded in writing and after giving an opportunity to the person concerned to represent against proposed action, remove the name of any person from any register of accepted candidates. In our opinion, this Rule is attracted only when the Government decides to take action against individual candidates whose names are placed in the various registers. In such an eventuality, the Government is obliged to afford an opportunity to the affected person to make representation against the proposed action. However, in a case like the present one where the very selection on the basis of which the names of the candidates were brought on the various accepted registers has been cancelled on account of pervasive influence of corruption and various irregularities and illegalities, Rule 17 has no application.

(iii) We are further of the view that Rule 17 can be invoked at the pre-appointment stage and it has no applicability after the selected candidate is offered appointment and such offer is accepted. After that stage, the government can take action only of termination of the appointment/service and not for removal of name from the register. That apart, in the present cases, no express order removing the name of any of the petitioners from the accepted registers has been passed. Therefore, the termination of the services of the petitioners cannot be invalidated on the ground of violation of Rule 17 of the 1976 Rules.

(iv) The argument of Sarvshri Rajiv Atma Ram. P.S. Patwalia and other learned counsel that the State Government could not have invoked Rule 23 of the 1976 Rule for termination of the services of those appointed to the PCS (Executive Branch) sounds attractive but cannot be accepted because it is settled law that a wrong description of the source of power cannot invalidate the action. It has not been disputed by the learned counsel for the petitioners that the State Government is competent to terminate the services of the petitioners and that the impugned decision is based on the reports submitted by the Vigilance Bureau showing that the selection made by the Commission during the Chairmanship of Shri Ravinder Pal Singh Sidhu were tainted by corruption and manipulations. In our opinion, the State Government possess inherent power to nullify all the actions taken in furtherance of tainted selection and orders dated 23.5.2002 cannot be quashed on the ground that Rule 23 is not attracted in such cases.

(v) Equally meritless is the argument of the learned counsel that some of the petitioners will be deemed to have been confirmed on the expiry of period of probation and their services could not be terminated except after following the procedure prescribed under the 1970 Rules and complying with the provisions of Article 311 of the Constitution of India. In this context, it is appropriate to mention that on account of order dated 29.4.2002 passed by this Court in Civil Writ Petition No. 6615 of 2002, the State Government did not take any action in the matter of confirmation of those appointees who had completed the maximum period of probation i.e. 3 years. The petitioners did not challenge the order passed by this Court restraining the State Government from passing the order of confirmation. Therefore, they cannot be heard to make a grievance against that order. Moreover, the State Government could have, on receipt of the information regarding large-scale manipulations and irregularities committed in the process of selection, decided not to confirm the petitioners on the expiry of the maximum period of probation i.e. 3 years. Hence, it is not possible to accept the argument advanced by the learned counsel on the basis of the theory of deemed confirmation.

For the reasons recorded above, we find no merit in the writ petitions and the same stand dismissed with no order as to costs.

24. Before parting, we shall like to place it on record that two members of this Bench (G.S. Singhvi and N.K. Sodhi, JJ.) who are the senior most Judges of this Court, were members of the two committees constituted by the High Court on

the administrative side to look into the factual position in the light of the press reports which were then appearing making oblique references amongst others to some of the Judges of this Court whose wards were reportedly selected by Commission. Both the committees looked into the matter and submitted their observations for consideration of the Full Court. The Full Court then decided to recommend to the State Government the termination of the services of all the candidates selected to judicial services during the years 1998 to 2001. When this bunch of writ petitions came up for hearing for the first time on 7.1.2003, we put it at the out-set to all the counsel for the petitioners as well as those for the respondents whether any of them had any objection to the hearing of the case by this Bench and their reply was an emphatic "No" which was recorded in the proceedings.