

(1989) 08 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6727 of 1986

Harjit Singh Sidhu and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Civil Service Examination Rules, 1983 — Rule 17, 2
Constitution of India, 1950 — Article 16, 226, 309, 320, 320(3)
Haryana Civil Service (Judicial Branch) Haryana (Amendment) Rules, 1974 — Rule 2, 8
Punjab Civil Services (Executive Branch) (Class I and II) Rules, 1976 — Rule 10, 10(1), 11, 12, 13
Punjab Labour (Class II) Service Rules, 1982 — Rule 7
Punjab Police Service Rules, 1959 — Rule 1, 10, 18, 19, 3
Punjab Tehsildars (Class II) Service Rules, 1984 — Rule 11, 4, 9

Citation : (1990) 1 ILR (P&H) 29

Hon'ble Judges : Ujagar Singh, J;M.M. Punchhi, J;A.P. Chowdhri, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Ujagar Singh, J.—The examination for filling up Posts of Block Development and Panchayat Officers were held by the Punjab Public Service Commission, Patiala and its final result was declared on 6th May, 1982. Civil Writ Petition No. 4759 of 1982 was filed by Sukhpal Singh Rattan and two others for a direction to consider the Petitioners for appointments to the Posts of Block Development and Panchayat Officers (in short BD & PO). This petition was decided, --vide judgment dated 23rd May, 1984. To challenge this decision, the State of Punjab and the Punjab Public Service Commission have filed Letters Patent Appeal No. 573 of 1984.

2. Another examination was held for filling up the extended Posts of Deputy Superintendent of Police and Jails and its result was declared on 16th June, 1985. CWP No. 666 of 1986 was filed by Mehar Singh Ghuman and others for a direction to fill up all vacancies falling as Deputy Superintendents against the

vacancies. On hearing this writ petition, a Division Bench of this Court was of the view that CWP 4759 of 1982 was not correctly decided and as judgment of the learned Single Judge was challenged in the above said LPA this writ petition was referred to a Division Bench.

3. CWP 6727 of 1986 was filed by Harjit Singh Sidhu and two others for appointment as Deputy Superintendent of Police. This petition was also directed to be put up with CWP No. 666 of 1986 and ultimately, both the writ petitions and the LPA came up for hearing before a Division Bench and finally, all the three cases were directed to be listed before the Full Bench.

4. The third examination was held for 64 posts requisitioned by the State Government, as detailed below:

Punjab Civil Service (Executive Branch)

PCS (EB)

24

Tehsildars

12

Labour Conciliation Officers

9

Assistant Employment Officers

3

Assistant Registrars Co-op. Societies

6

Excise & Taxation Officers

10

Consequently, the Public Service Commission held examination under the Punjab Civil Service (Executive Branch) Rules, 1976 and advertisement was given in the newspaper on 1st May, 1982. Ultimately, this examination was held and its result was declared on 26th June, 1985. The following recommendations were made:

General

S.C.

Backward

Ex-Service men

PCS (Executive Br.)

24

13

6

2

3

Tehsildars

19

9

4

1

5

Labour

..

..

..

..

..

Conciliation Officers

11

8

2

..

1

Assistant Employment Officers

6

3

1

1

1

Assistant Registrars Co-operative Societies

6

3

2

..

1

Excise & Taxation Officers

10

5

2

1

2

76

41

17

5

13

In respect of these results, Civil Writ Petition Nos. 3236, 3674, 4535, 4716, 4859, 5421 and 5468 of 1988 were filed in this Court. The same were disposed of by a common judgment dated 8th April, 1986 by G. C. Mital, J. Two Civil Writ Petition Nos. 9209 of 1987 and 4029 of 1988 were filed claiming mandamus for appointments to PCS (EB) Posts. These two Civil Writ Petitions were ultimately referred to Full Bench.

5. Civil Writ Petition Nos. 3236, 3674, 4535, 4716, 4859, 5421 and 5468 of 1985 were filed in this Court and they were decided by a common judgment dated 8th April, 1986 by G. C. Mital, J. Out of these, Civil Writ Petition Nos. 3236, 4535 and 5421 of 1985 were filed on behalf of Scheduled Castes candidates, while the remaining 4 writs were filed by Ex-Servicemen. The Scheduled Caste candidates challenged the selection made by the Commission to fill up the posts of PCS (Executive Branch) merely on the ground that out of the total posts, 25 per cent were reserved for the Scheduled Castes: 1/2 of them had to go to special category of Scheduled Castes known as Balmiki/Mazhabi Sikhs and the other to the other Scheduled Castes candidates, in the merit list and this rule was not followed. It was specifically mentioned that out of 74 posts, 19 posts had to be offered to the Scheduled Castes candidates and out of them 10 posts had to go to the candidates belonging to Balmiki/Mazhabi Sikhs and the remaining 9 to the other Scheduled Caste candidates, first post to be filled up by Balmikis/Mazhabi

Sikhs, second by other Scheduled Caste candidates, third by Balmikis/Mazhabi Sikh and fourth by other Scheduled Castes candidate and so on, whereas only 16 posts were offered to the Scheduled Caste candidates, 7 to Balmikis/Mazhabi Sikhs and 9 to other Scheduled Castes. After discussing the merits of the said 3 Civil Writ Petitions, it was found after going through the original merit list prepared by the Commission, that the appointments were being made strictly in accordance with merit and in view of the increased number of appointments to be made, 8 or 6 more Scheduled Caste candidates strictly on the basis of merit had to be appointed. It was urged by the learned Counsel for the Petitioners therein that the said balance seats must be filled up first from the persons who had approached this Court and if still vacancies remained, the same might be offered to the other members on merits despite the original prayer that vacant posts be filled on the basis of merit. This argument was not accepted. Since the Petitioners therein wanted an enquiry to find out, as to whether the appointments were being made on the basis of merit or irrespective of the merit, an allegation was made that the merit was being ignored. It was held that the Petitioners now could not turn round to say that the benefit of extended seats should be given only to those who had filed the writ petitions and not to those who had not come for impugning the action of the Government to be illegal or erroneous. Civil Writ Petition 3236 of 1985 was disposed of in view of the directions given therein that cases like that of Joginder Singh who was already working as Excise and Taxation Officer would be found out and the benefit of unfilled vacancy would go to the eligible candidate strictly on merit as found by the Commission. In Civil Writ Petitions 4535 and 4521 of 1985 filed by the Scheduled Caste candidates other than the special category mentioned above, it was held that candidates of the special category, were to be preferred to other Scheduled caste categories for the first reserved post. These two Civil Writs were also disposed of accordingly. So far as the Civil Writ petitions filed by Ex-Servicemen are concerned, it was held that 20 per cent vacancies were reserved for recruitment from amongst the released Indian Armed Forces Personnel. The unfilled vacancies in the reserve category could be carried forward for a continuous period of 4 years. After noticing the amendments made in the Punjab Civil Services (Executive Branch) Rules, 1972 in 1982 and 1984, it was directed that cases like those of Surinder Kumar and Harinder Singh would be found out by the Commission and all unfilled vacancies pending would go to the next eligible candidate strictly on merit as found by the Commission. With these observations, all the said 4 petitions were also disposed of. Against this judgment, 4 Letters Patent Appeals No. 54, 555, 593 and 831 of 1986 were filed by the ex-Servicemen candidates, but the same were dismissed.

6. Civil Writ Petition No. 666 of 1986 was filed by Mehar Singh Ghuman and others for directing the Respondents to recruit and fill all the vacancies arising and falling vacant of the quota of direct recruits in the category of Deputy Superintendent of Police from 1st August, 1981 to 14th June, 1985 from amongst the waiting list maintained by the Commission. The grounds mentioned

for the relief were that the Commission advertised on 1st August, 1981 9 posts of Deputy Superintendent of Police, 3 posts of Deputy Superintendent of Jails and 2 posts of Inspectors of Police and the Petitioners therein applied for all these 3 Categories. This advertisement was amended later on and number of posts of Deputy Superintendent of Police was increased to 17 and that of Deputy Superintendent Jails to 6. The Petitioners appeared in the written test and qualified. Ultimately interviews were held in March 1985. Result was declared by the Commission on 14th June, 1985 whereby it recommended 17 posts for Deputy Superintendents of Police and 6 posts for Deputy Superintendents of Jail, but no candidate was recommended for the post of Inspector of Police. With these results none of the Petitioners was selected and the above claim was made by the Petitioners.

7. This writ petition was resisted and,--vide order dated 5th August, 1986 a Division Bench of this Court finding the law laid down by the Supreme Court in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , running counter to the judgment in case *Sukhpal Singh Rattan and Ors. v. State of Punjab and Anr.* 1985 (1) S.L.R. 133, on which the Petitioners relied, admitted the writ petition to a Division Bench. As Letters Patent Appeal No. 573 1984 was pending against the judgment in *Sukhpal Singh Rattan (supra)*, it was ordered to be heard along with this Letters Patent Appeal. Civil Writ Petition 6727 of 1986 was filed by Harjit Singh Sidhu and two others with a prayer that the Petitioners therein, whose names are on the waiting list prepared by the Commission, should be appointed on the posts of Deputy Superintendent of police, going to be filled up by the Respondents and that the Respondents be directed to fill all the vacancies arising and falling vacant of the quota of direct recruits in the category of Deputy Superintendent of Police from 1st August, 1981 to 14th June, 1985 from amongst the waiting list maintained by the Commission. Vide order dated 15th May, 1987 this Writ petition was directed to be put up with Civil Writ Petition No. 666 of 1986. Both these writ petitions came up for hearing on 16th December, 1988, along with Letters Patent Appeal 573 of 1984 and,--vide order dated 16th December, 1988 in this Letters Patent Appeal, the Division Bench found that one of the points arising in both the said Civil Writ Petitions and the Letters Patent Appeal was regarding the correctness of the view expressed by S. S. Kang, J., in *Sukhpal Singh Rattan's* case (*supra*). Both these writ petitions and the Letters Patent Appeal were directed to be listed before the Full Bench for decision along with Civil Writ Petition No. 9209 of 1987 and 4029 of 1988. Civil Writ Petition No. 9209 of 1987 was filed by Gurinderjit Singh for a direction to the Respondents to fill up 16 posts from the direct recruitment in the PCS (Executive Branch) according to the advertisement issued on 9th March, 1985 and not to decrease the posts from 16 to 5 as per advertisement issued in September, 1987 and thereby not to take any action in filling 21 more names from 1984 Examination after the lapse of 6 months from the date of recommendation and seeking further direction to the Respondents to fill 16 vacancies from the next examination of 1987, as per the original advertisement

dated 9th March, 1985 and further 32 vacancies in the category to be filled up from the Examination of 1987. Another prayer was also made to restrain the Respondents from making any recommendation/appointment to the Service from 1984 examination. This petition was admitted,--vide order of the Division Bench dated 19th April, 1988. The other Civil Writ Petition No. 4029 of 1988 was filed by Varinder Pal Singh seeking a writ of mandamus to fill all the vacancies meant for direct recruits on the basis of 1984 Examination in the PCS (EB) and other allied services as the Petitioner was entitled to the appointment on the basis of merit list prepared for the result after viva-voce test. Another prayer made was to restrain the Respondents from taking action in pursuance of the subsequent advertisement dated 9th March, 1985 and from making any appointment to the Service till the decision of the civil writ petition. Both these civil writ petitions came up for hearing before M.R. Agnihotri, J. and,--vide order dated 5th October, 1988 the learned Judge referred both the petitions to a larger Bench. Ultimately these two writ petitions i.e. CWP 9209 of 1987 and 4029 of 1988 were referred to this Full Bench. This is how writ petitions No. 666 of 1986, 6727 of 1986, 9209 of 1987 and 4029 of 1988 and Letters Patent Appeal 573 of 1984 are before this Full Bench and all these matters are being disposed of by a common judgment.

8. Civil Writ Petition 4759 of 1982 was filed by Sukhpal Singh Rattan and 2 others, seeking a direction to the Respondents to consider the Petitioners for appointment to the posts of Block Development and Panchayat Officers (BD & P Os in short) on the recommendation of the Commission made in May, 1982.

9. This petition was contested by the Commission and there was no contest by the State of Punjab. One of the objections raised on behalf of the Commission was that a direction has to be given to prepare a waiting list and the Commission makes recommendations in accordance with Annexure P2 only if the concerned Department requisitions for it and only in cases where the selection is made on the basis of interviews only and this objection was held to be no impediment to the grant of relief to the Petitioners in the judgment dated 23rd May, 1984 passed by S. S. Kang, JJ. after final hearing It was specifically held that even if no waiting list is prepared, in the technical sense of the term a merit list of the candidates on the basis of their performance in the written test and interview, was available with the Commission and the Administrative Department was obliged to request the Commission to recommend the names for those 15 posts. This judgment of the learned Single Judge has been assailed in the Letters Patent Appeal filed by both the Respondents on the ground that the impugned instructions in Annexure P2 were not applicable to the facts of the present case; inasmuch the practice followed by the Commission was that it recommends for appointment only a specific number of candidates who have been requisitioned by the Government and the Commission maintains no waiting list of candidates for appointment which might subsequently have to be made.

10. Before proceeding further, Article 320 of the Constitution of India may be noticed:

320(1) It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointments to the Services of the Union and the Services of the State respectively.

(2) It shall be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.)

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted;

(a) on all matters relating to methods of recruitment to civil services and civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India, or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award;

and it shall be the duty of Public Service Commission to advise on any matter so referred to them and on any other matter when the President, or as the case may be the Governor of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or any particular class of cases or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

4. Nothing in Clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in Clause (4) of Article 16 may be made or as respects the manner in which effect may be

given to the provisions of Article 335.

5. All regulations made under the proviso to Clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the Sessions in which they are so laid.

To appreciate further the functions of the Commission the procedure for making recommendations may also be noted. For this a Booklet of Regulations and Instructions, Governing the Work of the Commission, printed by the Controller, Printing and Stationery, U.T., Chandigarh will be helpful in construing the powers and functions of the Commission. Part III thereof contains instructions and Part III-K contains instructions for holding of combined Examination for recruitment to similar posts/services and it contains services/posts in Group I thereof for which 1984 Examination was held. Paragraph 44 thereof is as under:

In order to rationalise allocation of candidates selected on the results of such examinations for the sake of uniformity and speedy decision, the following procedure has been evolved:

(i) The Department while intimating to the Punjab Public Service Commission the number, of vacancies to be filled on the basis of a combined examination in a year shall endorse a copy of the requisition to the Chief Secretary (in Department of Personnel and Admn. Reforms).

(ii) The Commission, while forwarding names of competitors in order of merit, shall clearly indicate the choice made by candidates in regard to preference for service. The list shall also include the names of candidates belonging to the Scheduled Castes/Tribes and other Backward Classes in order of merit. The Commission would simultaneously send to the Government the original applications of all the candidates equal to the number of vacancies including those reserved for Scheduled Castes/Tribes/other Backward Classes Plus five extra in each case to cover any additional vacancies. When advertisting for these posts the Commission will make it clear that the choice indicated by the candidates would be final unless changed before the final result becomes available.

(iii) In respect of services/posts for which the candidate had not indicated his choice, but are included in the category/categories for which the competition is held, the candidate will have an equal preference for those services/posts. Such candidate would be considered for any of those services, if he could not be allotted to a service of his preference.

(iv) On the basis of the Commission's list, a meeting of the Departments concerned will be called and candidates earmarked in the order of merit,

including reservation for the Scheduled Castes etc., for various services according to the vacancies indicated by the Departments. If at this stage the Departments can indicate additional number of firm vacancies, these will also be provided for.

(v) Having earmarked the candidates as above the Departments should proceed with the appointments after the formalities are completed. If by chance any candidate falls out as a result of verification of character and antecedents, medical examination, etc., a new appointment should not be made in place thereof as that would involve a revision of the whole list, but this vacancy should be carried forward as an additional vacancy to the next year. It is believed that the number of candidates who fail in the medical examination or whose antecedents are found to be unsatisfactory will be very small and the risk of ignoring this number can be easily taken, than running the risks of delays involved in reallocating the whole list.

(P.G. Circular No. 391-3GS-62/1443, dated the 11th January, 1962).

According to this paragraph, the Department has to intimate to the Commission the number of vacancies to be filled on the basis of a combined examination in a year. It shall endorse a copy of the requisition to the Chief Secretary (in Department of Personnel and Admn. Reforms). The Commission in its own turn and after holding a combined examination, has to forward the names of competitors in order of merit and clearly indicating the choice made by the candidates in regard to preference for service. Names of candidates belonging to Scheduled Castes/Tribes and other Backward Classes in order of merit, would also be included in the list. Along with recommendations, the commission would simultaneously send original applications of all the candidates equal to the number of vacancies, including those reserved for Scheduled Castes/Tribes/ other Backward Classes plus 5 extra in each case to cover any additional vacancy. In the advertisement for the posts requisitioned, the Commission has to make it clear that the choice indicated by the candidates would be final unless changed before the final result becomes available. After the list is received from the Commission, a meeting of the Departments concerned has to be called and candidates earmarked in the order of merit for various services according to the vacancies indicated by the Departments. If at that stage, the Department can indicate additional number of firm vacancies, the same will also be provided for. After earmarking the candidates at the said meeting, the Departments have to proceed with the appointments after formalities are complied with. Suppose by chance any candidate falls out as a result of verification of character and antecedents, medical examination etc., a new appointment should not be made in place thereof as that would involve a revision of the whole list, but this vacancy should be carried forward as an additional vacancy to the next year. According to the requirements of paragraph 44 of the Instructions, the Commission has to make an advertisement for filling up the posts requisitioned by the Government. The above said book-let Part III-A relates to instructions

issued by the Punjab Government and these instructions relate to the procedure to be observed by the Departments of the Punjab Government in their dealings with the Commission. In respect of classes of cases in which references are to be made to the Commission as required under Article 320(3) of the Constitution of India read with Public Service Commission (Limitation of Functions) Regulation, 1955, (hereinafter called Regulations) Clauses 10, 16 and 17 of this procedure are relevant and are reproduced as under:

10. When the advice of the Commission is required in regard to appointments to a service or post, in addition to asking for the order of priority among the candidates recommended, the reference to the Commission shall specify clearly--

(1) the number of posts to be filled;

(2) the qualifications required for such posts, which may be with reference to the rules of the service concerned where such rules exist; and

(3) Whether Government would like the Commission to invite an officer of the Department concerned to assist them in an advisory capacity. Such a request should only be made in the case of recruitment to technical services or to technical posts.

16. The normal convention is that the advice of the Commission should be accepted. In cases where it is proposed to disagree with the advice of the Commission, the Department concerned should communicate to the Commission the reasons for that course and pass no orders until their observations have been received and considered by the Council of Ministers in accordance with the Rules of Business.

In case it is proposed not to accept the advice of the Commission for reasons not before the Commission when its recommendation was made, the Commission will ordinarily be given an opportunity of reconsidering its opinion and, if necessary, of making a fresh recommendation:

Provided that no reference to the Commission under this instruction shall be made save with the previous concurrence of the Chief Secretary (in the Department of Personnel and Administration Reforms).

17. The Commission shall be informed of the action taken on their recommendations in all cases, including those relating to recruitment. Ordinarily, an endorsement forwarding copies of communications in which the orders are conveyed, recommendations are made or other action taken on merits referred to them will suffice.

11. According to the above clauses of procedure, in addition to asking for order of priority amongst the candidates recommended, reference to the Commission has to specify clearly the number of posts to be filled and the Commission gives an advice which under the normal convention has to be accepted and where it is proposed to disagree with such advice the Department concerned has to

communicate with the Commission the reasons. After the advice of the Commission is received and action by the authorities concerned is taken the Commission has to be informed of the action taken on their recommendations in all cases and every year every Department has to send to the Commission special assessment reports about the amount and quality of work done by the candidates recruited by the Commission for a period of three years or more as may be necessary. According to Part III-I of the said instructions to ensure that all cases of temporary appointments are brought to the notice of the Commission and a monthly return, in addition to normal intimation indicating all temporary appointments made without their approval has to be forwarded to the Commission and any omission on the part of the Department has to be treated as a serious irregularity. These instructions are binding on the Government as the President in respect of All India Services and the Governor in respect of other services and posts in connection with the affairs of a State may make regulations specifying the matters in which either generally or any particular class of cases or any particular circumstances shall not be necessary for the Commission to be consulted. The Commission is an independent body which functions without any outside interference. The purpose of Article 320 of the Constitution is to have an independent selection for appointments to the services of the union and the State and the Commission has to be consulted in respect of matters mentioned in clause three thereof. In the working of the Commission it has to give its own independent opinion for selection of candidates to be recruited for the posts requisitioned. The commission has no concern with the number of posts lying vacant with different Departments of the Government. It is only concerned with the vacancies for which requisition is made. On the receipt of requisition an advertisement is issued by the Commission and so far as the Government is concerned it cannot make any appointment beyond the qualified candidates recommended by the Commission and the order of merit inter se of the candidates has to be maintained while appointments are made. No candidate even if qualified has a right to be recommended. The recommendation is the privilege of the Commission and a candidate may be qualified but still may not be recommended by the Commission because of some standard considered by it to be essential for a particular appointment keeping in view the standard required for the purpose.

12. The Punjab Civil Services (Executive Branch) (Class I) Rules 1976 (hereinafter called "Service Rules") may be referred. In these rules "Administrative post in the Service" means a post shown in Appendix I to these rules and shall include any post which may from time to time be declared to be Administrative post in the Service for the purposes of these rules by the Government by a general order or a special order. Definition of "Service" is given in Rule 2 Clause (f) and it means Punjab Civil Service (Executive Branch) (Class I). Rule 4 of these rules makes it mandatory that all appointments to the service shall be made by the Government in consultation with the Commission. This rule thus mandates that without consultation with the Commission, no appointment

to the Service can be made by the Government, Rule 7 requires that appointment to the service has to be made in the manner provided in the rules from amongst accepted candidates whose names have been duly entered in accordance with these rules in the registers of accepted candidates to be maintained under these rules, Registers A.I, A.II. A.III,B. and C. have to be maintained by the Chief Secretary according to Rule 8 and the names of candidates for different posts have to be entered therein in different registers meant for different posts. Rules 9, 10 and 11 relate to the procedure of selection of candidates whose names have to be entered in the registers A.I, A.II and A.III respectively. Rule 12 mandates the holding of a competitive examination called "the examination" through the Commission for selection of as many candidates as Government may determine. A new Rule 13 has been substituted for the Rule 13 by Punjab Government Notification GSR 100/Constitution Article 309/Amendment (9)/88 dated 16th November, 1988 and according to this rule a preliminary competitive examination shall be held through the Commission for the purpose of selection of candidates for admission to the main competitive examination as specified in Rule 13-A (Again newly added by the said notification). Rule 13-A provides that a main competitive examination shall be held through the Commission for the purpose of selection by competition of as many candidates for the service as Government may determine and total number of candidates to be admitted to the main competitive examination shall not exceed 13 times the total number of vacancies determined by the Government, under sub-rule thereof. Rule 14 is the most important and decisive rule. It mandates that subject to the provision of Rules 13 and 13-A Government shall include in register B in order of merit determined by the Commission, the names of such number of candidates as it may, from time to time, determine from amongst those who have been declared as qualified in the main competitive examination by the Commission. Rules 12 and 14 are decisive in the bunch of the cases. Another Rule is Rule 19 according to which the candidates on the same register shall be appointed to the service in the order of merit assigned to them by the Commission while selecting as a batch for that particular register. These rules make it incumbent on the Government to maintain the merit determined by the Commission from amongst those who have been declared as qualified and these names have to be entered in Register B in which the entry of the names of the persons accepted as candidates as a result of main competitive examination has to be made. It is admitted case of the parties that a joint examination was held by the Commission for the posts of P.C.S. (Executive Branch), Excise and Taxation Officers, Tehsildars, Labour Conciliation Officers, Assistant Registrars Cooperative Societies, Employment Officers and total number of posts requisitioned was 64 and advertisement for these posts was made on 1st May, 1982.

13. The learned Counsel for the Appellants in L.P.A. No. 573 of 1984 has argued that no mandamus can be issued either to the Commission to make a recommendation or to the Government to make an appointment even out of the

recommendation. This is so inspite of the fact that there are number of vacancies to be filled. He has relied upon certain authorities which are being discussed hereunder:

14. In *Jatinder Kumar and Others Vs. State of Punjab and Others*, , the facts were that on 31st March, 1978 the Inspector General of Police, Punjab, sent a requisition to the Subordinate Services Selection Board to select and recommend 7 suitable person;; for the post of Assistant Sub-Inspectors of Police. While the matter was pending consideration 50 more posts of Assistant Sub-Inspectors of Police became available and, therefore, the Board was requested to recommend 57 suitable persons for these posts. Lateron, after the interviews were over but before the select list could be finalised by the Board the Inspector General of Police,--vide his letter dated 31st of August, 1979 requested the Board to recommend 170 more persons in addition to 57 already under consideration in anticipation of further vacancies likely to occur as a result of expected reorganisation of the police force. Thus, in all 227 candidates were to be recruited by the Board for the post of Assistant Sub-Inspectors of Police. The Board, however, recommended a panel of 144 candidates on 22nd of December, 1979. In the meantime, the proposal for disbandment of Punjab Armed Police Battalion and creation of additional posts in the Districts was turned down by the Government and, therefore, the anticipated 170 temporary vacancies of Assistant Sub-Inspectors could not be available. Out of the earlier 57 posts, however. 9 were offered to the wards of the deceased police officers and the remaining 48 posts were offered to the candidates recommended by the Board in order of merit determined by the Board. Since the remaining candidates recommended by the Board pursuant to the latter requisition were not appointed as there were no vacancies, the disgruntled candidates filed two petitions under Article 226 of the Constitution before the High Court. After reproducing the relevant provisions of Article 320 of the Constitution of India it was noted that the fact that there was no provision in the Constitution which makes the acceptance of the advice tendered by the Commission, when consulted, obligatory renders the provision of Article 320(3) only directory and not mandatory. The following observations of the apex Court can be quoted as under:

The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a high public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Commission. The selection by the Commission, however,

is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure,--vide Article 323 of the Constitution. This, however, does not clothe the Appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decisions of this Court in *A.N. D'Silva Vs. Union of India (UOI)*,) and *The State of Haryana Vs. Subash Chander Marwaha and Others*,). The contention of Mr. Anthony to the contrary cannot be accepted.

15. In *Mani Subrat Jain and Others Vs. State of Haryana and Others*, , the facts were that the Petitioners asked for a mandamus directing the Respondents to join the Petitioners to the posts of Additional District and Sessions Judge. The Petitioners also asked for a mandamus or an appropriate writ quashing the orders of the Respondents whereby the High Court was informed that the Government was not prepared to join the Petitioners to the posts of Additional District and Sessions Judge. After considering the facts of the case it was held as under:

It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something.

In this case the Government pointed out that the High Court had not written to the Government about the posts for appointment before issuing advertisement therefor. After the Government communicated to the High Court that the recommendations were not accepted a new situation developed. The Government asked the High Court to issue the advertisement and to invite the applications for the appointment on posts. The High Court accepted that position and acted upon. The High Court issued the advertisement. The attitude of the High Court was commented upon as peculiar in supporting the candidature recommended by

it, even after accepting the position of the Government that original recommendations were not accepted by the State Government and a new advertisement was issued. It is significant to mention here the further observations of the apex Court:

In regard to persons who are appointed by promotion or direct recruitment this Court has held that it is not open to the Government to choose a candidate for appointment by direct recruitment or by promotion unless and until his name is recommended by the High Court.

16. In *Baldev Singh and Ors. v. The State of Haryana and Ors.* 1988 (1) S.L.R. 377, the prayer for the issuance of a writ of mandamus was made by a number of Engineering Graduates for commanding the Haryana Public Service Commission to recommend their names to the State of Haryana for appointment against the forty-four posts lying vacant in the Haryana Service of Engineers Class-1 PWD (Irrigation Branch) required to be filled in by direct recruitment on the basis of open competition in accordance with the service rules. A reference to Sub-Rule 2 of Rule 7 was made and the same provided that the selection of candidates shall be made by the Commission after holding a competitive examination. The Commission shall then recommend the required number of candidates after arranging their names in the order of merit providing therein that a candidate shall not be considered qualified for appointment unless he obtains not less than 40 per cent marks in each subject and also not less than 50 per cent in the aggregate and no candidate who does not obtain the qualifying marks shall be called for interview by the Commission. After the requisition was received Commission advertised 22 posts of the Haryana Service of Engineers Class-I and after holding the selection names of 8 candidates were recommended for appointments. Thereafter, in the year 1983, State Government again sent a requisition for advertising 23 posts for the same service and the commission accordingly advertised the said vacancies. Again in the year 1985 an advertisement was issued wherein number of posts in the Public Health Branch as well as in the Buildings and Roads Branch were also added to the vacancies in the PWD (Irrigation Branch) for which a combined competition was to be held by the Commission. It was specifically mentioned in the advertisement that for the Public Health Branch the number of posts were 15 and for the Buildings and Roads Branch the posts were 8 but there was no such indication in the case of Irrigation Branch. In response to the advertisement number of persons applied yet only 500 persons, including the Petitioners, were called for the written test. Out of the aforesaid candidates who took the written-test, only 66 persons including the Petitioners qualified the same and 63 persons out of them were called for interview. After holding the interview the Commission did not recommend the names of any persons having been selected as suitable for appointment to Class I Service of Engineers in the Haryana PWD Irrigation Branch though for the Public Health and Buildings and Roads Branch of the P.W. D. names of the suitable persons were recommended by the Commission on 8th September, 1986. This resulted in the situation that whereas no suitable

candidate had been recommended to the Haryana Service of Engineers Class I Irrigation Branch for the vacancies falling in the quota of direct appointments, promotee officers belonging to Class II Service of Engineers were being allowed to continue to hold these posts, of Class I Service meant for direct recruits, on ad hoc basis for a considerably long period. The commission contested the Writ Petition on the ground that it had inherent jurisdiction to regulate its internal functioning and also to devise mode and method for the effective discharge of its constitutional functions under Article 320. The Commission further contested that it had evolved a criteria for selecting the most suitable candidates which criteria did not violate or come into conflict with the statutory rules framed under Article 309 of the Constitution. According to the Commission, the Service Rules provided for 50 per cent marks in the aggregate for eligibility of a candidate for a viva voce examination. Since the recruitment was for Class I Service evidently the cut off line for final selection had to be higher than 50 per cent in the aggregate including the viva voce examination and this cut off line was perfectly in order to select the best talent out of eligible candidates. There was said to be no violation of any constitutional or statutory provision. After hearing the parties the Division Bench of this Court held as follows:

The question of violation of quota would arise only if either - there is refusal on the part of the Haryana Public Service Commission to hold a selection for direct recruitment on the basis of combined competition, etc. or; on the part of the State Government in filling the posts by direct appointment out of the eligible and qualified persons available for the same. In the present case, firstly, no requisition whatsoever was placed by the State Government with the Haryana Public Service Commission for making a selection to the posts of Haryana Service of Engineers Class I and the commission of its own, anticipating the receipt of such a requisition in due course, issued an advertisement for holding a combined competition for the P.W. D., Buildings and Roads and Public Health Branches, as also for the Irrigation Branch. Secondly, even on the basis of the competition held, no list whatsoever of the selected candidates has been forwarded to the State Government, making any recommendations for appointment to the Haryana Service of Engineers Class I, in the P.W. D. Irrigation Branch. In such a situation, it cannot be attributed at all to the State of Haryana that it had the intention of violating or by-passing the statutory Rules. If as a result of the whole process, promotee officers belonging to Class II Service are being allowed to continue to hold on ad hoc basis the posts falling in the quota of direct recruits, it is only a fortuitous circumstance which is neither going to confer any right of promotion or seniority on them, nor can it be helped.

17. Another argument was raised that when the posts belonging to the quota of direct appointments are available and lying vacant to be filled up out of the direct recruits the State Government is duty bound to fill those posts by obtaining the list of qualifying candidates from the Haryana Public Service Commission and to make the appointments on the basis thereof. This argument was repelled by the Division Bench with the following observations:

In a situation like the present one, where the Public Service Commission has not found any candidate suitable for being recommended to the State Government for appointment to the Haryana Service of Engineers Class I, the mere fact that the posts are lying vacant does not empower the State Government to insist upon the Public Service Commission to send the list of non-suitable but found eligible candidates for appointment. Thus, the second contention of the learned Counsel for the Petitioners is also without force and is repelled.

With these observations, the case of *Neelima Shangla v. State of Haryana* 1986 (3) SLR 389 was distinguished. It was further held by the Division Bench as follows:

There is no such mandate in Rule 7(2) *ibid* which requires that Public Service Commission to forward the list of all the candidates who have qualified according to the pass percentage prescribed in the Rules. On the other hand, the Commission has to recommend the required number of candidates after arranging their names in order of merit, obviously as considered fit and suitable by it. The only proviso which imposes a rider on the authority of the Commission supports the Commission's stand that while recommending the names, the Commission must ensure that no person should be called for interview who did not obtain the qualifying marks in the written test and should not be recommended for appointment if he had not secured at least 50 per cent marks in the aggregate. There is no such fetter imposed on the power of the Commission to prescribe higher pass percentage for deciding the suitability of the candidates. Thus the contention of the learned Counsel for the Petitioners is without any force and is rejected.

18. In case *Ram Bhagat Singh v. The State of Haryana* C.W.P. No. 1313 of 1986, a direction was sought to declare ultra vires Rule 2 of the Haryana Civil Service (Judicial Branch) Haryana 1st Amendment Rules, 1974 and directing the Respondents to waive the condition in the case of Scheduled Castes in not obtaining at least 55 per cent marks in the aggregate including the viva voce. This case came up for hearing before a Division Bench of this Court and petitions failed and were dismissed. The Division Bench held as follows:

The purpose behind Rule 8, when it provides that no candidate, shall be considered to have qualified unless he obtains at least 55 per cent marks in the aggregate of all papers including viva voce test, clearly, is to lay down a standard for judging the fitness or suitability of a candidate for appointment as Sub-Judge. As it was at the time when Rule 7 was framed, possible for a candidate securing merely 45 per cent marks in the aggregate in written papers to obtain 55 per cent marks in aggregate of all the papers including written and viva voce test (marks allocated for viva voce test being 200), the Rule provided that persons securing less than 45 per cent marks in the written papers i.e. persons who could not, even if they secured 100 per cent marks (200 marks) in the viva voce, qualify for selection are not to be called for interview. Its purpose merely was to avoid futile interviews. However, when as a result of guideline laid

down by the Supreme Court in Ashok Kumar Yadav's case (supra), the Commission reduced the marks for interview /viva voce test from 200 to 120, its purpose was not to dilute the standard set up by Rule 8 for judging the suitability or fitness of a candidate for the job in the service. It is true that as a result of reduction in the marks allocated for viva voce test from 200 to 120, calling of the candidates securing between 45 per cent and 49 per cent marks in the written papers, for interview or viva voce test, has become redundant, but then it, in our opinion, has absolutely no impact on the standard set up by Rule 8 for judging the fitness or suitability of a candidate for the job. Merely because some candidates who could not possibly qualify, have been interviewed, it does not mean either that any legal right of theirs has been affected or that any prejudice is caused to them. In the result, we find that the incongruity pointed out by the Petitioners is not such, which, in any way, affects the validity either of the provisions contained in Rule 8 or that of their non-selection.

19. The rules involved in the present case relate to appointment to the posts of P.C.S. (Executive Branch) and there is lot of difference between these rules and Punjab Civil Service (Judicial Branch) Rules 1951 which provide a little different method. According to the latter rules the vacancies in the cadre of P.C.S. (Judicial Branch) whether permanent or temporary or officiating have to be filled in the order in which the names have been entered in the register maintained by the High Court. The entry into that register is made by the High Court after the Commission holds an examination and publishes the result thereof in the Punjab Government Gazette. The State Government selects the names in the order of merit and sends it to the High Court. The High Court then enters the names in the Register and out of these names the High Court recommends the candidates for appointment. This procedure was dealt with in case Shri Madan Mohan Aggarwal and Ors. v. The Punjab and Haryana High Court and Ors. 1981 (2) S.L.R. 23, wherein a Division Bench of this Court specifically held that the panel of selected candidates out of qualified candidates is sent by the State Government to High Court and the entry is made in the required register maintained by the High Court. Thereafter, High Court was not competent either to withhold or defer its entry in the register. It was also held that the High Court cannot take upon itself to recommend for appointments to the State Government candidates from the list of the Commission.

20. It was on the basis of P.C.S. (Judicial Branch) Rules that "Neelima Sangla"s case (supra) was decided and it was held therein by the apex Court that the State Government could not refuse to make appointments out of the list of qualified eligible and suitable candidates recommended by the Commission, if the vacancies are available against which such appointment can be made. In that case, Neelima Sangla had qualified the test and was held to be eligible but the State Government did not recommend her name for entry in the register maintained by the High Court.

21. In another case, Union of India v. M.V.V.S. Murthy 1987 (5) S.L.R. 708

wherein the Petitioner-Respondent took Civil Service Examination conducted by the Union Public Service Commission in the year 1983. This examination was a combined one for several services including Indian Police Service. In his application form against column 22, he mentioned his preference for Indian Administrative Service only-He was placed in 280th position in the final merit list and was found, not entitled to be recruited into the Indian Administrative Service i.e. the service of his choice. He expressed his ignorance about not being aware of the implications of not indicating the preferences, for various services and sought mistake to be condoned and gave his preferences informing the Union Public Service Commission. He was intimated on 14th August, 1984 by the Central Government that. he. was being considered for appointment in the Indian Police Service subject to the availability of vacancies in those services, taking into account his ranking in the merit list and preference for services. He did not join the training course but sat for the Civil Service Examination of 1984 and again was not successful for Indian Administrative Service or the Indian Police Service. In February, 1985 he received an offer of appointment on the basis of 1.983 examination to the Central Information Service, Group A. Thereupon he represented his claim that he was entitled for appointment to the Indian Police Service in consideration of the fact that last person offered such service had ranked 291 in the merit list of 1983. This request was rejected. The apex Court after considering the facts held as follows:

That being the position the Respondent who, had not opted for the police service could really have no grievance to make.. Rules 2 and 17 of the Civil Service Examination Rules, 1983 which are relevant in the matter of allocation-of services are also against the Respondent and support the stand of the Central Government.

With these observations the appeal of the Union of India was allowed and order of the Tribunal was set aside.

22. In case *Dr. Jai Narain Misra v. State of Bihar and Ors.* 1970 S.L.R. 923, the question of promotion to selection posts was involved. Seniority-inter se of the persons concerned was not relevant and it was for the Government to select such officers as it considered as most suitable. In this view the apex Court held "that the High Court was not justified in going into the question of seniority nor will we be justified in going into that question and so far as the question of suitability is concerned, the decision entirely rested with the Government and for discharging this responsibility it was open to the Government to seek the assistance of the Public Service Commission." In the facts and circumstances of this case, it was further held that the High Court was not justified in calling for the records of the Public Service Commission and going through the notings made by various officials in the Commission as well as the correspondence that passed between the Commission and the Government.

23. In *Jatinder Singh Bedi v. The State of Punjab* 1974 S.L.W.R. 360, Punjab Public Service Commission issued an advertisement inviting applications for 79

posts of temporary mechanical engineers in the Punjab P.W. D. out of which, two were for B. & R. Branch, two for Public Health Branch and 15 for Irrigation Branch. As a result of the interview the Commission sent its recommendations to the State Government. The Chief Engineer B. & R. Branch asked for 5 posts instead of two for his Department and after some correspondence the Government agreed to the appointment of five temporary Mechanical Engineers in B. & R. Branch. The Commission was requested to recommend names of five candidates instead of two, with a further direction that out of the five candidates to be recommended, one should be Scheduled Caste and one Ex-Serviceman. Before this communication could reach, the Commission had already recommended two candidates in accordance with the earlier requisition. No candidate belonging to the Schedule Caste or Ex-Serviceman had been selected nor was in the waiting list that had been prepared by the Commission with the result that a fresh advertisement was made on three posts of Mechanical Engineers on February, 3, 1973 specifically stating that one post was reserved for Scheduled Caste candidates and one for Ex-serviceman. This action on the part of the Commission was challenged in this petition but the same was dismissed. The matter came up in L.P.A. and the same contention was raised that according to the Government policy no fresh advertisement could be made and the selection had to be made by the Public Service Commission out of the merit list for filling the vacancies occurring within six months of the preparation of the merit list. It was held that there was no merit in this contention and the Government Policy according to which the vacancies occurring within six months of the preparation of the merit list by the Public Service Commission can be filled by the State Government out of the list so prepared without making a fresh advertisement was merely directory and not mandatory, and on the basis of that policy, it could not be justifiably argued that in a given case the selection should be made out of that merit list only, especially when such a selection results in negating the effect of some other policy of the Government. The Division Bench agreed with the learned Single Judge that no legal right of the Petitioner had been infringed by following the procedure by the Public Service Commission and that the Appellant could not raise any objection to the advertisement made by the Public Service Commission.

24. In *State of U.P. v. Rafiquddin and Ors.* 1988 (1) SLR 491, judicial service examinations were held by the Commission in 1970, 1972 and 1973. By 1st Notification by Commission dated 3rd September, 1970, 85 posts of Munsifs were advertised. 918 appeared but only 294 were called for viva-voce test. Only 46 candidates were recommended in the first list. Another request for more candidates was made to the Commission and minimum marks of 40 for qualifying the test were reduced to 35. On 25th April 1972 another list of 33 candidates was sent by the Commission. Thus, all the 79 candidates were appointed between May 1972 to 12th June, 1973 and ultimately on 17th July, 1973, seniority of all these 79 candidates was determined by the Commission on the basis of 1970 examination. Another examination was held in 1972 for 150

posts. Written test was held in November, 1973. Result was declared on 26th June, 1974 and 150 candidates were recommended and ultimately appointed between 1975 to 1977. Some of the unsuccessful candidates of 1970 examination made representation to the State Government for considering their case and the State Government,--vide its letter dated 24th July, 1973 requested the Commission which refused to consider the proposal of the Government as the minimum marks prescribed by the Commission under the then existing proviso to Rule 9 could not be ignored in judging the suitability of a candidate. In spite of this refusal a meeting of the Chief Minister, Chief Justice of the High Court and the Chairman of the Public Service Commission was held on 3rd May, 1974 and according to the decision in the meeting the Commission was to be requested to recommend such candidates of examination held in 1970 who might have secured 40 per cent or more marks in the aggregate but could not qualify in the viva voce. Commission was requested to forward the application forms and the marks obtained by such unsuccessful candidates who might not have qualified in the viva voce. The Commission informed the Government that the application forms and the other particulars of the unsuccessful candidates had been destroyed and, therefore, the Commission was unable to forward the names of such candidates as desired by the Government. However, a list of 37 candidates of 1970 examination who had failed to secure 35 per cent qualifying marks in the viva voce but had obtained 40 per cent or more marks in the aggregate was sent. The Commission's letter contained a note that the candidates mentioned therein had not been found suitable by the Commission. This was the third list containing the names of Rafiquddin and 36 others. Out of these 37 names the State Government appointed 21 candidates after obtaining the approval of the High Court. The remaining 16 candidates had again appeared in 1972 Examination and they were selected and had been appointed to the service. In March 1977, a seniority list of successful candidates of the competitive examination of 1970 was published and the said 21 candidates challenged the same. After considering the case in detail and referring to various authorities the apex Court came to the following conclusions:

The Commission had never made any recommendation for their appointment instead under the influence of the Government, it had forwarded the list without its recommendation. The appointment of unplaced candidates made in pursuance of the decision taken by the high level committee, is not countenanced by the Rules. There is no escape from the conclusion that the unplaced candidates were not appointed to the service on the basis of" the result of the competitive examination of 1970. Their appointments were made in breach of the Rules, in pursuance of the decision of the high level committee. It is well settled that where recruitment to service is regulated by the statutory rules, recruitment must be made in accordance with those rules, any appointment made in breach of rules would be illegal. The appointment of 21 "unplaced candidates" made out of the third list was illegal as it was made in violation of the provisions of the Rules. The High level committee which took decision for recruitment of

candidates to the service on the basis of the 40 per cent aggregate marks disregarding the minimum marks fixed by the Commission for viva voce test had no authority in law, as the Rules do not contemplate any such committee and any decision taken by it could not be implemented.

14. We are surprised that the Chief Justice, Chief Minister as well as the Chairman of the Commission agreed to adopt this procedure which was contrary to the Rules. The high level committee even though constituted by highly placed persons had no authority in law to disregard the Rules and to direct the Commission to make recommendation in favour of unsuccessful candidates disregarding the minimum marks prescribed for the viva voce test....

25. We may again refer to the powers of the Public Service Commission qua selections for appointments in public service. Our earlier observations may usefully be supported with the following valuable observations of the apex Court in Rafiquiddin's case (supra):

The Public Service Commission is a constitutional and independent authority. It plays a pivotal role in the selection and appointment of persons to Public Services. It secures efficiency in the public Administration by selecting suitable and efficient persons for appointment to the services. The Commission has to perform its functions and duties in an independent and objective manner uninfluenced by the dictates of any other authority. It is not sub-servient to the directions of the Government unless such directions are permissible by law. Rules vest power in the Commission to hold the Competitive examination and to select suitable candidates on the criteria fixed by it. The State Government or the high level committee could not issue any directions to the commission for making recommendation in favour of those candidates who failed to achieve the minimum prescribed standard as the Rules did not confer any such power on the State Government. In this view even if the Commission had made recommendation in favour of the unplaced candidates under the directions of the Government the appointment of the unplaced candidates was illegal as the same was made in violation of the Rules.

26. In another case *The State of Haryana Vs. Subash Chander Marwaha and Others*, , the facts were that on 3rd February, 1970, an advertisement was published in the Government Gazette to the effect, that Haryana Public Service Commission will hold an examination. for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). A number of candidates appeared in the competitive examination, result of which was-declared and published in the Haryana Government Gazette on April 6, 1971. Forty candidates obtained 45 per cent or more marks. From out of these candidates, the State Government made-only seven appointments in the serial order of the list according to merit. Respondents who ranked at No. 8, 9 and 13 in that list did not get an order of appointment although there were vacancies. The-view of the State Government and that of the High Court previously intimated to the State Government was that the candidates with less; than 55 per cent marks in

the examination should not be appointed as Sub-Judges in the interest of maintaining high standard of competence in judicial service. In the writ petition, it was claimed that since there were 15 vacancies and they had the necessary qualifications for appointment, the State Government was not entitled to pick and choose only seven out of them for appointment, because to do so would be to prescribe a standard which was not contemplated by the Rules but was against them. The contention on behalf of the State was that the rules did not oblige them to fill any of the vacancies and that it was open to them to appoint the first seven candidates from the list in the interest of maintaining high standards. This Court agreed to the view of the State Government in that Writ. It was" not disputed that the mere entry in the list of names of candidates as required by Rule 10(1) of the Rules does not give him a right to be appointed. It was also not disputed that the advertisement for 15 vacancies to be filled does not also give him a right to be appointed. The apex Court observed that it may happen that the Government for financial or other reasons may not fill up any vacancy.

27. The following observations from the judgment are most relevant:

There is no question of the High Court making any recommendations. Once the State Government has selected? the names of the candidates strictly in accordance with the list, such selection for appointment is intimated to the High Court and the candidates so selected by Government for appointment are to be entered by the High Court in a Register in the order of the selection. Obviously the Registrar is to be kept by the High Court because the High Court knows in its administrative capacity what vacancies have occurred and which are the Courts to which the appointments have to be made. The service Rules have been made in consultation with the Public Service Commission and the High Court and, therefore, they are binding on all. They show that the examination is the final test apart from medical examination as per Rule 11 in the part C for a candidate's appointment to the post of Subordinate Judge and once the list is prepared by the Public Service Commission strictly in order of merit, neither the Public Service Commission nor the State nor the High Court can depart from the order of merit given in the list except where reservations have been made in favour of backward classes and Scheduled Castes and tribes in accordance with Rule 10 (ii).

6. In the present case it appears that about 40 candidates had passed the examination with the minimum score of 45 per cent. Their names were published in the Government Gazette as required by Rule 10(1) already referred to. It is not disputed that the mere entry in this list of the name of a candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have right to be appointed. The list is merely to help the State

Government in making the appointments showing which candidates have the minimum qualifications under Rules. The stage for selection for appointment comes thereafter, and it is not disputed that under the Constitution it is the State Government alone which can make the appointments. The High Court does not come into the picture for recommending any particular candidate. After the State Government have taken a decision as to which of the candidates in accordance with the list should be appointed, the list of selected candidates for appointment is forwarded to the High Court and the; High Court then will have to enter such candidates on a Register maintained by it. When vacancies are to be filled the High Court will send in the names of the candidates in accordance with the select list and in the order they have been placed in that list for appointment in the vacancies. The High Court, therefore, plays no part except to suggest to the Government, who in accordance with the select list is to be appointed in a particular vacancy. It appears that in the present case, the Public) Service Commission had sent up the rolls for the first 15 candidates because the Commission had been informed" that there are 15 vacancies. The High Court also in its routine course had sent up the first 15 names to the Government for appointment.

28. The Commission has a distinct and distinguished status under our Constitution and cannot and rather should not indentify itself with the Government authorities. The powers of this Court under Article 226 of the Constitution of India cannot be invoked to make directions to the Commission for recommending any candidate for appointment to a public service post as it would amount to interference in its working as an independent institution having a peculiar and distinct status. The purpose behind giving this status to the Commission, is apparent and not hard to seek. The framers of the Constitution wanted such an independent body to select such qualified persons as were expected to do their duties effectively and without any interference therein. With that intention in view, the Commission has given powers to recommend appointments of only those successful candidates who were thought to be capable to fulfil" the intention of the framers of the Constitution.

29. A reference was also made by the learned Counsel to the-case J.R. Raghupathy and Others Vs. State of A.P. and Others, . That was a case where the High Court interfered with the location of Mandal Headquarters and quashed the notifications issued u/s 3(5) of the Andhra Pradesh Districts (Formation) Act, 1974, on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the Headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The apex Court held these guidelines for location of headquarters merely in the nature of instructions of the Government to the Collectors. The Government was held to have discretion in the matter of formation of a revenue mandal or location of its headquarters in the nature of things and the Government was necessarily left with a choice in the use of the discretion conferred upon it. The

judgment of the High Court was thus set aside and it was specifically held that the -High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ Petitioners.

30. The learned Counsel for the Respondent in the L.P.A. and some of the writ Petitioners seeking appointments have vehemently urged that the administrative instructions given by the Government are binding on it and once there are vacancies the Government has to fill up those vacancies after intimating the same to the Public Service Commission and thereafter once a candidate is qualified in the examination held by the Public Service Commission he has a right to be appointed to the vacant post or to a post which is likely to be available within six months of the result of the examination held by the Commission. The counsel have relied upon on the following authorities in support of their arguments.

31. Bhanwar Singh Bhup Singh Rajput Vs. State of M.P., is a case where date of birth of the Government servant in his service book was alleged to be incorrect. Similar disputes were involved in Sohan Singh Bawa v. State of Haryana and Anr. 1967 SLR 934, Manak Chand Vaidya v. State of Himachal Pradesh and Ors. 1976 (1) SLR 402, Hari Parshad Honda v. State of Punjab and Anr. 1984 (3) SLR 737, S. Selvavinayagam v. State of Tamil Nadu and Anr. 1985 (3) SLR 412, Brigadier Prithvi Raj v. Union of India 1986 (1) SLR 754. In these cases Petitioners prayed for a writ of mandamus for correction of the date of birth and in circumstances of each case the High Court decided these cases in accordance with the facts involved therein. However, these cases have no relevancy with the controversy in the present case.

32. Case of Gladson Menino Vaz and Anr. v. Dean Goa Medical College AIR 1981 Goa 21 relates to admission of first year M.B.B.S. Course and prospectus, therefore. It was held that the prospectus ?amounted to promissory estoppel and could be enforced against authorities by a writ petition.

33. In Syed Shamin Ahmed v. The State and Ors. 1981 (1) SLR 100, Union of India V. K.P. Joseph and Ors. 1973 (1) SLR 910 and Union of India v. Anglo Afghan Agencies etc. AIR 1968 SC 718, it was held that the circulars or instructions issued by the Government were binding on the Government.

K.K. Jagia v. State of Haryana 1984 (2) SLR 741, Government was held to be under obligation to follow the administrative instructions in the absence of Rules.

34. Another case, Paramjit Singh Sandhu and Others Vs. Ram Rakha Mal and Others, , has been relied upon in C.W.P. No. 6727 of 1986 wherein one of the parties filed the Civil Misc. petition seeking verification/directions but in substance one for quashing the seniority list prepared by the State of Punjab in respect of the cadre of Deputy Superintendents of Police in Punjab Police Service. The Supreme Court had earlier pronounced judgment in this case on March 22,

1979 reported in *Paramjit Singh and Others Vs. Ram Rakha and Others*, . The seniority list was challenged on the ground that it had not been prepared in conformity with the judgment but in contravention of the same. After construing Rule 3, 6, 8 and 10 of the Punjab Police Service Rules 1959, it was held that there was no ambiguity in the judgment and ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both the sources after the recruitment seniority is determined, from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. The following further observations may be usefully reproduced below:

These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be correlated to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said: "The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. The quota in the present case is 4:1 that is four promotees to one direct recruit.

This case does not help the Petitioners on the point involved in this case.

35. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , a proprietor of the Cinema theatre holding a licence for exhibiting cinematograph film with no objection certificate granted under the rules, was held not entitled to invoke the certiorari jurisdiction to get a no objection certificate granted under the rules in favour of a rival in the trade quashed. The apex Court held that to have a locus standi to invoke this jurisdiction the Petitioners should be an "aggrieved person" meaning of which depended on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the Petitioner's interest and the nature and extent of the prejudice and injury suffered by him. The petition was dismissed.

36. After having discussed the legal position we take up individual cases. L.P.A. No. 573 of 1984 arises out of the judgment dated 23rd May, 1984 of the learned Single Judge in C.W.P. No. 4759 of 1982. The claim in the petition was that an

advertisement No. 34 was published in the Tribune dated 12th March, 1979 for 9 posts of B.D. and P.O. and the Petitioners applied. Thereafter, another advertisement was made in Tribune dated 18th March, 1978 for 13 posts of said officers and the persons like the Petitioners who had already applied in response to 1979 advertisement, were not required to apply again. Petitioners took written examination and after written examination, interviews were held. The final result was published in the Tribune dated 11th May, 1982 and Petitioners were not recommended for appointment to the said posts. But the Petitioners believed that their names were on the waiting list. According to the claim made additional vacancies could be filled up within six months from amongst the recommendations of the Commission for the vacancies advertised earlier and if the additional vacancies arise after the expiry of the six months another advertisement has to be made. On 8th May, 1982, another advertisement for 15 posts of the said officers was made which was totally contrary to the instructions. A representation was made but to no avail. The additional advertisement dated 8th May, 1982 which is Annexure P-3 has been challenged solely on the ground that these vacancies had arisen within six months of the recommendations as a result of the earlier examination and, therefore, fresh advertisement was illegal and liable to be quashed and if examination was allowed to be held in view of Annexure P-3 the Petitioners' case would be prejudiced. It has been further brought to the notice that out of the 13 posts earlier advertised only 11 had been filled up. To this petition the State Government did not file any written-statement. Only the Commission filed its written-statement by way of affidavit of Shri Shamsher Singh, Under Secretary, and therein he averred that a waiting list had not been prepared and no direction was received from the State Government. The Commission considers the request of the Department concerned in the light of the instructions contained in Annexure P-2 and recommends the candidates if they fall in the zone of selection. Said 15 posts of the officers were requisitioned and on receipt of this requisition advertisement was made. The Petitioners were said to have no right to claim privilege on the fresh posts advertised and out of the 13 posts already advertised only two posts were lying unfilled due to non-availability of Ex-servicemen for which the State Government was asked to get "no objection certificate" from the Defence Welfare Department to fill up the said posts from the General Category candidates. An objection was also made the Petitioners have no locus standi to challenge the advertisement Annexure P. 3. Another objection was that a period of six months had elapsed since the publication of the said advertisement and the closing date for submission of application forms in answer to Annexure P.3 had expired on 7th June, 1982.

37. The averments from both sides make it clear that the Petitioners were not recommended by the Commission for appointment against the posts advertised and no waiting list was prepared for recommending candidates out of the examination held for additional vacancies.

38. The learned Single Judge accepted the Civil Writ Petition on the ground that

the executive instructions contained in Annexure P. 2 are binding on Respondent Mo. 1 and if any right is conferred on any citizen by these instructions, the same can be enforced by this Court. Reliance was placed on case *Union of India v. K. P. Joseph and Ors.* 1973 (1) SLR 910, wherein an administrative order provided certain benefits to Ex-military personnel on re-employment on the basis of their length of actual military service and it was held by the apex Court that it conferred a right relating to conditions of service and the Court should enforce it. It was further observed therein as under:

39. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , this Court, in considering the nature of the Import Trade Policy said:

Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities.

40. To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice of *audi alteram partem*, into this area. A very perceptive writer has written:

Let us take one of Mr. Harrison's instances, a regulation from the British War Office that no recruit shall be enlisted who is not five feet six inches high. Suppose a recruiting officer musters in a man who is five feet five inches only in height, and pays him the King's shilling: afterwards the officer is sued, by the Government for being short in his accounts; amongst other items he claims to be allowed the shilling paid to be undersized recruit. The Court has to consider and apply this regulation and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last will must have two witnesses. (John Chipman Gray on "The Nature and Sources of Law").

We should not be understood as laying down any general proposition on this question. But we think that the Order in question conferred upon the first Respondent the right to have his pay fixed in the manner specified in the order and that was part of the conditions of his service. We see no reason why the Court should not enforce that right.

41. Another reason given by the learned Single Judge is that even if no waiting list is prepared, in the technical sense of term, a merit list of the candidates on the basis of their performance in the written-test and interview was available with the Commission and the administrative Department was obliged to request the commission to recommend the names for these 15 posts which too fall in the zone of selection. Ultimately the learned Single Judge directed the Commission to find out if any of the Petitioners falls, on the basis of his performance, in the competition held by it, in the zone of selection for any of the posts for which advertisement was published in the Tribune dated May 8. 1982. If so. the

Commission was directed to make recommendation to Respondent No. 1 in terms of the Circular Annexure P-2 and if one of the Petitioners or all the Petitioners are recommended by the commission, Respondent No. 1 was directed to consider them for appointment to the said posts. Thus judgment has been challenged on the ground that the Commission recommends for appointment only a specific number of candidates for the vacancies which have been specifically requisitioned by the Government and the Commission maintains no waiting list of candidates for appointments which might subsequently have to be made. This L.P.A. came up for hearing on 1st August, 1984 and a Division Bench of this Court admitted the same and stayed the operation of the judgment of the learned Single Judge, till further orders. Civil Misc. No. 1950 of 1984 was filed by the Petitioners for vacation of the above stay. After issuing notice of this Civil Miscellaneous the Division Bench dismissed the same and confirmed the stay order already granted. In reply to this Civil Miscellaneous the Commission asserted that no irreparable loss or injury was caused to the Respondent. It was also added that in compliance with the judgment of the learned Single Judge the Commission took up the case and in its special meeting dated 13th June, 1984 found that Sukhpal Singh Rattan had not even qualified in the interview, and the merit of the other two Petitioners was far below the names of the candidates recommended in respect of various categories. In other words, none of the Petitioners was found to be in the zone of selection. It was, therefore, replied that the said order does not effect the seniority of the Petitioners in subsequent interviews. In view of the above facts this writ petition was liable to be dismissed. This L.P.A. is accepted, the judgment of the learned Single Judge is set aside and the writ petition is dismissed. Parties are left to bear their own costs.

42. In Civil Writ Petition No. 666 of 1986 filed by Mehar Singh Ghuman and others, the Petitioners prayed for a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to recruit and fill all the vacancies arising and falling vacant to the quota of direct recruits in the cadre of Deputy Superintendents of Police between 1st August, 1981 and 14th June, 1985 from amongst the waiting list maintained by the Commission. The grounds given are that the Commission advertised 9 posts of Deputy Superintendents of Police, 3 posts of Deputy Superintendents of Jail and two posts of Inspectors of Police on 1st August, 1981. By an amendment number of posts of Deputy Superintendents of Police was increased to 17 and that of Deputy Superintendents of Jail to 6. The Petitioners qualified the written test. Thereafter interview was held, in March 1985 and the Commission declared the result of selection on June 14, 1985, thereby recommending 17 candidates for the posts of Deputy Superintendent of Police and 6 for the posts of Deputy Superintendent of Jail. No candidate was recommended for the post of Inspector of Police and none of the Petitioners was selected for any of the posts. It is further claimed that during the said period Respondents Nos. 1 and 2 filled 101 posts of Deputy Superintendent of Police by way of promotion from amongst Inspectors, and detail of which has been given

in the (petition. According to the Rules, 80 per cent of the posts of Deputy Superintendent of Police are to be filled by promotion from the rank of Inspectors of Police and 20 per cent by direct recruits. Relying on Paramjit Singh Sandhu and Others Vs. Ram Rakha Mal and Others, , it is claimed that as against 101 promotions 25 vacancies had to be filled up by direct recruits and the Respondents were bound to fill the quota of these 25 posts and these 25 vacancies were available after June 14, 1985 when the result was declared by the Commission and out of the names recommended by the Commission this quota was to be filled within six months of the selection. Ultimately, the reliance was placed on the judgment of the learned Single Judge appeal against which is LPA mentioned above. The reply to this petition by Respondents Nos. 1 and 2 was given through the written statement of Shri B. S. Dhariwal I.P.S. Director General of Police and it mentioned therein that the Petitioners competed for 17 posts of Deputy Superintendent of Police. It was admitted that promotions to the rank of Deputy Superintendents of Police were made on 28th October, 1983, 24th May, 1984, 21st August, 1984 and 10th April, 1985. Requisition for number of posts was made from time to time and ultimately in all requisition for 17 posts was placed and the Commission recommended 17 candidates on 14th June, 1985. The Petitioners could not ask for any direction for requisition to be placed with the Commission. It is also asserted that 20 posts had already been filled up through direct recruitment and correspondence for placing requisition for 9 more posts with the Commission was going on. This comes to 29 posts which is the quota of direct recruits out of 144 posts of the Deputy Superintendents of Police. The Government was requested through letter dated 17th December, 1986 to accord approval for placing requisition for these posts and the contention of the Petitioners that the Director General of Police requested the Government, for filling up these 9 posts out of the candidates who had already competed the test was wrong. Reply to this petition by the Commission was filed by Shri Jatinder Singh Falha Secretary of the Commission and it was asserted therein that posts of Inspectors of Police were withdrawn from the purview of the Commission being Class III posts and the Petitioners could not be selected because they could not qualify for selection on the basis of merit. This petition came up for hearing on May 12, 1986 before a Division Bench of this Court and it was directed to await the judgment in CWP No. 2939 of 1985 and the case was adjourned to 5th August, 1986, when the Division Bench admitted this petition to Division Bench and ordered the same to be heard along with said L.P.A. No. 573 of 1984, observing that the judgment of the learned Single Judge ran counter to the law laid down by the Supreme Court in State of Haryana v. Subhash Chander Marwah and Ors. AIR S.C. 2216, and, therefore, the judgment of the learned Single Judge needed reconsideration. We have considered the legal position and have found that no mandamus can be issued, either against the Commission or against the State Government for filling of vacancies if there are any. Moreover, from the reply of Respondents Nos. 1 and 2 we find that out of the quota of direct recruits, only 9 vacancies were there. For these vacancies Respondent No. 2 was taking up the case with Respondent No. 1 for sending a requisition to the

Commission.

43. As mentioned above, LPA No. 573 has been accepted, judgment of the learned Single Judge has been set aside, and the writ petition has been dismissed. In that view of the matter, we do not find any merit in this petition and the same is hereby dismissed.

44. In C.W.P. No. 6727 of 1986, the Petitioners Harjit Singh Sidhu and two others claimed a writ of mandamus or any other suitable writ against the Respondents on the grounds that the Petitioners were then working as Deputy Superintendents of Jail Grade II (under training) as they were appointed through the Commission as direct recruits the Petitioners Nos. 1 and 2 belonged to General Category whereas Petitioner No. 3 belonged to reverse category of Scheduled Castes. The advertisements are the same as in Civil Writ Petition No. 666 of 1986. The Petitioners claimed to have applied for both the posts of Deputy Superintendents of Police and Deputy Superintendents of Jails. It is also mentioned that out of these posts of Deputy Superintendents of Jail Grade II one was reserved for Scheduled Castes and one for Ex-Servicemen. Out of 17 posts of Deputy Superintendents of Police 4 were reserved for Scheduled Castes, one for Backward Classes and two for Ex-Servicemen. The examination was held by the Commission and the Petitioners are said to have been declared successful. After physical fitness test and interview in March 19. 1985 final result was declared on June 14, 1985. Names of the Petitioners Nos. 1 and 2 appeared at serial No. 13 and 14 out of the general merit, whereas that of Petitioner No. 3 appeared at serial No. 5 of the list reserved for Scheduled Castes. 10 persons were recommended from amongst general category candidates, 4 from amongst Scheduled Castes Candidates, one for Backward Classes and two amongst from Ex-Servicemen. As the Petitioners Nos. 1 and 2 at serial No. 13 and 14 were not given the appointment of the post of Deputy Superintendent of Police and since Petitioner No. 3 was at serial No. 5 of the Scheduled Castes merit list he was also not given appointment of the Deputy Superintendent of Police as only 4 posts were reserved for Scheduled Castes. However, since all the Petitioners had also applied for the post of Deputy Superintendent of Jail Grade-II they were appointed to this post and at present undergoing training as Deputy Superintendent of Jail Grade-II. Rule 6 of the Punjab Police Service Rules 1959 has been relied upon and quota of 80 per cent by promotion and 20 per cent by direct recruitment as upheld in Paramjit Singh Sandhu's case (supra) wherein it was held that whenever vacancies occurred in the service the appointing authority is to fill in the rotation 4:1 and Rule 1 is invoked. Reliance is made on the admission to hearing of Civil Writ Petition No. 666 of 1986. This petition came up for hearing on May 15, 1987 when the Division Bench of this Court directed it to be put up for hearing alongwith CWP No. 666 of 1986 and according to the order in that petition, it was to be heard along with LPA No. 573 of 1984.

45. Written-statement to this petition on behalf of Respondents Nos. 1 and 2 is

almost the same as in CWP No. 666 of 1986. Written statement of Respondent No. 3 has been filed by Shri Avtar Singh OSD and instructions dated 22nd March, 1987 are said to have been held good in Sukhpal Singh Rattan's case (supra) against which LPA No. 573 of 1984 is pending. It is averred therein that Respondent No. 1 had not sent any fresh requisition to the answering Respondent to fill the alleged vacancies and, therefore, the claim of the Petitioners was pre-mature and earlier recommendation was sent to the Government on 13th June, 1985 and a period of about more than a year had already elapsed. No intimation had been received by the Commission for filling of more vacancies. C.W.P. No. 666 of 1986 has been dismissed. In this petition the Petitioners were given their second preference on account of other candidates, who on merit were above the Petitioners, were given first preference and when no post was left for the Petitioners in the first preference they were recommended for their second preference, and in consequence thereof Petitioners have been appointed as Deputy Superintendent of Jail and they are working on these posts. We do not find any merit in this petition and dismiss the same, with no order as to costs.

45A. In Civil Writ Petition No. 9209 of 1987 direction was sought to fill up 16 posts by direct recruits in P.C.S. (Executive Branch) according to the advertisement issued on 9th March, 1985. The Petitioner claims that he appeared in the written examination of 1984 and the result was declared on the 25th June, 1985. Respondent No. 1 decided to fill up 16 vacancies from 1985 Examination of P.C.S. (Executive Branch) and allied services and consequently letter dated 16th January, 1985 was sent to the Commission. Advertisement appeared on 9th March, 1985 and the examination was scheduled to be held in June, 1985. Petitioner got Roll No. 1408. The written examination was adjourned and it was to commence with effect from 14th October, 1985. Again this written examination was postponed and later on another advertisement was issued in September 1987 when number of posts in the PCS cadre was decreased from 16 to 5 only. Another grievance is also made that although the Commission recommended 24 candidates out of 1984 Examination but Respondent No. 1 suo motu filled 16 posts from vacancies from the candidates recommended for allied services. Further another prayer is made that the said five vacancies and earlier 16 vacancies could be filled from 1987 examination. In written-statement by Respondent No. 1 it has been asserted that the said 16 candidates were actually appointed in 1986 and none of them has been made a party to this petition and therefore, the petition was liable to be dismissed for non-joinder of necessary parties. As a matter of fact all the 40 direct appointees (24 recommended for PCS (EB) by the Commission out of 1984 examination and 16 recommended for allied services) were appointed against vacancies of PCS (Executive Branch) posts,--vide orders dated 18th March, 1986. On facts it has been put forth that a request was made for 16 more vacancies to be filled up on 16th January, 1985 but according to Rule 14 of the "Service Rules" the competency to include the names of the candidates in Register B from the list lies with the Government and

the function of the Commission was only to send the list, in order of merit, of the candidates who had qualified the examination. It has also been claimed that the number of candidates to be appointed to PCS (Executive Branch) was to be determined by the Government at the relevant time. Written-statement on behalf of the Commission mentions that it had recommended 76 candidates in the first instance and later on 7 more names were sent in July 1985 and thus, the select list of Commission consisted of 83 names only. It has been vehemently urged that the additional 16 candidates were appointed without its consultation. 1987 examination was held in December and number of posts of PCS (Executive Branch) was only 5 in accordance with the requisition received from the State Government. The Commission had received additional demand for 16 vacancies on 24th December, 1985 but no action could be taken in the face of direction of this Court in CWP No. 4538 of 1985 to the effect that increased posts be not filled. In view of the observations made by the apex Court in Rafiq uddin's case (supra) the status of the 16 candidates appointed by the State Government without any recommendation of the Commission is not better than 37 "unplaced Candidates" mentioned in that case. Observations with regard to those unplaced candidates was that their appointment was made in breach of the rules and any such appointment would be illegal. In this case those 16 candidates have not been made parties and no order therefore, can be passed against them. We, however, do not approve these appointments and place our views on record that said interpretation of Rule 14 of Service Rules, is definitely not called for. Such type of appointments are against the spirit of the Constitution, relevant rules and regulations and are really a transgression of the powers of the Commission. This rule as originally framed is reproduced as under:

14. Subject to the provision of Rule 13, Government shall include in Registrar "B" in order of merit determined by the Commission, the names of such number of candidates as it may, from time to time, determine, from amongst those who have been declared as qualified in the examination by the Commission.

This Rule was amended by Notification dated 16th November, 1988 and the words "rules 13 and 13-A" were substituted for the words "Rule 13". According to this Rule, Government is bound to include in Register "B" in order of merit determined by the Commission. This merit which has to be determined by the Commission is not the list of qualified candidates arranged according to the marks obtained but is a list of merit determined by the Commission from amongst those who have been declared as qualified in the examination by the Commission. It goes to show that when examination is held by the Commission the candidates who qualify are declared and become eligible. The Commission further determines the merit out of these qualified and eligible candidates meaning thereby that the word "merit" means the standard required for the post and the Commission determines the merit, only of those candidates who in its opinion are found suitable for the posts and after determining the merit the list of only those candidates is sent to the Government which is commonly called the recommendation of the Commission. This recommendation of the Commission

was subject to Rule 13 originally and the new rules 13 and 13-A substituted in 1988 are not relevant for the purposes of these cases. The original Rule 13 deals with admission of candidates to competitive examination and it laid down the manner and form prescribed for application and documents or papers as required by the Commission to be attached therewith. This rule further does not allow certain persons to appear in the examination. Register B is prescribed under Rule 8 of the said Rules and has to be maintained for entering the names of persons accepted as candidates as a result of competitive examination. Rule 7 prescribes that appointment to the service shall be made in the manner herein provided from amongst accepted candidates whose names have been duly entered in accordance with these rules in the register of accepted candidates to be maintained under these rules. Rule 12 deals with holding of competitive examination for selection of candidates. The selection by a competition referred to in Rule 12 means the selection of as many candidates for the Service as Government may determine. It means that the Commission holds competitive examination for selection of only that number of candidates as the Government determines. This rule also indicates that the words "merit determined" in Rule 14 means a selection by Competition of as many candidates as Government may determine out of the qualified and eligible candidates. The only interpretation of the rules can be that all the appointments to the Service shall be made by the Government in consultation with the Commission (Rule 4). The Commission holds competitive examination according to the regulations contained in Appendix II and after the result of the examination, it selects as many candidates as determined by the Government and sends the names of only those candidates who have been selected and in other words whose merit is determined by the Commission. Their names are then required to be included in Register B. Thereafter, these candidates are called accepted candidates. The Government then makes appointments to the Service from amongst candidates entered in various registers in a slab of 100 vacancies as indicated in Rule 18 and candidates whose names are entered in the said registers have to be appointed in the Service in the order of merit assigned to them by the Commission while selecting as a batch for that particular register according to Rule 19. In this view of the matter, instructions in Annexure P2 can be held to be only for administrative convenience and of directory nature and cannot supersede the Service Rules which are statutory and of binding nature. Moreover, Annexure P2 cannot override the Regulations framed under proviso to Clause (3) and Clause (5) of Article 320 of the Constitution., There Regulations have the approval of the parliament or State Legislature, as the case may be, under the said Clause (5) thereof, Moreover, Clause 10 of the Procedure requires a reference to the Commission and number of posts to be filled have to be specified. Clause 16 of "the Procedure" further lays down a mandatory provision in case recommendation of the Commission is not accepted and further if non-acceptance of the recommendation of Commission is for reasons which were not before the Commission when making the recommendations the Commission has to be given an opportunity of reconsidering its recommendations. All these

clauses are statutory provisions and while observing these provisions, Government instructions Annexure P2 can be ignored as a whole. In any case, no writ or direction can be issued on the basis of instructions Annexure P2. The interpretation of Respondent No. 1 regarding Rule 14 is misplaced and cannot be upheld. If the rule is interpreted in that manner, the words "merit determined by the Commission" and also the words "from amongst those who have been declared as qualified" will lose all significance and will be redundant. If that had been the intention in framing the rules the wording of the rule would have been entirely different. This aspect of the rule has not been specifically brought to the notice of G. C. Mital, J. while deciding Civil Writ Petitions No. 3236, 3674, 4532, 4716, 4859, 5421 and 5468 of 1985-- vide order dated 8th April, 1986 wherein it has been observed that after discussing the merits of the said three Civil Writ Petitions, it was found after going through the original merit list prepared by the Commission, that the appointments were being made strictly in accordance with the merit. This judgment is wrongly being relied upon to say that the merit list prepared by the Commission means list of qualified and eligible candidates and it is pressed into service to argue that all candidates who qualified in the examination are deemed to have been recommended by the Commission. The learned Single Judge did not consider the list of candidates selected out of the qualified and eligible candidates to be the candidates selected by the Commission.

46. In CWP No. 4759 of 1982 the learned Single Judge relied on executive instructions contained in Annexure P2 of that petition and further held that if no waiting list was prepared, in the technical sense of the term, a merit list of candidates on the basis of their performance in the written test and interview was available with the Commission and on this basis the learned Single Judge ultimately directed the Commission to find out if any of the Petitioners therein was in the zone of selection and if so, the Commission was directed to make recommendation. The above aspect of the rules was not specifically brought to the notice of the learned Single Judge and the direction given to the Commission as a matter of fact could not be given any direction to send a recommendation. The writ petition is, therefore, liable to be dismissed and is dismissed with no order as to costs.

47. Civil Writ Petition No. 4029 of 1988 filed by Vardinder Pal Singh seeks issuance of an appropriate writ, order or direction in the nature of mandamus to fill up the vacancies meant for direct recruits on the basis of 1984 examination and for restraining Respondents from taking action in pursuance of the subsequent advertisement dated 9th of March, 1985.

48. The Petitioner, after giving the narration of an advertisement dated 1st May, 1982 by the Commission stated that the State Government Respondent No. 1 had placed a requisition for 92 posts and he was allowed roll No. 6317. Result of the written test was declared on 28th November, 1984 by the Commission. Thereafter interviews were held on the basis of viva-voce test on 15th May, 1985. Thus, the final result of selected candidates appeared in the daily Tribune

of 26th June, 1985. The Petitioners claim that 80 vacancies occurred in PCS (Executive Branch) during the years 1978, 1979, 1980, 1981 and 1982. Out of these vacancies 40 had to be filled from amongst direct recruits from list "B" and 40 from other sources. 35 more vacancies in the PCS (E.B.) occurred during the years 1983, 1984 and 1985 for being filled up by competitive examination. The details of rules applicable to Excise and Taxation Officers, Tehsildars, Labour and Co-operative Service and Employment Department have been narrated in the petition. Instructions dated 22nd March, 1957 and 11th January, 1962 Annexure PI and P2 respectively have been relied upon and it is averred that additional vacancies becoming available upto 6 months after the date of recommendation by the Commission are also to be filled up from the same Examination. Thus, there was no necessity to issue another advertisement on 9th March, 1985. Number of vacancies are stated to be 93 and the same vacancies were to be filled up on the basis of 1984 examination. Civil Writ Petition No. 3236 of 1985 and other writ petitions, decided along with that, have been referred to. Finally, it was prayed that a direction in the nature of mandamus be given to Respondent No. 2 to make recommendation of 21 candidates on the basis of 1984 Examination and send their records to the State of Punjab Respondent No. 1 who may be further directed to fill up these vacancies meant for direct recruits and further prohibit the Respondents from proceeding with interviews of candidates who applied in pursuance of the advertisement dated 9th March, 1985. Written statement by Shri Mohinder Singh, Under-Secretary, Punjab Public Service Commission was filed and the claim in the written petition was contested, saying that the Petitioner was not successful in the 1984 Examination. Therefore, this writ petition filed in May, 1988 was liable to be dismissed due to laches. Another objection that this writ petition was liable to be dismissed on the ground that after 1984 Examination, a fresh examination was held in 1987 in pursuance of an advertisement dated 9th March, 1985. The Petitioner appeared therein, but he does not figure in the list of successful candidates after the written and viva voce tests. It is reiterated that fresh requisitions for 16 posts of PCS (EB) was received from Respondent No. 1,--vide letter dated 16th January, 1985 is Annexure RI, desiring the Commission to make an advertisement for fresh examination during the year 1985. The examination was conducted ultimately in the year 1987 from 19th December, 1987 to 6th January, 1988. The averment on behalf of Respondent No. 1 in answer to writ petition No. 3236 of 1985 that number of vacancies had increased by 93 was made without consulting the Commission, as to whether additional suitable candidates were available, or not. The Commission did not prepare any waiting list and had intimated to Respondent No. 1 that no further suitable candidate was available. As a fresh examination had already been announced on 9th March, 1985 for which applications had been received and the examination was scheduled to be held with effect from 14th October, 1985, but the same was suddenly postponed by Respondent No. 1 who could not ask for additional names in view of the stay in Satnam Singh v. State CWP No. 4538 of 1985, which stay was vacated after the alleged 6 months period had expired. In the replication, the Petitioner has reiterated his earlier averment.

49. One Sanjeev Kumar son of Shri Chamela Ram filed Civil Miscellaneous No. 9217 of 1988 in CWP 9209 of 1987 under order 1 Rule 10 of the Code of Civil Procedure, seeking himself to be impleaded in the writ petition as Petitioner on the grounds that he had also applied in pursuance of advertisement dated 8th March, 1985 is a candidate for the PCS (EB) and was similarly placed as the Petitioner in the writ petition. He was declared to have successfully qualified in the written examination held by the Commission on 13th May, 1987 and was interviewed on 24th May, 1988. Further it is stated in the Civil Miscellaneous that he claims the same relief as the Petitioner is in the petition. The Civil Miscellaneous was directed to be heard along with the main case,--vide order dated 28th July, 1988, passed by the learned Single Judge.

50. Civil Misc. No. 14863 of 1988 was filed by one Gurdass Singh Walia with a prayer to be added as a Respondent to oppose the writ Petitioner and to claim his right on the basis of 1984 Examination. This Civil Miscellaneous was also directed to be taken up with the main case,--vide order dated 8th of December, 1988 passed by this Bench. Said Gurdass Singh Applicant had already filed Civil Writ Petition No. 4716 of 1985 and the same was disposed of,--vide order dated April 8, 1986 by the learned Single Judge along with orders in CWP 3236 of 1985, already noted above. Another Civil Miscellaneous No. 1150 of 1988 (looks to be mistake for 89) by Sukhminder Singh Bains with the same prayer for being made a Respondent in the main petition so as to claim the same relief as claimed in Civil Miscellaneous No. 14863 of 1986. All these three Civil Miscellaneous applications are also dismissed with CWP 9209 of 1987.

51. As earlier stated, the appointment to the Service is to be made in the manner provided for in the Service Rules from amongst the accepted candidates whose names have been duly entered in accordance with the said Rules in the register of accepted candidates whose names have to be duly maintained under the said Rules. Competitive examination has to be held by the Commission and Regulations for such examination are contained in Appendix II to the said Rules. Clause (2) of this Appendix enjoins candidates equal to three times of the total vacancies determined by the Government Sub-rule (1) of Rule 13-A to qualify for competitive examination. This clause makes it clear that when the requisition is to be made to the Commission, vacancies have to be notified for which candidates are to be selected and those vacancies are to be determined by the Government. As discussed above, the Commission has to determine the order of merit from amongst those who have been declared as qualified and according to this recommendation, the Government has to make appointments. The same principles, as discussed with regard to LPA 573 above, apply to this writ petition and as a result thereof, this civil writ petition is dismissed.

52. The Punjab State Co-operative Service, Class II, Rules, 1958 have been referred to and according to Rule 4 thereof, all appointments to the Service have to be made by the Government after such consultation with the Commission as may be required by Article 320 of the Constitution of India. According to Sub-rule

2 of Rule 5, the State Government has to determine in what manner such vacancy shall be filled; provided that 1/3rd of the vacancies shall be filled by direct recruits and the remainder by promotion or transfer. The word "Service" means the Punjab State Co-operative Service, Class II.

53. The Punjab Tehsildars (Class II) Service Rules, 1984 contain Rule 4, according to which, all appointments to the Service shall be made by the Financial Commissioner and "Service" means the Punjab Tehsildars (Class II) Service. Appointment to the Service has to be made from amongst the candidates whose names have been duly entered in the register of accepted candidates to be maintained under rules thereof. Rule 9 requires Register "A", Register B-I and Register B-II to be maintained by the Financial Commissioner. Rule 11 thereof requires a competitive examination to be held by the Commissioner either separately or jointly for the recruitment to the Punjab Civil Service (Executive Branch) (Class I) for as many candidates as may be determined by the Financial Commissioner.

54. The Punjab Employment (Class I and II) Service Rules, 1963 require all appointments to be made by the Government. Rule 9 thereof requires appointments to the posts in the Service to be made by such method, as is specified in that Rule. Under various clauses of this Rule, some percentages have been fixed for direct appointment, promotion and transfer of different officers.

55. The Punjab Labour (Class II) Service Rules, 1982 defined "Service" as Labour Service (Class II) Service, Rule 7 thereof requires appointment to the "Service" to be made in the manner specified in Appendix B to these Rules. Appendix B specifies different qualifications for different posts.

56. The Punjab Excise and Taxation Department (State Service, Class II) Rules, 1956 have also been referred to wherein in Rule 2, Clause (a) "the Commission" has been defined as the Punjab State Public Service Commission and "the Service" means the Punjab Excise and Taxation Department (State Services Class II) in Clause (f) thereof. According to Rule 5, method of recruitment of Excise and Taxation Officers is either by promotion of Assistant Excise and Taxation Officer or by competitive examination to be conducted by the Commission either separately or jointly with that for recruitment to the Punjab Civil Service (Executive Branch) and allied Services. In this particular "Service", Clause 7 of Appendix B, referred to in Rule 5 seeks to have names of qualified and unqualified candidates arranged in order of merit according to the aggregate marks obtained at the examination. This clause is not relevant in the present case, inasmuch as the contest is for PCS (EB) posts.

57. The above said Rules of different Departments do not prescribe details about the requisitions of posts to the Commission and also for any method of recommendation. When a joint requisition is sent by the Government to the Commission for selection of candidates for the posts in the above Departments, a joint examination is held and as a result of the joint examination held by the

Commission, selection is made for posts in different Departments on merit out of the qualified and eligible candidates. Clauses 10, 16 and 17 of the Procedure, referred to above, will govern the steps to be taken by the Commission. The method of sending the requisition to the Commission and how the recommendation of the Commission is to be dealt with, is referred to in the Punjab Civil Services (EB) (Class I) Rules, 1976 which are helpful in determining all these questions. Those Rules have already been discussed above. The State Government has also issued instructions in respect of the procedure to be followed while sending requisition to the Commission with a view to filling up posts for which consultation with the Commission is a pre-requisite.

58. Before concluding, it is clarified that out of all these five cases, only two CW Ps 9209 of 1987 and 4029 of 1988 attract the applicability of the Service Rules, while two CW Ps 666 of 1986 and 6727 of 1986 relate to the posts of Deputy Superintendent of Police, Deputy Superintendent Jails and Inspectors of Police and LPA 573 of 1984 relates to the posts of Block Development and Panchayat Officers.

59. With the detailed discussion above, all these five cases are decided as follows:

- (1) LPA No. 573 of 1984 is allowed and CWP 4759 of 1982 stands dismissed, with no order as to costs.
- (2) CWP Nos. 666 and 6727 of 1986, 9209 of 1987 and 4029 of 1988 stand dismissed, with no order as to costs.