
(2015) 07 P&H CK 0400

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 4413, 7359 and 10070 of 1995

Nachhatter Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Constitution of India, 1950 — Article 162, 234, 309, 356, 73

Citation : (2015) 07 P&H CK 0400

Hon'ble Judges : Amol Rattan Singh, J.

Bench : Single Bench

Advocate : K.S. Khehar, Advocate, for the Appellant; K.K. Gupta, Addl. Advocate General, for the Respondent

Judgement

Amol Rattan Singh, J.—These three petitions have been clubbed together as they all seek quashing of the selection process conducted by the Punjab Public Service Commission (hereinafter to be referred to as "the Commission") for appointment to the PCS (Executive Branch) (hereinafter to be referred to as "the Service") from Register "C" in the year 1994, in respect of vacancies that occurred in 1991. They further seek a writ of mandamus to the respondent-State to consider the claim of each of the three petitioners in these cases for appointment to the said service, in accordance with the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976 (henceforth to be referred to as "the Rules"), according to merit, in Register "C" and still further, for a writ of prohibition restraining the respondent-State from giving effect to the appointments of respondents No. 5 to 7 in CWP Nos. 4413 of 1995 and 10070 of 1995, who are respondents No. 6 to 8 in CWP No. 7359 of 1995 (For the sake of convenience, they would hereinafter be referred to as respondents No. 5 to 7).

2. All the said respondents, i.e. respondents No. 5 to 7 in CWP Nos. 4413 of 1995 and 10070 of 1995, are the same three persons, i.e. S./Sh. Daljit Singh, Jagdish Chander Sabharwal and Navtej Singh, whose appointment to the PCS (Executive Branch) has been challenged by the petitioners. A stay order, to the

following effect, was passed by a Division Bench on 24.03.1995, at the time of issuance of notice:--

"We have heard learned counsel for the petitioner in the matter of interim relief and are of the opinion that the petitioner has made out a prima facie case for grant of such relief.

Till the next date, it is directed that on the basis of the impugned selection made, respondents No. 5 to 7, if not already appointed, shall not be appointed to the P. C.S. (Executive Branch) ".

It is not in dispute that since respondents No. 5 to 7 had already joined service, the order obviously could not take effect in view of what was stated in the order itself. Eventually the petitions were admitted to regular hearing on 19.12.1996 and though they came up for hearing from time to time in the intervening years, they came to a head, for conclusion, only in the year 2013.

3. At the outset, before proceedings to narrate the facts, as given in the petitions, it would be appropriate to reproduce Rule 8 of the aforesaid Rules, as amended vide notification of the respondent-Government dated 07.03.1989.

"8. The following Registers of accepted candidates shall be maintained by the Chief Secretary to Government, Punjab, namely:--

- 1) Register A-I in which shall be entered the names of Tehsildars and Naib-Tehsildars accepted as candidates;
- 2) Register A-II in which shall be entered the names of temporary members of Class II and members of Class III Services serving in connection with the affairs of the State of Punjab and holding ministerial appointments accepted as candidates;
- 3) Register AIII in which shall be entered the names of persons accepted as candidates from amongst Excise and Taxation Officers, Block Development and Panchayat Officers and District Development and Panchayat Officers serving in connection with the affairs of the State of Punjab;
- 4) Register B in which shall be entered the names of persons accepted as candidates as a result of [the main competitive examination], and
- 5) Register C in which shall be entered the names of persons accepted as candidates from amongst officers or officials serving in connection with the affairs of the State of Punjab, who are not covered by any of the categories of officers or officials hereinbefore mentioned in this rule."

Thus, Register "C is that Register in which names of persons accepted as candidates for appointment to the Service are entered, as are not from the category of services mentioned in Clauses (1) to (4) of the Rule, i.e. Registers A-I, A-II, A-III and B. Register "C", therefore, can be called the "residuary register" in which the names of those officials/officers, serving in the State of Punjab, are

to be entered, as are considered suitable as candidates for appointment to the Service, from any other service in the State Government, other than the services enumerated in Clauses (1) to (3) of Rule 8.

4. The three petitioners in the three different petitions, alongwith respondents No. 5 to 7, were nominated from various services as given herein under, for consideration for selection to the Service.

"1. Nachhater Singh (petitioner in CWP No. 4413 of 1995), Inspector, Cooperative Societies, Punjab, on deputation with the Punjab State Cooperative Agricultural Development Bank, Chandigarh.

2. Vijay Kumar Syal (petitioner in CWP No. 7351 of 1995), Senior Scale Stenographer in the office of the Deputy Commissioner, Sangrur.

3. Gurmeet Singh (petitioner in CWP No. 10070 of 1995), Inspector, Cooperative Societies, Punjab.

4. Daljit Singh (respondent No. 5) in service under the Director Public Instructions (Schools), Punjab (specific post not mentioned).

5. Jagdish Chander Sabharwal (respondent No. 6) -ditto-

6. Navtej Singh (respondent No. 7), Superintendent in the Punjab Public Service Commission, Patiala."

5. The essential facts, as given in each petition, are being reproduced separately herein under:--

CWP No. 4413 of 1995

6. The petitioner, Nachhatter Singh, is stated to have obtained a degree of Bachelor of Physical Education, after which he undertook a Diploma Course in Coaching at the National Institute of Sports, Patiala and was thereafter appointed as an Inspector, Cooperative Societies, in the Department of Cooperation, Punjab and during the course of his service, he obtained a degree of LLB in the year 1986, securing a 1st Division. Thereafter, he is stated to have obtained a degree of Master in Business Administration, also in the 1st Division.

7. In June 1993, a requisition is stated to have been sent by the Punjab Government to the Punjab Public Service Commission, to fill up three posts in the Service from Register "C, as per the procedure prescribed in Rule 15 of the Rules.

On receipt of nominations from the prescribed authority, a compilation of the record of those nominated, is stated to have been submitted to the Punjab Public Service Commission, by the first respondent, i.e. the Chief Secretary to the Government of Punjab, in January 1994. Thereafter, the nominated candidates, including the petitioner and respondents No. 5 to 7 are stated to have been informed that the process of interviews would be conducted from 15.09.1994 to 21.09.1994, during which period, interviews are actually stated to have been conducted.

8. The petitioner and respondent No. 7 (Navtej Singh) appeared before the Commission on 21.09.1994, whereas respondents No. 5 and 6 are stated to have appeared on 15.09.1994.

As per the contention in the petition, at the time when the selection process was in progress, the Commission was constituted of 5 members (including the Chairman), of whom two, i.e. Jagdish Raj Saini and Sh. Jaspinder Singh Jakhar, have been impleaded by all the petitioners as respondents.

Other than these two members, it is stated in the petition that Sh. Bhupinder Singh Sidhu, was the Chairman of the Commission and Sh. V.P. Dubey and Sh. S.S. Kalsi, were the other two members (Shri Bhupinder Singh Sidhu has been impleaded as a respondent in CWP No. 7395 of 1995).

9. It is contended in the petition that a quorum of at least 50% of the members was required to conduct the process of selection; however, on the date that respondents No. 5 and 6 were interviewed, i.e 15.09.1994, only two members, i.e. respondents No. 3 and 4, conducted the selection process, by interview.

Further, it is contended that when the petitioner and respondent No. 4 appeared before the Commission, on 21.09.1994, they were interviewed by only one member, i.e. Sh. J.R. Saini (respondent No. 3).

10. It is further contended that the Commission had allotted 100 marks for the interview, which were further to be assigned to different heads, including for achievement in sports, extra curricular activities, academic qualifications, personality etc.

In this regard, it is contended and, in fact, is the first ground of challenge in the petition, that the procedure is completely alien to the Rules and as a matter of fact, the Rule only requires determination of merit on the basis of the service record of those who were nominated by various "agencies", i.e. as per Registers A-I, A-II, A-III and "C" and no other material is to be considered by the Commission.

11. A reference in this regard has been made to Rules 9 to 15 which lay down the procedure for selection of candidates for enrolment in the different Registers, A-I, A-II, A-III, "B" and "C".

Since the petitioner is only seeking selection from Register "C", Rule 15 which deals with such selection process, is reproduced herein below:--

"15. (1) Each of the authorities specified in the first column of the Table below may submit to the Government through the Administrative Secretary of the respective Department in Form II attached to the rules the nomination rolls of such number of persons as is specified in each case in the second column of the said Table from amongst officers or officials working in its office or offices subordinate to it who are not covered by any of the categories of officers or officials mentioned in rules 9,10 and 11:--

[Provided that during the operation of a Proclamation issued under clause (1) of article 356 of the Constitution of India in the State, the Governor may nominate one person from amongst the officers or officials working in his office or offices subordinate to him who are not covered by any of the categories of officers or officials mentioned in rules 9,10 and 11.]

2) No nomination roll in respect of a person shall be submitted under the provisions of sub-rule(1) unless such person-

a) is a confirmed hand and has completed 10 years" continuous service under the Government;

b) was under the age of 45 years on the first day of November immediately preceding the date of submission of names by the nominating authorities; and

c) is a Graduate of a recognized University.

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

4) The names of the persons recommended by the Commission shall be entered in Register "C in the order in which they are recommended by the Commission."

Thus, in the said rule, no criterion or method of grading has been given, by which the Commission would make the selection, from amongst the candidates whose names have been sent for consideration.

12. However, it is contended that since, in order to determine merit, selection must be made only as per the service record of the candidates, who were found eligible in terms of Rule 15, the petitioners" service record should have been alone looked at and since there is no adverse entry in his Annual Confidential Reports (ACRs), as no such remarks were communicated to him, his grading should have been given accordingly, because as per his (petitioners") information, in his ACRs for the previous 5 years, he had been graded "Very Good", whereas respondents No. 5 to 7 had, according to the petitioner, a substantially inferior service record.

13. A specific averment has been made by the petitioner, in the petition, that at the time of interview, he informed the PPSC Member interviewing him, i.e. respondent No. 3, that the process of interview was not valid, firstly, because a single member could not conduct the interview and secondly because marks were being assigned for academic records, sports and extra curricular activities etc., whereas the selection could only be with reference to the service record of a candidate.

As per the petition, respondent No. 3 is stated to have informed the petitioner, during the course of the interview, that the process being adopted was mechanical and no marks were being assigned on the basis of personal

satisfaction and as such there was nothing wrong in the selection process. However, the petitioner is stated to have been further informed by the said respondent that his objection would be brought to the notice of the Chairman, which, according to the petitioner, was never done and further, it is alleged that specific marks were assigned for the personality of the candidates who appeared before the Commission, with such grading being wholly on the basis of personal assessment of the member.

The petitioner has also filed a specific affidavit along with the petition (Annexure P-4), with regard to the process adopted by the Commission on the date of interview (including what has been referred to immediately hereinabove).

14. The next ground on the basis of which selection of respondents No. 5 to 7 has been challenged, is of mala fides by favouritism.

It is contended that respondent No. 5, Daljit Singh, is the brother of one Gurmit Singh, who at that time, was Political Secretary to the Chief Minister of Punjab and as such, he was selected only because of his proximity to the Chief Minister.

It is further contended that as regards Navtej Singh, respondent No. 7, since he was holding the post of a Superintendent in the Commission, he was personally nominated by the Chairman of the Commission, and as contended during arguments, by even creating record in his favour and by removing adverse record against him.

15. Next, it is contended that respondents No. 6 and 7, Sarvshri Jagdish Chander Sabharwal and Navtej Singh were members of ministerial services at the time that their names were nominated to the Service and, therefore, if at all their names were to be considered, it could have only been with reference to Register A-II, nominations from which are governed by Rule 10 of the Rules, which pertains to nomination of candidates holding ministerial posts, for consideration by the Commission, by different authorities. The relevant part of Rule 10 reads as follows:--

"10. (1) Each of the authorities specified in the first Column of the table below may submit to the Government in Form I attached to these rules the nomination rolls of such number of persons as is specified in each case in the second column of the said table from amongst the temporary members of Class II Services and members of Class III Services, holding ministerial appointments and working in its office or in the offices subordinate to it:--

xxxxxx xxxxxx xxxxxx"

Thus, even their eligibility for consideration for nomination to Register "C", has been challenged. It needs to be noticed here that during arguments it was pointed out by all learned counsel that petitioner Vijay Kumar Syal (appearing in person, in CWP No. 7359 of 1995), was also from the ministerial cadre, being a Stenographer.

16. It is next contended that though the process of selection was conducted in the month of September 1994, the result was only declared on 17.03.1995, on which date it was released to the members as per Annexure P-5 with the petition.

In the said result, only respondents No. 5 to 7 were shown to have been selected for appointment from Register "C". The implication, therefore, is that it was deliberately delayed because these respondents were to be selected, even though it was difficult to do so on merit.

The above, thus, is the entire detail of the contentions made in the petition.

17. In the reply of the first respondent, i.e. the State of Punjab, the major part of the stand is that the selection having been made by the Commission, the reply to the individual grounds of challenge would be only relatable to respondent No. 2-Commission.

However, as regards the issue raised by the petitioner that a viva voce is alien to the procedure stipulated in the Rules, it has been stated by the first respondent that the matter already stands adjudicated upon by a Division Bench of this Court in the case of *Des Raj and others v. State of Punjab and others*, (19950-1988) RSJ (1) 178, wherein it has been held that the process of interviews is not only advisable, but is essential for appointment to the Service, from various Registers.

18. The reply filed on behalf of the Commission (respondent No. 2) takes preliminary objections to the effect that:--

"i) It is a general tendency amongst unsuccessful candidates to interfere in a selection process judiciously conducted, on account of non-selection. The case of *Javed Rashid Bhatt and others v. State of Jammu and Kashmir*, 1984 (1) SLR 543, has been referred to, on this issue.

ii) That the allegation of mala fides is an after thought, especially because the petitioner was fully aware at the time of his interview that respondent No. 6 was also a candidate being interviewed along with him; however he did not raise any objection to his candidature at that stage, nor about the constitution of the Board or its members. As such, the challenge to the selection is belated, after the declaration of the result. In this regard, a judgment in *Manak Lal v. Prem Chand*, AIR 1957 SC -4, has been cited, along with a subsequent judgment in *Madan Lal v. State of Jammu and Kashmir*, (1995) 3 SCC -486.

iii) That the Commission has a distinct and distinguished status under the Constitution and has been given powers to select qualified persons as are expected to do their duties effectively.

The judgment of the Supreme Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, , has been cited to submit that this Court would not function as an appellate Court over a decision of a selection committee, as, to scrutinize the relative merits of candidates as to their fitness for a particular

job, is a function to be performed by a committee which has expertise on the subject.

iv) It is next contended that the nomination of respondents No. 6 and 7 was made by the competent authority and the issue with regard to such selection has already been decided by a Division Bench of this Court in CWP No. 3691 of 1994, Bhajan Singh and others v. State of Punjab and others, vide judgment dated 19.05.1994.

Thus, it is, all in all, contended that the selection was made purely on merit and as such calls for no interference."

19. In reply to the specific contentions raised in the writ petition, the reply of the Commission, while denying all allegations of mala fides, is that there were 4 interview boards constituted by the Commission, of which Sh. J.R. Saini headed the first board "in the subject of PCS", Sh. S.S. Kalsi and Sh. J.S. Jakhar, Members, headed the second interview board "in the subject of Physics" and Sh. V.P. Dubey, Member, headed the third interview board "in the subject of District Welfare Officer".

The above obviously is a reference to the interview boards constituted for selection to different posts, with respondent No. 3, Sh. J.R. Saini, heading the interview board conducting interviews for selection to the Service, whereas Sh. V.P. Dubey was heading the interview board conducting interviews for selection to the post of District Welfare Officer and the other two members, accordingly, headed the interview boards conducting interviews for selection to the post of "Lecturers in Physics".

20. While denying the allegations of favouritism towards respondents No. 5 to 7, it has been specifically stated, with regard to respondent No. 7, who was a Superintendent in the Commission at the time of his selection, that he had rendered more than 25 years continuous service under the Government, including 10 years as a Superintendent and that his overall service record was excellent.

In this regard, it has been further contended that employees of the Commission cannot be deprived of their right of appearing in an interview or examination conducted by the Commission and the selection having been fairly conducted, there was no reason for setting aside the same.

21. With regard to the allegation that a single member of the interview board cannot conduct the interviews, the specific stand of the Commission is that the said process is perfectly legal, as per established procedure which was adhered to in the selection process in question also.

However, it has been contended in the reply that the "contents of the criteria adopted by the commission cannot be divulged publicly".

It is admitted that the interview marks were assigned under different heads, viz.

"academic records", "service record", "extra curricular activities", which were kept in a sealed cover.

It is further contended that the contention of the petitioner that only service record was to be taken into consideration is wholly fallacious and that the Commission, being a Constitutional body, is fully competent to devise its own methodology and as such the procedure adopted by it for making the selection in question is not violative of any provisions of the Rules.

The contention of the petitioner that respondent No. 3 (Sh. J.R. Saini, Member of the Commission), had informed the petitioner that his objection would be brought to the notice of the Chairman has been stated to be incorrect, though, it is contended, that the result was approved by the Commission as a whole and not by the third respondent alone.

The contents of the affidavit filed by the petitioner with regard to the "conversation" etc. with the third respondent on the date of interview, have also been specifically denied, on the basis that respondent No. 3 had so denied it.

It has been specifically averred that respondents No. 5 to 7 were selected on the basis of overall service record and their performance in the interview, by which, overall, they had a better merit than the petitioner.

22. The individual replies of respondents No. 5 to 7, i.e. the selected candidates, are almost ad verbatim the same qua each other and, in essence are the same as the reply filed by the Commission.

They have all denied any political connection on account of which they have been selected and they have reiterated the stand that the single member interviews were perfectly valid and legal and that service record was not the only criteria to be measured by the Commission while making selections and, consequently, conducting of interviews with marks assigned under different heads, was also a perfectly legal and valid exercise and therefore their selection is liable to be upheld.

23. Respondent No. 5, Daljeet Singh, in addition to the above, has also annexed along with his reply, his bio-data, showing his achievements, inasmuch as he is stated to have completed his Matriculation in the Ist division, graduation in Science with a high second division, a degree of Bachelor of Education with 55% marks, and thereafter has obtained a post graduate degree in Political Science with the same marks, and an LLB degree in the Ist division. He also acquired a second post graduate degree in Public Administration with 50% marks and finally, a third post graduate degree (M.Sc.) in Zoology with 57% marks.

Other than that, he has mentioned obtaining of merit certificates in his college for various extra curricular activities.

24. All these respondents have also placed reliance on the same judgment as had been relied upon by the Commission and have also annexed with their

replies the said judgment of the Division Bench, in Bhajan Singhs" case (supra), by which the nomination of candidates to Register `C", who were otherwise eligible for nomination from Register A-2 was dealt with, (for those belonging to the ministerial staff in specified offices given in Rule 10).

It was held by the Division Bench that after nominations were invited by the Chief Secretary in respect of 9 vacancies in the service, and recommendations had been made as per rules, in respect of different Registers, a second thought was given to interpretation of the rules, which resulted in the nomination of ministerial staff, like the petitioners in that petition, being made from Register "C" and not from Register A-2. The Division Bench, while considering the interpretation given by the Government, held as follows:--

"At this stage for the purpose of disposal of these writ petitions we accept the interpretation put forth by the State. The result is that the petitioners and their departments stood completely ignored from consideration for the purposes of nominations to be made for filling nine posts in PCS (Executive Branch) and this is on account of the interpretation now put forth as above. The petitioners are not to suffer on account of the interpretation adopted after Head of Departments were called upon to nominate from Register `C" as above. In future it would be open to the State to adopt the interpretation as put forth and fill the vacancies accordingly. In order to meet the ends of justice, it is considered appropriate to give directions to the State to forward the names of the petitioners who have been duly recommended by their Head of Departments in Register `C" to the Public Service Commission along with others. It may be observed that it is for the Public Service Commission to select suitable persons from the nominations made above to fill the vacancies in the PCS (Executive Branch). Let these directions be complied forthwith. Writ petitions stand disposed of as above."

Hence, the contention in the present case is that once this court had accepted that nominations made only on a wrong interpretation of rules, cannot be reversed at least for the purpose of that selection which was before the Division Bench, the respondents No. 5 to 7 in the present case, also cannot be faulted or penalised on account of their names having been nominated for selection from a different Register, than the one from which they would otherwise be eligible to be nominated from.

On a specific query, it has been stated that the selection process in question, before the Division Bench, was the same as is now in issue before this Court. Hence, it is contended that once that issue had been settled by the Division Bench with regard to nominations, for that year at least, without any further challenge, the argument being adopted by the petitioners, to the contrary, cannot be considered.

25. In fact, during the course of hearing, an application was moved by learned counsel for respondents No. 5 to 7, seeking to place on record certain documents to show that despite instructions dated 24.6.1993 of the Government, directing

all the Heads of Department to ensure that nomination to Register 'C' is made from the employees not covered in the categories given in clause 2(v) of the letter, the instructions were effectively modified, vide letter dated 17.1.1994, addressed to the Secretary of the Commission, by which it was stated that the ministerial services referred to in Rule 10 of the Rules were inadvertently restricted only to Secretariat offices, vide the earlier letter dated 24.6.1993. As such, the nominating authorities were not properly guided and not categorically informed that the officials working in various Directorates and other Government offices, in ministerial posts, are to be excluded from Register 'C'.

The letter further goes to show that this was done (vide the letter dated 24.6.1993), keeping in view the past practice continuing since the promulgation of the Rules; but since the Government decided that a bad precedent should not be repeated, therefore, the Commission was asked to confine its decision to only those persons as would fall (correctly) under the relevant rule, i.e. only those who were actually eligible, as per Rule 15, for nomination from Register "C".

26. Mr. Sibal, learned Senior Counsel appearing for respondents No. 5 to 7, submitted that thereafter, since as per judgment in Bhajan Singhs" case (supra) delivered by this court, this court had directed that the nominations not made in accordance with rules be also kept intact for the prevalent year, hence, all those who had been wrongly nominated, including the petitioner in CWP No. 7359 of 1995 (Vijay Kumar Syal) and respondent Jagdish Chander Sabharwal, were also retained in the list of candidates for consideration of selection from Register 'C'.

It needs to be noted that the application to place on record the aforesaid documents (Annexures A-1 to A-3 with the application) was allowed, subject to all just exceptions, vide the order of this court dated 5.4.2013. Subsequently, learned counsel for the petitioners had sought time to file a reply to the application but had finally not done so. In any case, the documents in question, being copies of Government communications, are not denied by the non-applicants-petitioners.

CWP No. 7359 of 1995

27. Coming to the averments made in the next petition, as regards the personal details of the petitioner, Vijay Kumar Syal, as given in his petition, it is stated that he passed the Matriculation Examination in the 1st Division and thereafter went on to eventually obtain a Masters degree in Public Administration, while working as a Stenographer with various administrations, despite the arduous nature of his job. The petition also states that he represented his State in Cricket and also has been a good "social worker", including being a regular blood donor, and has also authored a book on Community Development and Panchayati Raj.

He is also stated to have earned many appreciation letters and maintained a "Very Good/Good" service record.

He is also stated to have been one of the 10 candidates out of 250 who qualified

the written test for the post of District Treasury Officer, for which interviews were conducted by the Commission on 18.01.1994, but, as alleged, less meritorious candidates were appointed by awarding them arbitrary marks even though the petitioners' performance was "par excellence". He is stated to have also qualified the examination for appointment to the post of Block Development and Panchayat Officer in October, 1993 but despite securing 85-90% marks, was not appointed due to the alleged unfair practice of the Government, "in order to recruit their own kith and kins"

It is contended that this selection was quashed by this Court in July, 1994.

Thereafter, the petitioner is stated to have qualified the PCS Preliminary Examination (for appointment from Register "B") held in December 1993, after which he could not clear the examination, partly, as alleged, due to nepotism and favouritism by the Commission and partly because he was too involved in official work on account of a contempt petition pending against his appointing authority.

It is further contended in his petition, that he worked day and night for preparing for his interview for the selection in question in the present petition and was completely in touch with all current general knowledge and, accordingly, his answer to all questions asked, on the various topics, were excellent (as stated in the petition), despite which he was not selected.

28. It is further alleged in this petition, that the criteria for the interview was not revealed, i.e. as to how many marks were to be assigned for service record, educational qualifications and interview.

29. The rest of the petition takes the same grounds of challenge to the selection process as are taken in CWP No. 4413 of 1995, with the addition in this petition that out of 5 members of the Commission, 2 were IAS officers but they were not members of any of the boards/committees that conducted the interviews and, as such, with the other two members never having been either employees of the State Government earlier, or having been associated with the State Government, they were not fit persons to conduct the interviews.

Repeating the malafides in the selection of respondents No. 6 and 7, on account of their proximity to the then Chief Minister and the Chairman of the Commission respectively, it has further been stated by this petitioner that, earlier also, the Chairman of the Commission had appointed his personal assistant in the selection held in December 1991. In the selection presently under challenge, he now had appointed respondent No. 7 (respondent No. 8 in the present petition), i.e. Navtej Singh.

It needs mention here that in this petition, the then Chairman of the Commission, Sh. Bhupinder Singh Sidhu, has been impleaded as respondent No. 3.

This petitioner has contended that Sh. Jagdish Chander Sabharwal, one of the respondents selected, was on the personal staff of the then Education Minister,

Punjab, and it was because of this that he was selected.

Other than the above, the rest of the petition challenges the selection process on the same grounds as are given in CWP No. 4413 of 1995, i.e. the process being not in accordance with Rules and being arbitrary etc.

30. The replies of the respondents to this petition are also essentially the same as those filed in reply to CWP No. 4413 of 1995. The only notable addition, in the reply of the Commission, in this case, is that with regard to the petitioners' contention on his record, it has been stated that the vacancies to the service that were being filled in the year 1994, had been existent in the year 1991 and, therefore, since the selection was for the vacancies of the year 1991, the record five years prior thereto was seen, in which the ACR of the petitioner for the year 1987-88 was `Good" and not `Very Good", as claimed by the petitioner.

It is also stated that though there were 44 candidates who were interviewed for selection from Register C, there were only 3 vacancies that were required to be filled and service record was not the only criteria which was to be looked into.

Further, in this petition also it has been reiterated, that if the petitioner had any grievance qua the criteria adopted by the Commission, he was required to challenge the same prior to the declaration of the result. In support of this contention, a judgment of a Division Bench of this court, in Kulwant Singh Guru versus State of Punjab and others (CWP No. 5308 of 1995), decided on 5.4.1995, has been cited.

CWP No. 10070 of 1995

31. Gurmeet Singh, the petitioner in this petition, is stated to have acquired two Masters Degrees in Arts, during the course of his employment as an Inspector, Cooperative Societies, on which post he is stated to have been appointed initially on ad hoc basis, in the year 1983, and subsequently on regular basis w.e.f. 12.02.1990.

Other than the grounds of challenge taken by the petitioners in the other two petitions, no other additional ground has been taken in this petition, except that the process of written test and viva voce, for selection to the service, is applicable only to Register "B", as stipulated in Rules 12 to 14 of the Rules.

32. Nothing more than what has been stated by the respondents in their replies to the other two petitions is discernible from the replies filed by all the respondents to this petition, nor has anything specific been pointed out in this regard. In effect, the replies are substantially identical to those filed in the other two petitions.

33. Before going to the arguments of learned counsel who appeared in these cases, it is necessary to state here that record of the respondent-Commission, as also of the Government, was summoned by this court, vide a detailed order dated 1.2.2013 and in the light of arguments addressed at that time by learned

counsel for the petitioners, and as recorded in the order dated 15.2.2013, the criteria laid down by the Chairman, on 12.09.1994, for the interviews commencing from 15.9.1994 was found to be as is given hereunder:--

"(i) Academic achievement (up to graduation level) : 40 marks

(ii) ACRs for the last five years : 30 marks

(iii) Viva voce : 30 marks

Under criteria (ii), in respect of the ACRs recorded, the break-up of marks was to be: 6 marks for an outstanding report; 5 marks for a very good report; 4 marks for a good report and no marks would be given for a report recorded with a grading below 'Good'."

34. Addressing arguments for the petitioner in CWP No. 4413 of 1995, Mr. K.S. Khehar, learned counsel, first submitted, in the light of all the pleadings referred to during the course of hearing, that respondent Jagdish Chander Sabharwal was a Superintendent in the Department of School Education and as such, his nomination could, at best, be considered for entry into Register A-II and not in Register 'C' (as already discussed herein above). Mr. Khehar further submitted that because the aforesaid respondent was not a party to CWP No. 3691 of 1994, i.e. Bhajan Singhs" case (supra), or in any of the writ petitions filed at that time, therefore, his averment, in paragraph 6 of the preliminary objections taken in his written statement, was factually incorrect, as he never approached the Court, seeking the relief that the petitioners in that petition did; therefore his nomination for consideration, from a Register other than the one from which he was eligible, would not be valid, no directions having been given by the Division Bench, in his favour. Thus, as per learned counsel, since the view taken by the Division Bench was only in respect of the petitioners in the cases before the court, the respondents in the present case cannot take shelter of the aforesaid judgment.

35. Mr. Khehar next submitted that respondent No. 7, Navtej Singh, had actually been graded below average and had an adverse record in his ACRs for the years in question, especially for the years 1987-88 and 1988-89 and as such he was not eligible to be even considered for appointment. He submitted that a perusal of the record would show that the ACRs for this period, i.e. 1987-88 and 1988-89, are missing, and to cover up the same, the Chairman of the Commission certified that his conduct for the said period, as also for 1989-90, was "fully satisfactory". Learned counsel pointed out that this was done because respondent No. 7 was a Superintendent in the Commission itself and, consequently, close to the Chairman, who went out of his way to favour him.

In this regard, it needs to be noted at this stage itself, that this court, after having summoned the record from the official respondents, had noted in its order dated 1.3.2013, in respect of the aforesaid allegedly missing record, in view of specific submissions made by learned counsel appearing for the petitioner, and

by the petitioner appearing in person (Vijay Kumar Syal), that there seemed to be discrepancies in the record. The following part of the order dated 1.3.2013 is reproduced hereunder:--

"Be that as it may, I have seen the record, produced in Court by the respondents today, in which the ACR of respondent No. 7 for the period 01.04.1986 to 31.03.1987 is page marked as page Nos. 44-45 and, thereafter, for the period 1989-90, there is some overwriting in the pagination. For the numerical (sic-numeral) 50, numerical 46 has been substituted by overwriting. Similarly, for page 51, numerical 47 has been substituted by overwriting; thereafter, the certificate issued in respect of the year 1987-88 is page-marked as page No. 48 after cutting out the original number which is difficult to decipher, in view of the extensive cutting on it. Similarly, the certificates given for the years 1988-89 and 1989-90 have been page marked as pages 49 and 50, with similar cutting on the original page numbering.

For the years 1989-90, again there is overwriting on the page numbering, to substitute "55-56" with page numbers 51-52. This overwriting continues till the ACRs for the year 1992-93, which is page-marked as page No. 54; thereafter, the last page pertains to the period 01.04.1981 to 13.12.1981 and the page is marked as No. 55, without any overwriting on it.

It may be pertinent to note that respondent No. 7, Navtej Singh, was a Superintendent, working in the Punjab Public Service Commission itself, at the time when his case was considered for nomination to the PCS from Register C."

36. However, it also again needs to be noted that though respondent No. 7 had filed a reply to the petition denying all allegations, he is stated to have died during the pendency of the petition and as such it had further been recorded by this court in its said order dated 1.3.2013, as follows:--

"Though it may otherwise have been a case for holding an enquiry, however, despite these above glaring discrepancies, I find myself unable to go into this issue at this stage, in view of the fact that it is commonly conceded that respondent No. 7 has died in the meanwhile and, as such, if any enquiry is held against him with regard to the issue of whether any ACRs were actually removed to favour him, he is obviously no longer present to defend himself. Hence, I have no option but to agree with the submission made by the learned State counsel that on hearsay without any enquiry on the issue, (and in the absence of any enquiry which can be held) this issue would have to lay at rest because, in addition mainly to the fact that said respondent has died, 22 years have also gone by since such alleged tampering took place, if at all."

37. Mr. Khehar next submitted that despite what has been laid down by Rule 17(a) of the Rules of Procedure of the Punjab Public Service Commission (adopted on 04.04.1986 and amended on 27.07.1987), there was no properly constituted Committee/Board for conducting the interviews, as no resolution/discussion with regard to the constitution of the Board/Committee that was to

conduct interviews, was passed by the members of the Commission. As such, any decision taken in that regard by the Chairman alone, was wholly contrary to law and vitiates the interview process. He further referred to Rule 17(a)(ii) and (iii) to submit that there was no compliance to this either, as there was no approval of the result, by the Commission, before it was forwarded to Government. He further submitted that Regulation 20 was also not complied with.

Learned counsel, therefore, submitted that in view of non-compliance of the mandatory provisions and the obvious malafides in the selection, which are manifest tangibly in the form of the record with regard to the missing ACRs of respondent No. 7, the selection of respondents No. 5 to 7 having been made completely for extraneous considerations, deserves to be quashed.

38. Mr. Vijay Kumar Syal, petitioner in CWP No. 7359 of 1995, appeared in person, and first submitted with regard to his own achievements in academics, as detailed in his petition, including the fact that he had graduated and thereafter obtained his Masters' degree in Public Administration, while working in the Punjab Government as a Steno Typist/Stenographer, since 1980. Thereafter, he authored a book in 1994 and completed his law degree in 1996.

He further submitted that he also received the Presidents' Silver Medal for work done during the Census Operation of 2001.

Thereafter, Sh.Syal was selected at No. 1 in the merit in the selection process to the Service (Punjab Civil Services) in respect of vacancies occurring in the year 1994 and was appointed to the same in 2011, pursuant to CWP No. 9715 of 1999 being allowed in his favour on 08.09.2008, though subject to the outcome of the decision of a Full Bench of this Court.

That selection of the petitioner was from Register A-II, i.e. the register for appointment to the "PCS" from amongst ministerial staff.

He further submitted that interviews for appointment from Register A-II and Register "C", for the selection presently in question, i.e. selection held in 1994 pertaining to vacancies of the year 1991, were held together in September 1994. There were 3 posts to be filled in from Register "C" and 10 posts from Register A-II.

Before declaration of the result, Mr. Syal submitted, 3 posts from Register A-II and 1 post from Register "C" were notified to be filled in, in respect of vacancies which arose in 1994 itself. A requisition for 14 posts was sent by Government, to the respondent-Commission, on 27.09.1994, vide a communication, Annexure P-4 (annexed with CWP No. 7359 of 1995). Of these 14 posts, 5 were to be filled in by direct recruitment from Register "B", 3 each from Registers A-I and A-II, 2 from Register A-3 and 1 from Register "C".

According to the petitioner, these should have been, in fact, added to the on going process for the vacancies arising in 1991 (i.e. the selection process presently in issue in these petitions), because of the fact that the said vacancies

had occurred before the declaration of the result of the selection process to fill in the vacancies of 1991.

In this regard, the petitioner cited the instructions of the Government of Punjab dated March 22, 1957, which he produced in Court, (though not annexed), pertaining to the procedure to be observed by the Administrative Department of the Punjab Government in dealing with the Commission.

The said letter refers to two earlier circulars of the year 1937, and specifically to the one dated 12.07.1937. The said circulars laid down that, after the expiry of 6 months, a fresh reference to the Public Service Commission would be necessary, to fill up additional vacancies not intimated to the Commission earlier.

According to the petitioner, since the selection process for the 1991 vacancies was initiated in June 1993 but not completed till September 1994, and in fact, the result was not declared till March 1995, the vacancies arising in the year 1994 should have been added to the ongoing process for selection (in respect of the vacancies of 1991).

In this regard Mr. Syal relied upon a judgment of the Supreme Court in *Virender S. Hooda and Others Vs. State of Haryana and Another*, . In that case, while referring to the instructions of the Punjab Government dated 22.03.1957 and subsequent instructions of the Haryana Government dated 26.05.1972, it was held as under:--

"Thus, when these vacancies within the period of six months from the date of previous selection the circulars are attracted and hence the view of the High Court that vacancies arose after selection process commenced has no relevance and is contrary to the declared policy of the Government in the matter to fill up such posts from the waiting list".

39. Mr. Syal next argued that the criteria for selection was not disclosed and this fact has not been denied by the respondents.

He further submitted that the criteria was actually defective because it was "prepared" by the Chairman of the Commission and not by the Commission itself, because it was only noted by the members, as proposed by the Chairman, with no active participation by the members themselves.

In fact, as per this petitioner too, the said criteria was tailor made to accommodate respondent Navtej Singh because of his proximity to the Chairman, being a Superintendent in the Commission.

He further submitted that the criteria for selection was laid down after the bio-datas of all candidates had been received and it was obvious as to what criteria would suit the persons who had already been earmarked for selection.

Mr. Syal also relied upon a judgment of a Full Bench of this Court in *Kamal Kumar Gupta v. State of Haryana and Ors.* 1991 (1) RSJ, 487, wherein, while dealing with the selection process made to the Haryana Civil Services, from Register A-I

(similar service rules being applicable to both States), it was held as follows:--

"The Division Bench took the Chairman of the Commission to their Chamber and put him general questions choosing at that stage to maintain the secrecy of the selection. The idea by then being simply to elucidate the matter for the purposes of their judicial satisfaction. During said conversation, the Chairman revealed as shown in the reference order that the criteria in question was laid out soon before the selection and that the criteria observed in the selection of the year 1982 or of the year earlier thereto was not preserved or repeated. He also conceded that the entire record of Service inclusive of A.C. Rs. etc. was present with the Commission before hand for a considerable period. The Court became apprehensive on account of said revelations and it has been observed in the reference order that the Hon"ble Judges constituting Division Bench had their reservations in that regard as to whether in the prior presence of the data thus available, a fair criteria could be evolved thereafter. We also feel that in all fairness criteria for selection should be laid out on receipt of requisition and not after the receipt of entire record and data concerning various candidates out of whom selection was to be made by the Commission. Whenever criteria is laid out after the receipt of whole record and data possibility of the same being tailor made cannot be ruled out. Thus in the peculiar circumstances of the case calling for the criteria adopted by the Commission and the result sheets by the Court for perusal was justified.

(Emphasis applied).

X X X X X

To sum up, the criteria laid out by the Commission has been found to be partly bad and partly not implemented properly so as to deny equal opportunity to all the candidates required to be considered by the Commission. The Civil Writ Petitions Nos. 8855 of 1988 and 1155 of 1988 are, therefore, allowed, selection/recommendation made by the Commission on 22.09.1988 and order of appointment dated 03.10.1988 (Annexure P-3) made on the basis thereof, are hereby quashed and the Haryana Public Service Commission is directed to make fresh selection recommendation of three most suitable persons out of the six names forwarded to it by the Committee headed by Chief Secretary to the State irrespective of subsequent developments, on the basis of criteria held good, after excluding the part relating to age, applying the rest again with regard to assessment of annual confidential reports and experience in line in the light of observations made above and tabulating the result afresh, within two months from the receipt of the order. The fresh recommendation shall be treated to have been made on 22.09.1988 and the candidates so recommended shall be entitled to all service benefits available to Haryana Civil Service (Executive Branch) since thereafter irrespective of any subsequent developments. No order for costs is however, made."

On this issue, the petitioner also relied upon a judgment of a coordinate Bench in

Sham Lal v. Union of India (1995) 1 RSJ 571.

40. Mr. Syal next contended that the marks assigned to the interview (viva-voce) were highly excessive, being 30% of the total of 100 marks spread over three different criteria (the break up of which has already been given earlier, in para 33 of this judgment).

He also submitted that the difference between marks assigned for different grades of the ACRs, was very less, i.e. 6 marks for an "Outstanding" report, 5 marks for a "Very Good" report and 4 marks for a "Good" report. On the other hand, there were no marks assigned for higher qualification, literary activities etc., though admittedly even as per the reply of the respondent-Commission, to para 6 of his petition, it has been stated that consideration of the qualification of candidates is an essential part of selection, along with service record and their performance in the viva-voce.

Mr. Syal next contended that as a matter of fact, though there were three heads of criteria shown, by way of: ACR records for the last 5 years, academic achievements upto graduation level and viva-voce; actually, no specific marks were assigned to each different category.

41. He next submitted that the selection from Register A-II was declared within one week of the interview, even though that result was in respect of 9 posts, whereas in respect of Register "C" it was declared after 6 months, even though it was only qua 3 posts.

As per the petitioner, all the above series of facts shows the malafides in the selection process, which were actually tailor made for the respondents, specifically respondent Navtej Singh.

In fact, the petitioner submitted, that the selection process should have been only a clerical process for tabulation of marks, as per the qualifications of a person and on the basis of his/her ACRs.

41-A On malafides, Mr. Syal further submitted that he was deliberately assigned two marks less than were to be assigned to him in respect of the ACR for the year 1987-88, which, in his case, was "Exceptional" but was assigned marks as are assignable for a report which is graded as "Good".

He next submitted that despite the above, on the basis of marks assigned for each individual criteria, other than viva-voce, he still had the highest marks amongst the present petitioners and the selected respondents, inasmuch as he had 48 marks, with 23 given for educational qualification and 25 given on the basis of his ACRs (thus totalling 48). However, in the viva-voce he was awarded only 09 marks, so as to ensure that his overall merit dropped below that of respondents No. 5 to 7.

Mr. Syal produced in Court the following statement (table/chart) showing the break-up of marks assigned to the three selected respondents and the three

petitioners before this Court:--

Other than that, Mr. Syal also produced in Court the following chart containing the names of all 44 candidates, including the petitioners and respondents No. 5 to 7, giving against each, the total marks obtained in the final result of the selection process. The said chart also contains remarks against some of the names which, according to the petitioner, are based upon information received by him from the the Commission, under the Right to Information Act.

Though these charts were not placed on record by way of any application moved, the facts contained therein have been put to learned counsel for the respondents, who, though not obviously endorsing the remarks made by the petitioner in respect of respondents No. 6 and 7, have not denied the factum of educational qualifications and the final marks obtained by each candidate.

Hence, the contention of the petitioner is that despite the petitioner himself and some other candidates being far more qualified than the selected respondents, specifically respondents J.C. Sabharwal and Navtej Singh, the achievements of the petitioners were deliberately downplayed by the Commission, both by assigning a criteria which was tailor made for respondents No. 5 to 7 and then again, by ensuring that the marks assigned to the petitioners in the viva-voce test, were of such a low grade that it would ensure that their overall merit was well below that of the said respondents.

41-B Mr. Syal also cited a judgment of the Supreme Court in *Durgacharan Misra Vs. State of Orissa and Others*, , to submit that the Commission cannot make a selection other than as per the Rules.

In that case, while considering selection to the post of Munsifs, as per the prescribed Rules, their Lordships held as follows:--

"16. The Rules have been framed under the proviso to Article 309 read with the Article 234 of the Constitution. Article 234 requires that the appointment of persons other than District Judge to the Judicial Service of State shall be made by the Governor of the State. It shall be in accordance with the rules made by the Governor in that behalf after consultation with the State Service Commission and with the state High Court. The Rules in question have been made after consultation with the Commission and the State High Court. The Commission which has been constituted under the Rules must, therefore, faithfully follow the Rules, it must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva voce test would, therefore, be illegal and without authority."

41-C He also relied upon a judgment of the Supreme Court in *Miss Neelima Shangla v. State of Haryana and others* (AIR 1997 SC 169), to submit that the Commission cannot concern itself with the number of posts that have been advertised or filled up and simply must forward the names to the Government for

appointment in the order of merit, especially if the candidates would not otherwise be disqualified in terms of any minimum marks stipulated in the Rules.

42. Mr. Syal also reiterated what Mr. K.S. Khehar had submitted with regard to the Rules of Procedure of the PPSC, specifically that Rule 17 was not followed in constituting the interview board, as it was decided by the Chairman himself and not by the Commission, after which the Chairmans' decision was simply circulated amongst the members.

43. On the issue raised by the learned counsel for the other two petitioners, that respondents No. 5 to 7 and petitioner Vijay Kumar Syal all belong to the ministerial service and as such could not be considered for appointment to the Service from Register "C", Mr. Syal submitted that the judgment of the Division Bench in Bhajan Singhs' case (supra), allowing the petitioners therein to participate as candidates from Register "C", not having been challenged, such a challenge could not be raised after the declaration of results. In this regard, he cited the judgment in Municipal Corporation of Delhi Vs. Gurnam Kaur, wherein, it was held as follows:--

"The decree passed by the learned Subordinate Judge not having been appealed from by the Municipal Corporation of Delhi has since become final. The rights of the parties therefore, stand crystallized by the terms of the decree passed by the learned Subordinate Judge."

44. Finally, with regard to granting relief to the petitioners, in case this Court comes to the conclusion that such relief is due to them, Mr. Syal submitted that even without quashing the selection of respondents No. 5 to 7, such relief can be granted, as has already been granted to him by a co-ordinate Bench, vide its judgment in CWP No. 9715 of 1999, decided on 08.09.2008.

In that case, Shri Vijay Kumar Syal had challenged the action of the respondents of not considering him for nomination to the service from Register A-II, despite his being eligible for such nomination in respect of the selection process which took place for vacancies of the year 1994. At the time when notice was issued in that petition, on 27.09.1999, a direction was issued to interview the petitioner but his result was ordered not to be declared without specific orders of the Court. Eventually, three names were recommended by the Commission, with the petitioner being at Sr. No. 1. Despite that, the petitioner was not appointed to the service. While noticing the petitioners' achievements, and also noticing that no guidelines have been issued for laying down a reasonable criteria in respect of the nomination of various eligible persons from different Registers, this Court (co-ordinate Bench), vide the aforesaid judgment dated 08.09.2008, directed that the petitioner be appointed from Register A-II, in respect of the recruitment process of 1994, on the basis of recommendation made by the Commission on 04.03.2005. The appointment of the petitioner was directed to be made against any available vacancy. Consequently, the petitioner was appointed to the service, upon the above directions passed in CWP No. 9715 of 1999 having become final.

It is necessary to note here that though this petitioner already stands appointed to the service pursuant to the above given directions in a writ petition earlier filed by him, he still seeks appointment against the vacancies of 1991, on the grounds detailed above, as, obviously, it would affect his seniority and future career prospects.

45. Coming now to the arguments addressed by Mr. Gurcharan Dass and Mr. Inderjit Singh, learned counsel appearing for the petitioner in CWP No. 10070 of 1995, i.e. Gurmeet Singh.

While reiterating all the arguments addressed by Mr. K.S. Khehar, Mr. Gurcharan Dass relied upon the judgment of the Supreme Court in *Ashok Kumar Yadav and others v. State of Haryana and others* (1995) (3) SLR 200, to submit that not more than 25% of the total marks to be assigned in a selection process, can be assigned for an interview/viva-voce. Thus, in the present case, 30 marks having been assigned out of 100, the selection process stood vitiated on this ground alone, as per learned counsel.

Other than that, Mr. Gurcharan Dass reiterated that since the entire criteria was tailor made to suit specific candidates and further, marks in the interview were also awarded only to ensure the selection of those very candidates, the selection of respondents No. 5 to 7 deserves to be quashed.

Learned counsel next relied upon a judgment of a Division Bench of the Madhya Pradesh High Court in *Adarsh Kumar Bharti v. K.N. Sinha and others* (1978 (1) SLR 793), to submit that, while considering *pari materia* Rules (as contended), it was held that when an interview board is constituted, the Chairman cannot act alone to constitute the board, unless he has been delegated that function, by the Commission as a whole. It was further held that the phrase "consultation with the Public Service Commission", means the Commission as a whole and not consultation with any one of the members thereof. Consequently, the recommendations made for appointment to the posts in question in that case, were quashed.

Lastly, Mr. Gurcharan Dass referred to Rules 5 and 11 of the Rules of Procedure of the Commission, to submit that all decisions by the Commission, have to be taken by a majority of its Members, and hence the single member Boards constituted, and the selection criteria adopted, not having been decided by proper process, and having been taken by the Chairman alone, were invalid decisions, vitiating the entire selection process.

With the above, the arguments of learned counsel for the petitioners, stood concluded.

46. Addressing arguments first, Mr. J.K. Sibal, learned Senior Advocate appearing for respondents No. 5 and 6, first drew attention to the letter dated 24.06.1993, already referred to earlier, to show that the aforesaid instructions of the Government, directed that a person who is not a ministerial employee working in

the Punjab Civil Secretariat/the Financial Commissioners" Secretariat/the High Court of Punjab and Haryana/the Punjab Vidhan Sabha, should not be nominated by the competent authority, as per clause-2(v) of the Instructions.

However, thereafter, vide letter dated 17.01.1994, addressed to the Secretary of the Commission (also referred to earlier), it had been clarified that the employees to be nominated were inadvertently restricted only to the Secretariat offices and as such were ordered to be excluded from Register "C". This was done in view of past practice since the promulgation of the Rules in 1976. However, since it was a bad precedent, in the face of the Rules, it should not be perpetuated and as such, officers/officials holding ministerial appointments as are covered exclusively by Rule 10 pertaining to Register A-II, cannot be considered for filling up vacancies from Register "C". Hence, vide the said letter dated 17.01.1994, the Commission was requested to confine its decision regarding selection of candidates from Register "C", only in terms of Rules 15.

Mr. Sibal further submitted that this decision was challenged before this Court in Bhajan Singhs" case (supra) (CWP No. 3691 of 1994 and connected cases), while deciding which, it was held that since the interpretation given by the Government, in the subsequent letter, was as per rules, but it still resulted in the petitioners in those cases being completely ignored from consideration (from either Register A-II or Register "C"), they would be considered to have been recommended from Register "C", by the Commission.

In this regard, he relied upon a judgment of the Supreme Court in National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, , wherein it was held that when the meaning of an enactment is obscure, the Court may resort to contemporary construction that the authorities have put upon it by their usage and conduct for a long period of time (reference para 5 of the said judgment).

Further, the decision of the Division Bench not having been challenged, in Bhajan Singhs" case, Mr. Sibal contended that the petitioners could not now challenge the selection of respondents No. 5 to 7 on the ground that the nomination should have been from Register A-II and not from Register "C".

In fact, learned Senior Counsel further submitted, that even the earlier letter dated 24.06.1993, by which directions were issued to restrict nominations from Register A-II to ministerial staff of only specified offices, was never challenged by the petitioners, thus precluding them from raising such a challenge at a stage when the results had already been declared.

He next submitted that the petitioners did not challenge the nomination of respondents No. 5 to 7 even when, vide communication dated 12.08.1994 (Annexure A-4 with Civil Miscellaneous Application No. 5351 of 2013), all heads of department were directed to intimate the dates of interview before the Commission, to each respective candidate. As such, the names of all candidates who were to be interviewed was given in the said communication and, in any

case, admittedly, respondent No. 7 was interviewed alongwith petitioner Nachhatter Singh who, admittedly was aware of his rights and had even confronted the Board member with regard to procedure etc.

Thus, all the petitioners knew that respondents No. 5 to 7 were being considered alongwith them, from Register "C", but failed to challenge their candidature to nomination from a "wrong Register".

47. Mr. Sibal next cited the judgments in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , to submit that the result of an interview cannot be challenged by an unsuccessful candidate on the ground that either the process of interview was unfair, or that the Selection Committee was not properly constituted.

Hence, learned Senior Counsel submitted, that the petitioners, by their own conduct of having taken part in the selection process right up to the stage of interview, are now estopped from challenging the same selection process, on any ground.

48. On the issue raised by Mr. Khehar that the judgment delivered by the Division Bench in Bhajan Singhs" case (supra) was a judgment in personam and could not apply to all those who did not approach the Court, (i.e. respondents No. 5 to 7), who were also considered for appointment from a "wrong" register, Mr. Sibal referred to another letter of the Government, addressed to the Secretary of the Commission, on 26.07.1994 (Annexure A-3 with the aforesaid Civil Miscellaneous Application No. 5351 of 2013). The said letter referred to the Division Bench judgment and further stated that since petitioner Vijay Kumar Syal and respondent No. 6 (Jagdish Chander Sabharwal) were also in the same situation as the petitioner before the Division Bench, they, alongwith others like them (names given in the communication dated 26.07.1994), must be treated at par, so as to avoid further litigation and in order to finalise the recruitment process in a time bound manner.

Hence, learned Senior Counsel submitted, that once this Court had held in the case of some candidates before it, that in view of past practice, they be given the benefit of being considered from Register "C", especially when they would otherwise have been left in the lurch, the same benefit was necessarily to be extended by Government itself to all who were similarly situated. He further relied upon a judgment of a Division Bench of this Court in Satbir Singh v. State of Haryana 2002 2 SCT 354, to reiterate that the State must extend the benefit of a judgment to those similarly placed.

49. In view of the above, learned Senior Counsel submitted that the petitioners having no ground for challenge and being estopped by their own conduct of having first participated in the same selection process with the same criteria laid down, their challenge to the appointments of respondents No. 5 to 7 cannot be entertained.

50. Mr. K.K. Gupta, learned Additional Advocate General, Punjab, who appeared for the State as also for the Commission, while adopting the arguments of Mr. Sibal, further pointed to the record of the Commission to submit that all procedure as has been prescribed in the Rules of Procedure for the Commission, was duly followed and as such, the contention of the petitioners, to the effect that the criteria laid down was "tailor made" to suit some candidates, or that the interview boards were improperly constituted, is belied by the facts.

51. First, referring to Rule 17(a)(i), he submitted that the composition of the Board or Committee constituted, for holding interviews for any post, even as per the said Rule, was to be decided by the Chairman and could even comprise of a single member.

As regards confirmation by the Commission, he pointed to Rule 17(a)(ii), to submit that only the decisions made, or order of preference settled by the Board or the Committee, was to be placed before the Commission for approval and confirmation, before taking action upon such decision. Thus, as per learned State counsel, the decision to constitute a single member or a dual/multi member board, was wholly the prerogative of the Chairman, even as per the Rules of Procedure, of the Commission, and was a practice followed before and after the selection in question.

Learned Additional Advocate General further submitted that even the reference to Rule 5 or Rule 11, as was sought to be made by the counsel for the petitioners, is fallacious, as the said Rules are only in the context of meetings of the Commission and decisions to be taken by the Commission in such meetings. The nomination of a Board/Committee constituted to conduct interviews, has nothing to do with Rules 5 or 11 and is only referable to Rule 17(a)(i).

Referring to the record, learned State counsel pointed out that as per practice, on/for each day that the interviews were to be held, the Chairman constituted the interview board for the 15th and 16th September, 1994, as also for the 20th of September, 1994 and had nominated Mr. J.R. Saini and Mr. J.S. Jakhar, as members. On the 21st September 1994, only Mr. J.R. Saini was nominated to constitute the one member board.

He further submitted that the same practice continues even now, as can be seen from subsequent selections made in the "Re-conduct" examinations for the selection process for the years 1994 and 1996, in the year 2005, as also for the recruitment process of 2001, which are all for selection to the Punjab Civil Services (Executive Branch), from different Registers.

Hence, learned Additional Advocate General submitted, that the process adopted being wholly in consonance with the Rules and practice, no fault could be found with either the constitution of the interview boards or with the selection process itself.

52. Mr. Gupta further submitted that this Court would not sit in appeal over the

selection process conducted by a constitutional body, which was competent to adjudge the suitability of each candidate for the Service. In this regard, he relied upon the judgment of the Supreme Court in *Dalpat Abasaheb Solunkes*" case (supra), wherein it was held as follows:--

"9. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High court went wrong and exceeded its jurisdiction."

53. Other than the above, the learned State counsel relied upon the following judgments to submit that the selection process was as per Rules and norms and therefore, did not call for any interference:--

"i) *Desh Raj and others v. State of Punjab* (supra) -

- On the issue of whether a viva-voce test should be held in the selection process to the Service, other than by way of direct recruitment.

ii) *Krishan Gopal v. State of Haryana* (2010 (8) SLR 556)

-On the issue of competence of the Commission/Board to lay down the selection criteria, if the Selection Commission is authorised by the Rules to do so.

iii) *Keshav Kaushik v. State of Haryana* (2010 (3) SLR 449)-

On the issue that no hard and fast Rule can be laid down for the percentage of marks assigned to a viva-voce/interview.

iv) *Madan Lal and others v. State of J & K and others* (supra)-

On the issue of locus standi of an unsuccessful candidate who has taken part in the interview process, to challenge the same on the ground of unfairness of the process or a defect in the constitution of the Selection Committee."

In all the above judgments, on the various issues mentioned against each of them, the hon"ble Supreme Court/this Court answered in favour of the Commission/State, upholding the selection process under challenge in each case.

Thus, Mr. Gupta submitted that in the present case also, the petitioners having participated in the selection process and thereafter having remained unsuccessful, cannot now turn around to challenge the same on any ground whatsoever, especially as the process was conducted as per Rules and norms.

54. Rebutting the arguments of the counsel for the respondents, Mr. K.S. Khehar first referred to Mr. Sibals" contention that petitioner Nachhatter Singh (petitioner in CWP No. 4413 of 1995) had complete knowledge of his rights, and in fact, admittedly, had confronted the member who was interviewing him and had questioned him on the illegality of a single member interviewing committee and that the selection process should only be on the basis of service record.

Mr. Khehar submitted that neither was the selection criteria disclosed, nor were the candidates made aware of the composition of the interview boards, as is obvious from the contention made in paragraph No. 6 of the writ petition, wherein the petitioner has referred to the necessity of a 50% quorum of Members of the Commission to conduct the selection process. Thus, learned counsel submitted, that the candidates not being aware of the selection process at all, they cannot be accused of not having challenged it before participating in it. Hence, Mr. Khehar further submitted, that the judgments cited on behalf of the respondents on that issue, would not be applicable to the facts of the present case.

55. Mr. Inderjit Singh, learned counsel (appearing for Mr. Gurcharan Dass, Advocate), for petitioner Gurmeet Singh (petitioner in CWP No. 10070 of 1995), in his rebuttal, submitted that the petitioners had waited to come to Court, with the hope that the Government would file an SLP against the judgment of the Division Bench in Bhajan Singhs" case (supra) and only when that did not happen, the petitioners approached this Court by filing the present petitions.

Other than the above, both Mr. Khehar and Mr. Inderjit Singh/Mr. Gurcharan Dass relied upon the following judgments to submit that if a judgment is delivered against the statutory provisions, it would have to be considered per incuriam and would not be considered a precedent:--

"i) Rattiram and others v. State of M.P. 2012 (2) Apex Court Judgments 287.

ii) Municipal Corporation of Delhi v. Gurnam Kaur (supra)."

Thus, learned counsel submitted that because the direction given by the Division Bench in Bhajan Singhs" case was not as per Rules, this Court would not be bound to hold that the selection of respondents No. 5 to 7 was correctly made from Register "C", when they were not eligible to be nominated to that register at all, being from ministerial staff, whose names could have been considered only for nomination to Register A-II, for eventual consideration for selection to the

Service.

56. Mr. Syal, petitioner in CWP No. 7359 of 1995, in rebuttal submitted, that he neither knew the selection criteria, nor knew the others who were being interviewed and as such, he could not have challenged the selection process before it was over.

Other than that, Mr. Syal reiterated all that he had submitted initially and stated that the very fact that doctors and engineers and "MBAs" had been left out from the selection process, as is obvious from the charts already reproduced earlier, shows that the selection process was wholly unfair and the criteria tailor made to suit respondents No. 5 to 7.

57. Having heard learned counsel for the parties, before considering the arguments made on each side, first of all, the relevant rules from the Rules of Procedure of the Punjab Service Commission, as have been produced by learned counsel for the respondents, need to be looked at and are, consequently, reproduced hereinunder:--

"2. (a) The Commission shall meet as often as necessary or as may be regulated by resolution by the Commission in the Committee Room under the presidency of the Chairman for the transaction of such business as can not be settled by circulation of files or is of such urgent and important nature that it is expedient to dispose it of by discussion in a meeting of the Commission without unnecessary delay.

Note:

(1) The Commission may call any specialist from outside for elucidation of any matter at a meeting, if necessary.

(2) The term business in these rules does not include interview of the candidates in connection with recruitment to services.

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3. The quorum for a meeting of the Commission shall be two where the number of serving Members is five and three where the number of serving member is six.

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5. Every question at a meeting of the Commission shall be determined by a majority of the votes of the Members present and in the case of equal division of votes, the Chairman shall have and exercise the second or casting vote.

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7. The decision of the Commission shall as far as possible be unanimous but if at any meeting the Chairman or any individual Member expresses a divergent opinion and unanimity cannot be reached, the opinion of the majority shall be the decision of the Commission.

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11. All decisions at a meeting of the Commission shall be recorded by the Secretary in the form of substantive resolutions and factum of dissent, if any, shall be noted. The draft proceedings shall be circulated as early as possible after the meeting and will be considered to have been confirmed after all the Members attending the meeting have signed the same without any objection.

In the event of any objections being raised by any one or more members regarding the correctness of the minutes, the draft minutes alongwith the objections shall be read out by the Secretary at the next meeting for consideration and confirmation by the Commission.

12. After the Commission have discussed a case and taken decision, a note recorded by a Member dissenting from that decision shall form part of the minutes of the meeting.

13(a) When a case is put up to the Sponsoring Member by the office, he will record his note and then the file shall be circulated among the other Members. If there is unanimity of views, the note of the Sponsoring Member will become the final decision of the Commission. And, if there is no unanimity of view, the Secretary will include the case in the agenda for discussion at the next meeting, among the Members.

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16 (a) The Commission may follow the same system for holding competitive and qualifying examinations as is followed by the Union Public Service Commission.

b) The Commission may by resolution lay down guidelines regarding the manner, the dates and the venue for holding such examinations and may also indicate the number of candidates that may be called for interviews.

17 (a) (i) The commission may from time to time decide to constitute Board(s) or committee(s) of one or more members for holding interviews of candidates for recruitment to various posts or for the purposes of any of its other functions. The composition of these Board(s) will be decided by the Chairman.

ii) Any decision made or order of preference settled by Board(s) or Committee(s) shall, before any action is taken thereon, be placed before the Commission for approval and confirmation.

iii) In the case of written examination as well as of selections made on the basis of interview, the Chairman shall be competent, after approval by the Commission to send the result to the Government Department concerned.

iv) Where more than one Member constitute a board for holding the interview, the senior most Member shall preside assisted by subject Expert(s). Each Member of the Board shall record his evaluation marks on the award sheets separately after general discussion with the Expert(s). After the interview each

Member shall seal his award sheet in a separate cover and pass it on to the Secretary who shall place all the award covers in a master cover, seal it with the seals of the Members and keep it in his own safe custody.

b) The Chairman will be responsible for the following functions:--

i) Fixation of interview dates, number of candidates to be summoned on each day and composition of interview Board(s).

ii) Appointment of Experts in consultation with concerned Member.

iii) Allocation of secret work regarding examination. The Chairman shall specify by designation the officer/officers who shall be responsible for all matters concerning the conduct of examinations. This will involve all confidential work regarding arrangements for setting of papers and their evaluation allotment of fictitious roll numbers, safe custody of answer sheets and result sheets after evaluation by the examiners etc.

iv) General Administration and co-ordination of the Commission's Secretariat.

v) Co-ordination of the commission's working.

vi) Distribution of work among the Members and staff of the Commission's Secretariat.

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20. The following shall be the specific duties of the Secretary or any other official nominated in this behalf in connections with the conduct of examinations and the interviews:--

a) After the conclusion of interviews on a particular day the marks sheets after being duly sealed in a separate envelope by each Member with his own seal shall be handed over to the Secretary for safe custody. He in turn shall seal the envelopes in a master envelope with his own seal alongwith these of the Members and keep it with him.

b) After the interviews are over, the Secretary shall assist the Commission in the preparation of the result as directed by the Commission.

c) He will be fully responsible for conduct of the examinations held from time to time by the Commission.

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22. The panel of experts for each subject shall be prepared by the Commission on the basis of the information to be collected by the Secretary from the various institutions and Government Departments.

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24. In matters for which no provision is made by these rules, the Commission

may be resolution regulate its proceedings in such manner as it deems fit.

25. The Rules of procedure approved and adopted on 20-7-1957 stand repealed."

Other than the above, the Rules 8, 10 and 15 of the Rules of 1976 already having been reproduced, Rule 7 of those Rules is reproduced below:--

"7. 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 Registers of accepted candidates to be maintained under these rules."

In addition to the above, a reference needs to be made to Rules 9 to 14 of the Rules of 1976, though it is not necessary to reproduce the said rules, the selections in question not being referable to them.

Just as Rule 15 lays down the method of nomination of candidates to Register "C", Rule 9 lays down the process of selection of candidates for nomination to Register A-I, Rule 10 for nomination to Register A-II, Rule 11 for nomination to Register A-III, whereas Rules 12 to 14 lay down the process of selection by way of direct recruitment and inclusion in Register-B.

Rule 8, which has already been reproduced in the earlier part of this judgment, categorizes employees of the Punjab Government as are to be nominated to each respective register, as also of candidates who are to be entered in Register-B, as a result of a competitive examination held for appointment to the Service.

58. Having seen the Rules of Procedure of the Commission, as also the Rules governing the Service, a break-up of the arguments addressed by learned counsel on both sides shows that the basic grounds for challenge to the selection in question, are three; i.e. illegal/irregular procedure adopted by the Commission; malafides in the manner of selection, with malafides intent to favour the selected candidates; and nomination for consideration from a wrong Register, in the case of petitioner Vijay Kumar Sayal and respondents No. 5 to 7. (The last ground having been by the petitioners other than, obviously, Vijay Kumar Syal).

Thus, the arguments on the above contentions, as addressed by the learned counsel, can be summed up as follows:--

1. The procedure adopted by the Government for nomination was incorrect, inasmuch as, petitioner V.K. Syal and respondents No. 5 to 7 were nominated for consideration for selection from Register "C, rather than from Register "A-II".

2. Thereafter, wrong procedure was adopted by the Commission in the selection process, with regard to the following:--

a) A single member board was constituted to hold the interview, though the quorum required is 50% of the members of the commission.

b) The criteria adopted as a parameter for selection, was not proper because of

the following:--

- i) Marks assigned to the interview/viva voce were excessive;
 - ii) No marks were assigned for higher qualification;
 - iii) The difference of grading between "Outstanding", "Very Good" and "Good", annual confidential reports, was minimal;
- c) The criteria was not decided by the Commission but only by the Chairman, i.e. respondent No. 3 in CWP No. 7359 of 1995

3. The malafides in the selection; which are manifest in the form of the following:--

- a) The criteria was tailor made to suit the favoured candidates, as can be seen from the fact that though the requisition for the posts in question was received by the Commission, from Government, in June 1993, the criteria was framed only on 12.09.1994, i.e. just before the interviews were held and well after the biodata of all the candidates had been received and thoroughly scrutinized by the Commission.
- b) Lower marks were assigned for the interview to all but the favoured candidates, in a manner so as to ensure that only those who were already chosen to be selected, topped the merit list, after seeing the marks assignable to them on the touchstone of the other two components of the criteria, i.e. on the basis of academic record and ACRs.
- c) The adverse record against respondent No. 7 was deliberately removed from his service file and a clean chit was given to him for the years in question, by the respondent-Chairman.
- d) The result of the selection process, in respect of Register "C", was deliberately delayed till March 1995, only because it was becoming difficult to adjust the chosen candidates, i.e. respondents No. 5 to 7.

This is obvious from the fact that whereas only 3 persons had to be selected out of 44 from Register "C", 10 candidates had to be selected from a larger number of candidates from Register "A-II", yet the selection from that Register was declared in October 1994."

59. Coming to the first argument raised by counsel for the petitioner in CWP No. 4413 of 1995 and CWP No. 10070 of 1995, with regard to respondents No. 5 to 7 and petitioner Vijay Kumar Syal (in CWP No. 7359 of 1995), i.e. nomination for consideration from a wrong Register by the Government.

Though the exact posts that respondents No. 5 and 6 were holding in Director of Public Instructions (Schools) Punjab, is not disclosed anywhere, none of the parties, or learned counsel for the said respondents, have refuted the fact that they were holding ministerial posts. Respondent No. 7, in any case, was holding the post of Superintendent in the respondent-Commission, at the time in

question and as such, was also on a ministerial post.

A perusal of Rule 8(2) of the Service Rules of 1976, shows that it is unambiguously stipulated therein, that in Register "A-II" shall be entered the names of accepted candidates who are members of Class II and III services, serving in connection with affairs of the State of Punjab, and are holding ministerial posts.

Register "C", on the other hand, as already noticed, is to contain the names of officers or officials of the State of Punjab, who are not covered by any other category of officers and officials as are given from Rule 8(1) to 8 (3) (Registers A-I, A-II and A-III), and who are also not selected by way of a competitive examination. Thus, correctly, no official who holds a ministerial post, would be eligible to be considered for selection to the Service from Register "C, because such officials" candidature for selection, is to be considered from Register "A-II".

Therefore, without doubt, neither respondents No. 5 to 7, nor petitioner Vijay Kumar Syal, were actually eligible for consideration from Register "C for the selection in question and, simply on that ground, actually, the selection of respondents No. 5 to 7 would otherwise deserve to be quashed.

59-A However, as already noticed in detail, that issue was settled by a Division Bench of this Court in Bhajan Singhs" case (supra), for the reasons given in that judgment; i.e., since the practice of including names in Register "A-II", in the past, was that those who are nominated from that Register, were only those who were holding such posts in the Secretariat and other few selected offices, hence, the same practice was followed even for the selection year in question, though Government sought to rectify that erroneous practice, vide its communication dated 17.01.1994, addressed to the Secretary of the Commission (Annexure A-2 with the application filed by respondents No. 5 and 6), by which it was stated that, in terms of what is stipulated in Rule 15 of the 1976 Rules, no official/officer holding a ministerial post can be considered for selection from Register "C and, as such, the Commission should confine its decision regarding selection of the candidates from the said Register only in terms of the provisions of Rule 15.

That decision having been challenged in Bhajan Singhs" case, the Division Bench came to a conclusion that since the practice had been continuing from the inception of the Rules, non-consideration of the candidates (petitioners before the Division Bench) who, though, holding ministerial posts, were nominated to Register "C", would amount to injustice to them. Hence, it was directed that, for the year in question, their candidature from Register "C" be accepted by the Commission, for consideration for selection.

Of course, had the decision been otherwise, i.e. to the effect that all those persons holding ministerial posts but wrongly nominated from Register "C" be considered for selection from Register "A-II", that issue may have got settled right then. That not having happened, possibly because it may have entailed a whole fresh selection process from inception, by comparison of inter se merit

between those to be then included in Register "A-II", with those already under consideration from that Register, the decision was accepted by all concerned, i.e. the State, the Commission, as also all candidates, including the petitioners and respondents No. 5 to 7.

Hence, even though it was strongly argued by Mr. Khehar and Mr. Gurcharan Dass that the Division Bench judgment would not be binding on this Court, and that it should be considered to be have been rendered per incuriam, it being in the face of a statutory rule to the contrary, I find myself unable to agree with that contention, firstly, for the reason that had the Rule not been brought to the notice of the Division Bench and the judgment had been rendered without consideration of the Rule, it can possibly be held to be not binding, on that principle. The Rule specifically having been noticed and considered by the Court and the judgment having been passed in the peculiar circumstances of the fact that due to past practice, the names of persons holding ministerial posts had been nominated to Register "C" and their non-consideration would, at that stage, actually result in injustice to them, this Court cannot interfere with that finding of a larger Bench, especially when all concerned authorities and the petitioners themselves accepted that judgment and it became final qua parties, without any further challenge.

Secondly, the petitioners having accepted the judgment at that stage, cannot turn around against it after they were unsuccessful in the selection process, to challenge the same. The matter would have been different, if, even after their non-selection, they had challenged that very judgment (in Bhajan Singhs" case), i.e CWP No. 3691 of 1994, and had met with success with such challenge. Obviously, if that had been so, this plea would have been redundant in the present case. However, in the absence of any challenge to the Division Bench judgment, and in view of the fact that the judgment was rendered after considering the relevant rules, this Court is bound by it. It needs mention here that, in that judgment, it had also been observed by their Lordships that in the future it would be open to the State to adopt the interpretation as it had put forth before the Court, and to fill the vacancies accordingly. Hence, a departure from past practice, in view of the provisions of the specific Rule in question, was not barred, after the selection for the year in question, i.e. the selection process presently under challenge, was over.

In view of the above, this contention of the petitioners in CWP No. 4413 of 1995 and CWP No. 10070 of 1995 has to be rejected, despite the fact that, on absolute merit, the contention is well founded and correct.

60. Coming next to the argument that the procedure adopted by the Commission was irregular/illegal.

The first ground of challenge in this respect, is that only a single member interview board was constituted (at least for some of the interviews), whereas a quorum of 50% of the total number of members of the Commission, is necessary

to conduct interviews.

This argument is wholly without any basis, in view of what is clearly stipulated in Rule 17(a)(i) of the Rules of Procedure of the respondent-Commission, as was applicable for the years in question, i.e. 1991-94.

Though the said Rule opens with the phrase that:--

"The Commission may from time to time decide to constitute Board(s) or Committee(s) of one or more members for holding interviews of that candidates", however, the concluding line of the said Rule reads to say that:-- "The composition of these Board(s) or Committee (s) will be decided by the Chairman".

Hence, this contention on behalf of all the petitioners, is completely misplaced. The quorum stipulated in Rule 3 of the said Rules, is only in respect of meetings of the Commission, for which a minimum quorum of two members is necessary, if the total number of serving members is five; the minimum is three members, where the number of serving members is six.

The constitution of the boards/committees for conducting interviews, having specifically been dealt with in Rule 17(a)(i), with the Chairman further specifically having been empowered thereby, to decide the constitution of such boards, the quorum stipulated in Rule 3 would have no application to such decision.

Further, Rule 17(a)(i) itself also envisages the constitution of a single member interview board/committee; hence, the contention that a single member board is impermissible, is a fallacious argument.

Thus, the judgments cited on behalf of the petitioners, to the effect that a selection process held by an incompetent committee would be vitiated, would not apply in the present case, by virtue of the aforesaid Rule itself. Hence, the said ground of challenge is not available to the petitioners and is consequently also rejected.

61. The next ground of challenge, with regard to procedure adopted by the Commission not being proper, is that the criteria for selection was wholly defective.

The first issue on this count, raised on behalf of the petitioners, is that the maximum marks assigned for the interview process was excessive, i.e. that the maximum marks (30) assigned to grade a candidates" performance in the interview, being 30% of the total number of marks awardable for the whole selection process, was excessive and smacks of malafides.

The issue of malafides would be dealt with separately, along with the other arguments made on that issue by the petitioners and as such, at this stage, it is first to be seen as to whether 30 marks out of 100 marks, were correctly or incorrectly earmarked/assigned by the Commission, as a percentage of the total

marks assigned.

There has been a great deal of controversy on this issue and first referring to one of the judgments cited by learned counsel for the petitioners, i.e. Ashok Kumar Yadav's case (*supra*), it is seen that the Supreme Court has held that where the selection process also involves a written examination, the total number of marks that should be assigned to an interview/viva voce, should not be more than 12.2% of the total marks of the selection process. This judgment pertains to a case of selection to the Haryana Civil Service (Executive Branch), to which *pari materia* Rules are applicable.

However, the vital difference is that the percentage of 12.2 marks, as held to be assignable by their Lordships, to the viva voce, was only in the context of a written examination also being held for selection to the Service. As such, the ratio of that judgment, as would also be seen from a discussion of other judgments on the issue, would hold good only for selection made to the Service from Register "B", in the present context.

Therefore, to determine as to whether 30% marks can be assigned to a viva voce/interview, of the total aggregate of marks upon which merit is to be determined for selection, the law as held in other judgments, also needs to be looked at.

Learned counsel for the petitioners had also cited the judgment in *Shri Durga Charan Misra v. State of Orissa and others*, AIR (1987) SC-2267, where selection to the Orissa Judicial Service was under challenge. After considering Ashok Kumar Yadav's case (*supra*), their Lordships held that when both, a written test and a viva voce are prescribed in the Rules applying to recruitment, but no minimum marks have been prescribed which must be cleared, in the viva voce, the selecting body could not, on its own, add to the Rules by laying down a minimum bench mark for the viva voce test.

In the present case, that is not the issue as it is nobody's case that any bench mark was adopted by the Commission for the viva voce test, which, if not reached, would disentitle the candidate for consideration for selection.

Hence, the judgment cited is inapplicable in the present context.

Similarly, in *Mohinder Sain Garg Ors. Vs. State of Punjab and Others*, , again the ratio of Ashok Kumar Yadav's case (*supra*) was reiterated, to hold that where there is also a written test, 25% marks assigned to the interview is excessive.

Mr. Syal had next referred to Ashok alias Somanna Gowda and another v. State of Karnataka (Civil Appeal No. 4088 of 1991 decided on 11.10.1991), wherein allotment of 33.3% of the total marks for the viva voce, was held to be excessive by the Supreme Court.

This again was a case, where a qualifying examination was also prescribed, to which a 100 marks were allotted, of the total of 150 marks, and 50 marks were

allotted for the interview, as per the Rule itself, which was held to be against the ratio of the law laid down in Yadav's case.

Thus, again this was a case akin to Ashok Kumar Yadav's case and as such, the ratio thereof would have no application, where no qualifying examination is prescribed in a selection process.

62. On the other hand, in All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, , where appointment by promotion was under consideration, in the State Bank of India, and the criteria based upon which selections were to be made, was appointments/appraisals and interviews, the Supreme Court rejected the contention that the percentage of marks allotted to the viva voce cannot be more than 15%. It was held that no hard and fast criteria can be laid down for the same and it would depend on the office, position or purpose for which the interview is to be held. However, it was held that interview marks should not be so high as to give an authority unchecked scope to manipulate, or to act in an arbitrary manner while making a selection. In the context of recruitment from persons of matured personality, their Lordships referred to an earlier judgment in Lila Dhar Vs. State of Rajasthan and Others, , to hold that an interview may actually be the only way, subject to basic and essential requirements being satisfied, to determine the best person eligible for the job.

63. Looking next at a judgment cited by the learned Addl. Advocate General, of a Division Bench of this Court in Keshav Kaushik v. State of Haryana and others, 2010 (3) SLR (Pb. & Hry) 449 , it was again held that no hard and fast rule can be adopted to hold as to what is the correct percentage of marks which should be allocated for a viva voce test. Referring to Lila Dhar and Ashok Kumar Yadav's cases (supra), as also to Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , it was held, as noticed above. However, it needs to be specifically noticed that the Division Bench was seized of selections to posts of Additional District and Sessions Judges in Haryana, the recruitment of which is governed by the Haryana Superior Judicial Service Rules 2007, wherein it is stipulated that the written test would carry a maximum of 750 marks and the viva voce 250 marks.

A similar view was again held by the Supreme Court in Bishnu Biswas and Others Vs. Union of India (UOI) and Others, . However, in this case, their Lordships held that the manner in which the marks had been awarded in the interview, indicated a lack of transparency and as such, after noticing the pattern of the marking in the interview, whereby those with lesser marks in the written test were given higher marks in the interview, the judgment of the Calcutta High Court, holding the selection process to be vitiated from a particular stage onwards, was upheld, also upholding the direction issued by the High Court to continue with the selection process from that point. The posts in question in that case, were for recruitment of Grade-D staff in the Andaman and Nicobar Administration.

64. In the present case, it is to be first noted that upon a specific query put to learned counsel for the Commission, and upon specific direction, he has produced records to show the criteria adopted by the Commission for the immediately preceding and succeeding selections, held in the years 1991 and 1999 (though in respect of vacancies that arose in different years). It was seen that in the selection process held in December 1991, for the Service, the criteria fixed was: 20 marks for educational qualification and co-curricular activities, 20 marks for record/Annual Confidential Reports and 60 marks for personality/apptitude and viva voce, thus totalling 100 marks.

In the interviews conducted in the year 1999, 30 marks were allocated for academic achievement (essential qualification being graduation), 20 marks for ACRs for the last 5 years and 50 marks for the viva voce (including therein aptitude for the job, personality and general awareness).

Thus, if the allocation of marks for the interview/viva voce is to be compared, then obviously the allocation of 30% marks for the viva voce test, as opposed to 60% and 50% in the immediately preceding and succeeding selections, is the most fair, for the year in question.

Though, in the light of the circumstances which are presently to be discussed, even 30 marks assigned to the viva voce/interview were excessive, in the opinion of this Court, however, on wholly objective parameters, 30% marks for the viva voce can not be said to be excessive, when considering the suitability of matured and seasoned persons, for recruitment to a job like a Provincial Civil Service, where there is no written test prescribed for such selection. However, more will be discussed on this issue, while considering the argument raised on behalf of the petitioners, with regard to alleged malafides in the selection process.

Per se, of course, 30% marks, as already said, with other criteria being service record and performance in academics, cannot be said to be excessive.

65. That brings us to next ground of challenge by the petitioners, i.e. no marks were allocated for higher qualification, thereby minimising the chances of persons with post graduate degree, doctorates, MBBS degrees etc.

Again on a query put to learned counsel for the Commission, and having perused the record with regard to such query, it is seen that only the basic qualification of Graduation was taken into consideration while allocating marks under the criteria of educational qualifications. Marks were awarded to each candidates, as per his/her performance at the graduate level. Thus, a person scoring 65% marks was awarded higher marks out of 40, than a person scoring 45% marks in the graduation examination. In other words, nobody could have achieved the maximum of 40 marks, unless he/she had obtained 100% marks at the graduate level. Though again, in the opinion of this Court, some additional marks could have been awarded on the basis of additional qualifications, however, that is turf upon which this Court would not tread, in view of settled law on the subject, that framing of a criteria that is best suited to the post in question, is not the job of

the Court but that of the body constituted for the purpose of such selection, especially where the body happens to be a Constitutional body like the Public Service Commission.

If any reference in this regard to any case law is needed, the judgment in *Dalpat Abasaheb Solunke v. B.S. Mahajan and others*, (*supra*), can be cited.

However, this is again to be seen in the light of the allegation of malafides made by the petitioner, to submit that the criteria itself was made to suit specific candidates. As such, more would need to be said on this issue also, further ahead.

66. Coming to the next argument made on behalf of the petitioners, that the grading awarded in respect of different categories of ACRs, i.e. 6 marks for an "Outstanding" report, 5 marks for a "Very Good" report and 4 marks for a "Good" report, with no marks for an "Average" or "Below Average" report, I see no specific ground at all to interfere in such allocation of marks, with the total number of marks assigned, in respect of the service record of a person, being 30 marks. Since record for the past five years had to be seen, then, if all reports were "Outstanding", the maximum number of marks would be 30. Again, per se at least, I see no reason to comment adversely upon the allocation or distribution of the marks assigned to different levels of gradings that a person received in his ACRs.

Hence, I find no substance in this argument of the petitioners.

67. The last two grounds, on which the procedure adopted by the Commission in the selection process, has been challenged by the petitioners, (other than mala fides), are that the criteria was not decided by the Commission but only by the Chairman and as such, it cannot be considered to be a decision of the Commission.

Second, that the selection process must only be on the basis of the record of the candidate and not by any other criteria. A huge "thrust" was made on behalf of the petitioners on the issue of what the criteria should have been for the selection process and whether the criteria framed can be said to be criteria framed by the Commission itself, rather than by the Chairman only.

As per learned counsel and Mr. Syal, the criteria was actually settled by the Chairman himself, alone, without consultation with the Commission and as such, in any case, it cannot be said to be valid criteria, whatsoever it may be.

To consider first, the issue of whether, in order to determine the criteria for the selection process the members of the Commission are required to sit in consultation with each other, a perusal of the Rules of Procedure would again be necessary.

67-A A perusal of Rule 2(a) would show that the Commission is required to meet as often as it may consider necessary for the transaction of business, as cannot

be settled by circulation of files, or if it is of such urgent and important nature that would necessitate the meeting of the Commission. However, note (2) below Rule 2(a) stipulates that the term "business" does not include interview of candidates in connection with recruitment to services.

This can be interpreted in two manners:-- (i) That it is only the interview of candidates which is excluded from the term "business", but any decision to be taken in connection with such interview, would be included within the ambit of the definition of "business"; (ii) that even any decision to be taken with regard to the manner of conducting interviews, including the number of Members of the Board/Committee and the criteria to be adopted for any selection, would be excluded from the term "business".

The note specifically states that the term "business" does not include interview of candidates, in connection with recruitment to services, and an interview is only one of the components of the selection process. Secondly, the exclusion in note (2) below Rule 2(a) is specific to interview of candidates in connection with recruitment. Thus, only the interview itself in connection with recruitment to services, is excluded from the term business and other decisions to be taken with regard to a selection process, are not, therefore, excluded from the ambit of that term. Thus, it cannot be held that selection criteria and other decisions related to the selection process, would be excluded from the said term, unless some other rule specifically deals with a particular part of the selection process, such as Rule 17(a) (i), by which, as already noticed, the decision to appoint Members of the interview board/committee, has been specifically left to the discretion of the Chairman.

Therefore, fixation of the selection criteria, would, in the opinion of this Court, be included in the term "business".

Having said that, it is also to be noticed that even in terms of Rule 2(a) itself, it has been left to the discretion of the Commission, to meet in conference of its Members, or to circulate the files concerning various transactions of business, amongst the Chairman and the Members.

In the present case, it is seen from the record that the criteria assigned for selection to the Service from Register "C", for which interviews were to commence from 15.09.1994, was signed by the Chairman on 12.09.1995 and thereafter by two Members on 15.09.1995, i.e. the 1st day of the interviewing process.

Thus, obviously, the criteria was circulated to the Members and no conference was held to settle the same. This is further fortified from a specific query made to learned counsel for the Commission, as to whether any minutes of meeting are on record, showing that the criteria had been settled in such meeting. Mr. Gupta had informed the Court that after a thorough scrutiny of the record, nothing had been found by the staff of the Commission, to show that any such minutes of meeting had been recorded. Hence, it is obvious that the criteria was

only circulated.

However, in the opinion of this Court, on an important issue like settling the criteria for the selection process, a discussion on the subject should be held by Members of the Commission and, correctly, such minutes should be recorded; however, in the face of the Rules of Procedure, which, in any case, are not under challenge, it cannot be said that the criteria having been settled by circulation, is bad only because it was not settled in a meeting between members of the Commission.

68. Coming next to whether the criteria could have been framed in the first place, by dividing it into three heads of academic achievement, annual confidential reports of the past five years and a viva voce test?

Learned counsel and Mr. Syal vehemently argued that in view of Rule 15 of the Rules of 1976, by which the procedure for selection of candidates for Register "C" is prescribed, no criteria other than the service record of those entered in the Register can be added by the Commission.

A perusal of Rule 15, however, shows that it only provides the eligibility of a person who can be nominated for selection to Register "C" and, further, the authority competent to nominate such persons.

Thus, the Minister Incharge of each respective department, the Administrative Secretary of each department and the Head of each department, in the Government of Punjab, are all entitled to nominate one person each, from amongst officials/officers not covered in Rules 9, 10, and 11 (pertaining to Registers "A-I", "A-II" and "A-III") for consideration for selection from Register "C".

A perusal of the Rules shows that no specific method or criteria of selection, by the Commission, is given in the Rules of 1976.

Similarly, no rule in the Rules of Procedure of the Commission, lays down the criteria to be adopted by the Commission for making selections to different posts in the Government of Punjab, whether to the Punjab Civil Service or to any other services. Hence, with no Rule prescribed for the purpose, it is obvious that the discretion to fix a criteria of selection is left to the Commission itself.

Though it is well settled that the Court would not substitute or fix any criteria for selection to posts outside its domain, and leave it to the expert body to do so, however, it has been held in *Dr. Krishna Chandra Sahu and others Vs. State of Orissa and others*, , as follows:--

"30. Now, power to make rules regulating the conditions of service of persons appointed on Government posts is available to the Governor of the State under the proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory rules, in a given case, have not been made, either by Parliament or the State Legislature, or, for that matter, by the Governor

of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions.

32. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homeopathic Medical Officers, as the basis for determining their suitability.

33. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309 . It is basically the function of the rule-making authority to provide the basis for selection. This Court in *State of A.P. v. V. Sadanandam* observed as under:

"We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive."

34. The Selection committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In *P.K. Ramachandra Iyer v. Union of India*, it was observed:

"By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm."

35. Similarly, in *Umesh Chandra Shukla v. Union of India*, it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Durgacharan Misra v. State of Orissa* and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce.

36. It may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this Court in *B.S. Yadav v. State of Haryana*. For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.

(Emphasis applied)

37. If it were a mere matter of transition from one service to another service of similar nature as, for example, from Provincial Forest Service to All India Forest Service or from Provincial Civil Service to Indian Administrative Service, the confidential character rolls could have constituted a valid basis for selection either on merit or suitability as was laid down by this Court in *Parvez Qadir v. Union of India* which was since been followed in *R.S. Dass v. Union of India*. But in the instant case, appointments are being made on posts in an entirely new service, though the educational qualifications required to be possessed by the candidates are the same as were required to be possessed in their earlier service."

69. Thus, as regards whether or not ACRs alone should be the basis of selection, a distinction was drawn between fresh recruitments and appointments from one service cadre to another, in para 37 of the above said judgment.

As regards who should lay down the selection criteria, the thrust of the reasoning is that a selecting body cannot substitute its own criteria for that provided in the rules or instructions issued by the Government. However, it was also observed (para 32) that the Government in that case had neither issued any administrative instructions nor supplied the selecting body with the criteria, which was to be adopted on the basis of which the suitability of candidates was to be determined.

69-A In the present case, as already seen, no suitability criteria, whatsoever, has been laid down in the Rules or even by way of any executive instructions brought to the notice of this Court by either the State or the Commission, (or even the petitioners), that Government itself has laid down any such criteria.

Thus, would, in such a situation, the Commission be justified in laying down criteria on its own, to determine suitability of candidates for selection to the service?

In the opinion of this Court, in the absence of any such statutory rules or instructions issued by the executive/Government, there would be not much choice but for the Commission to frame its own criteria.

Still, a reference needs to be made to two judgments of this Court, which though not directly dealing with the issue, (as to which body should frame a selection criteria), nevertheless dealt with the stage at which the selection criteria should be laid down and as to whether an interview would be a necessary parameter on the basis of which suitability of candidates to the Service should be determined.

On the latter issue, i.e. the necessity of an interview, the Division Bench judgment cited on behalf of the respondents, in *Des Raj v. State of Punjab and others*, (supra, decided on 08.04.1986), needs to be first referred to.

In fact, the very issue which has been raised by the petitioners, that "non-maintainability" of an interview for selection to the Service was also raised in that case, as can be seen from the following observations of the Court:--

"6. The first and foremost ground of attack was that the rules do not envisage and viva voce test and the suitability of the candidates could only be judged on the basis of their service record. Referring to the provisions of Rule 15 which lays down separate marks for viva voce test for the direct recruits, it was urged that wherever the rule making authority wanted a viva voce test to be held, it had specifically so provided, and the absence of any such provision qua the candidates to be selected from the various Registers gives a clear indication that no viva voce test could be resorted to by the Commission for making their selection. We, however, find ourselves unable to subscribe to this view. If the method of selection had been specified as in the case of direct appointees, it could not have been possible to evolve a method in variance thereto by the Public Service Commission. But, in the absence of any guidance in the rules in this regard, the Commission was well within its right to evolve its own method to judge the suitability of the candidates. The consideration of the service record of the candidates alone would have provided hardly any guidance to judge their suitability, because till now all the candidates have been doing only clerical jobs. After selection, they are to be put on administrative jobs as members of the service. Their service record in the capacity of clerical jobs, obviously, could not provide a proper data to judge their suitability for administrative jobs. The viva voce test, therefore, was not only advisable but a must in the case of the candidates to be selected from the various Registers. We need not dilate on this matter any further and suffice it would to quote the following observation in *Ashok Kumar Yadav and others v. State of Haryana and others*, 1985 (2) All India Services Law Journal 482 to emphasise the importance and need of a viva voce test:--

"It is now admitted on all hands that while a written examination assess the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board."

Thus, it was held by the Division Bench, by reference to *Ashok Yadav's* case,

that a viva voce test was an essential part of the selection procedure to determine suitability of candidates for selection to the service.

Similarly, the Full Bench in Kamal Kumar Guptas" case (supra) held as follows:

"...For objective satisfaction in the given situation i.e. in the case of persons of matured personality as all the candidates were bound to be interviewed test perhaps may have been the only proper way subject to basic and essential academic and professional requirements being satisfied. But for the reasons best known to the Commission it was not restored to..."

Therefore, even as per the observations of the Full Bench, record of the candidate alone would not be sufficient criteria to determine selection, and an interview was essential.

The Full Bench also dealt with the issue of as to at what stage, the criteria must be laid down. Though not seized with the issue of whether the Commission was competent to frame the criteria or not, by holding that it must be laid down at the stage when the Commission receives the requisitions for making selections to the Service, the Full Bench, tacitly, did not disapprove the laying down of the criteria by the Commission. This can be seen from the observation of the Court as follows:

"...In the light of these circumstances in order to peep into the same the Division Bench was constrained to call for the criteria adopted by the Commission. It has been specifically mentioned by the Division Bench in its order of reference dated August 10, 1989 that they found prime facie that the return was fairly discrepant with regard to the actual facts as were found from the Gradation List of Tehsildars/Naib Tehsildars prepared by the Revenue Department and the result achieved by the Commission on some particulars, and that for the purpose they wanted to have the matter elucidated. So they had sent for the Chairman of the State Public Service Commission through the Commission's counsel, at that juncture.

10. The Division Bench took the Chairman of the Commission to their Chamber and put him general questions choosing at that stage to maintain the secrecy of the selection. Their idea by then being simply to elucidate the matter for the purposes of their judicial satisfaction. During said conversation, the Chairman revealed as shown in the reference order that the criteria in question was laid out soon before the selection and that the criteria observed in the selection of the year 1982 or of the year earlier thereto was not preserved or repeated. He also conceded that the entire record of Service inclusive of A.C. Rs. etc. was present with the Commission before hand for a considerable period. The Court became apprehensive on account of said revelations and it has been observed in the reference order that the Hon"ble Judges constituting Division Bench had their reservations in that regard as to whether in the prior presence of the data thus available, a fair criteria could be evolved thereafter. We also feel that in all fairness criteria for selection should be laid out on receipt of requisition and not

after the receipt of entire record and data concerning various candidates out of whom selection was to be made by the Commission. Whenever criteria is laid out after the receipt of whole record and data possibility of the same being tailor made cannot be ruled out. Thus in the peculiar circumstances of the case calling for the criteria adopted by the Commission and the result sheets by the Court for perusal was justified."

69-B Hence, in view of the law down as above, though the practice of the selection body laying down its own criteria had been deprecated by the hon"ble Supreme Court in Sahus" case (supra), however, in view of the fact that no statutory rule or executive instruction exists, that lays down the parameters and criteria on the basis of which suitability of candidates for selection to the Service is to be made, the criteria laid down by the respondent-Commission, in the year 1994 at least, cannot be the cause for quashing the selection by this Court, especially when both, a Division Bench and the Full Bench, have actually held that an interview process is necessary for gauging suitability for selection to the Service.

However, whether the selection deserves to (and can be) quashed on other parameters, or not, is something which needs to be seen on the touchstone of whether or not there were any malafides in the selection process.

70. As per the petitioners, malafides in the selection process can be seen from the factors already reproduced in the opening part of this judgment.

Thus, dealing with them one by one, this Court is to come to a conclusion as to whether or not such malafides actually exist in the appointment of respondents No. 5 to 7, or any of them.

The first ground for alleging malafides is that, as already seen, the criteria was actually framed by the respondent-Commission on 12.09.1994, which was 3 days before the interview process was to start. This is despite the admitted fact that the requisition to the Commission, for conducting the selection process, was sent by the Government in June 1993. Thus, very obviously, the entire biodata of other candidates had been received by the Commission and had also been scrutinized by it in the period of 1 year and 3 months prior to the "overt" selection process being actually started, in the form of interviews.

As already noticed, the Full Bench in Kamal Kumar Guptas" case (supra), had already deprecated the framing of criteria at a belated stage and specifically held that whenever a criteria is laid down after the receipt of the record and data, the possibility of the same being tailor made cannot be ruled out. Therefore, it found the action of the Division Bench in calling for the entire record to examine the criteria adopted to be wholly justified and eventually it was found by the Full Bench that the criteria was bad and, particularly, not implemented properly.

In the present case the situation seems to be not different, because once the records and bio-data of the candidates had been scrutinized, it was obvious as to

what criteria would suit which candidate. Yet, the criteria, per se, in this case, cannot be held to be entirely bad, as already discussed, in view of the fact that marks for interview were limited to 30% of the total marks assigned to the three different components of the criteria. It is, therefore, to be further seen as to whether malafides can be attributed on account of other factors, as alleged by the petitioners.

71. The first thing that is seen on a scrutiny of the record, is that amongst the selected candidates (respondents No. 6 to 8), respondent No. 6-Daljit Singh had obtained 23 marks for educational qualification, on account of the fact that he had 57.53% aggregate marks in the graduation examination, which, in terms of proportionate percentage, works out to be 23 marks out of 40 marks assignable under that criteria. He was awarded 21 marks on the basis of his Annual Confidential Reports for the past 5 years, i.e. from the year 1986-87 to the year 1999-91, which cannot be faulted considering that he had four "Good" reports for which he received 4 marks each and had one "Very Good" report for which he received 5 marks, thus totalling 21 marks.

Thus on the basis of these two components of the criteria, Daljit Singh obtained 44 marks, whereas for the viva voce test, he was awarded 28 marks, thus totalling 72 marks.

Similarly, respondent No. 7, Jagdish Chander Sabharwal, obtained 17 marks out of 40 marks for educational qualification as he possessed proportionately that percentage of marks in his subjects of Graduation.

Having all five "Outstanding" reports, he was awarded 30 marks under that parameter, thus totalling 47 marks, after which he was awarded 24 marks in the viva voce, with a grand total of 71 marks.

Respondent No. 8-Navtej Singh, obtained 17 marks out of 40 for educational qualification, with a score of 43.83% aggregate marks in his graduation. For his Annual Confidential Reports, he was awarded 17 marks and it is necessary to notice here that, from the record of the Commission, the following recording is seen, under this parameter:--

The marks awarded against each years' ACR grading, are written in the original record, with no marks having been awarded for the years 1987-88 and 1988-89.

The alphabets/numerals "P/48" and "P/49" obviously denote the page number in the record file of respondent No. 7, as can be compared with what was recorded by this Court in the order dated 01.03.2013 (already reproduced earlier in this judgment). It had also been noticed that there are cuttings in the page numbering on pages 44-50, of which pages 46 and 47 were originally numbered as 50 and 51, whereas on the other pages, i.e. 44, 45, 48, 49 and 50, the original number is not fully visible. The same occurred in pages originally numbered as 55-56, with re-numbering as 51-52.

Obviously, there seems to be substance in the allegation that adverse record

against respondent No. 8 was removed and instead he was given a certificate of "good and satisfactory conduct" for the years 1986-87 and 1988-89.

It is to be noticed that though no marks have been awarded for the ACRs of these years and as such it would seem that he would draw no benefit from removal of ACRs with an "Average" or "Below Average" grading, however, if the remarks contained in such record either reflected on his integrity, or poor quality of work etc., obviously there would have been a large question on his selection.

As per the petitioners, the adverse record was removed by the Chairman, who is respondent No. 3 in CWP No. 7359 of 1995. However, as already said, no further enquiry is being initiated on that issue, in view of the fact that respondent No. 8 has already died and two decades have gone by.

Be that as it may, the said respondent (Navtej Singh), would otherwise have been awarded a total of 34 marks (17+17 each under the criteria of academic qualification and ACRs), but as per the "Detailed Master Result Sheet" of the Commission, he was awarded 35 marks, possibly because the score for educational qualification, out of 40 marks, came to be 17.532, as his percentage of marks in graduation, was 43.83. In the interview, he was awarded 29 marks out of 30, thereby making a final score of 74 marks.

As regards petitioner Nachhatter Singh (CWP No. 4413 of 1995), he obtained 22 marks out of 40 marks on account of educational qualification, (with 56.16% marks in his graduation) and obtained 23 marks on the basis of his ACRs, thus totalling 45 marks. In the interview, he was awarded 18 marks out of 30 marks, thereby scoring a total of 68.

Petitioner Vijay Kumar Syal (CWP No. 7359 of 1995), obtained 23 marks out of 40 marks for educational qualification with 57.69% marks and received 25 marks out of 30 on account of his ACRs, thus totalling 48 marks. In the viva voce, he was awarded 9 marks out of 30.

Coming last to petitioner Gurmeet Singh (CWP No. 10070 of 1995), he received 20 marks for educational qualification and 17 marks on account of his ACRs, thus totalling 37 and was awarded 10 marks out of 30 in the viva voce.

72. A perusal of the above shows that the petitioners mainly lost out to respondents No. 5 to 7 on account of higher grading given to the said respondents in the viva voce.

Of course, it must be noticed that respondent Jagdish Chander Sabharwal had obtained 30 marks out of 30 on account of his 5 "Outstanding" ACRs.

On the other hand, Vijay Kumar Syal submitted that though he had an "Outstanding" ACR for the year 1987-88 in the score sheet of the Commission, he was shown to have only a "Good" ACR for the said year and consequently was awarded 4 marks instead of 6. The said ACR has not been produced by the respondents, so as to be able to determine as to whether it was an "Outstanding"

report or only a "Good" report. However, that issue is not being gone into further, because even if two extra marks are awarded to Mr. Syal, that still would not bring him at a higher point of merit qua respondents No. 5 to 7, as the total marks obtained by them were 72, 71 and 64 respectively, whereas Mr. Syal had a total of 57 marks. Hence, even if two marks are added to 57, he would obtain 59 marks.

72-A De hors Mr. Syals" contention with regard to the above, it is now to be seen as to whether this Court can or should interfere in the awarding of marks in a viva voce, as per assessment of general knowledge, personality etc. made by the interview Board?

That answer, on principle, has to be in the negative, i.e. that this Court can not interfere in such a manner. However, in the entire circumstances of events, where the criteria was admittedly framed only 3 days before the interviews were to start, with all relevant material before the Commission qua the plus and minus points of each candidate and further, seeing that all the selected candidates specifically scored extremely high marks in the viva voce, as opposed to their scores on the basis of other two criteria (with the exception of Jagdish Chander Sabharwal qua his ACRs), most definitely a doubt does occur in the mind of the Court with regard to fairness of the interview process and the awarding of marks for the same.

This is to be also weighed in the light of the fact that none of the two medical doctors, one of them being a M.D., or a Platoon Commander in the Home Guards, who had a Presidents" Award, or even one Vijay Kumar Sharma, who was eventually selected in the IAS, and one Bakshish Singh who was a Sub-Divisional Engineer, and some other candidates, who were LLBs etc., scored higher in the interview than respondents No. 5 to 7.

Vijay Kumar Sharma, aforesaid, obtained 10 marks in the interview, Dr. Paramjit Singh, 10 marks, Dr. Jotinder Kaur, 9 marks, Anantjit Singh, Platoon Commander, 10 marks, Bakshish Singh, Sub-Divisional Engineer, 12 marks etc.

As already seen, petitioner Vijay Kumar Syal, who eventually, in the next selection process, is stated to have topped the merit list, was awarded 9 marks and petitioner Nachhatter Singh who otherwise had almost an equal score to that of respondents No. 6 and 7 on the other two criteria (45 marks against 44 and 47 respectively), was awarded 18 marks out of 30 in the interview.

Despite this, it needs to be said that persons with higher qualification may not perform well in interviews, both, on account of lack of inter-active skills, or even on account of lack of general knowledge; however, it is definitely a matter of surprise and intrigue that all amongst highly qualified persons scored low, whereas all the selected persons, who were at the ministerial level, with relatively lesser marks on the other parameters (again with the exception of Jagdish Chander Sabharwal with a maximum score for his ACRs), scored far higher marks in the viva voce. That, in fact, becomes a little too surprising to be

acceptable. Nevertheless, the Court would still not hold the selection to be bad, even as per settled law on the subject, in a selection process on account of higher marks awarded in an interview, to certain candidates viz-a-viz other candidates.

However, the factor of missing pages with re-numbering in the personal record file of respondent No. 8-Navtej Singh, with a note in his favour from the Chairman (as his administrative authority in the Commission), and the page numbering having been deliberately changed, are facts which definitely the Court finds "too co-incidental to be co-incidental", to repeat what was said in the order dated 01.03.2015.

73. Coming to the last ground of challenge made by the petitioners, i.e. that the result was unnecessarily delayed till March 1995, whereas the result in respect of Register "A-II" with a larger number of selectees was declared within two months, though otherwise perhaps not too much would devolve on the same, but in the entire circumstances and chain of events, as enumerated above, that too definitely adds to the suspicion in the mind of the Court that all was not well with the selection process.

74. Having found as above, to the effect that though, strictly, no irregularity in procedure is discernible, in terms of the Rules governing recruitment to the Service, or the Rules governing the procedure of the Commission, however, on the issue of malafides, starting from the fact that the criteria was settled only after all records of the candidates had been scrutinized and interviews were about to commence, alongwith all the factors as detailed above, thereby giving credence to the allegations of the petitioners, with regard to the allegations of mala fides, this Court would, naturally, have been inclined to quash the selection and to direct a fresh selection, and if this matter had been finally adjudicated upon within a few years after the selection had taken place, the selection would have been quashed, in view of the apparent favouritism.

However, now, firstly on account of the fact that more than two decades have gone by since the selection took place (including the two years that this Bench took to decide the matter), with two of the selectees either having retired or being on the verge of retirement and one selected candidate, i.e. Navtej Singh, having unfortunately died, quashing of the selection process at this stage, in the opinion of this Court, would neither be proper, nor justified. This is especially so as, even if the selection were to be quashed, obviously the petitioners cannot be ordered to be appointed, once the selection process itself is held to be vitiated.

Naturally, if the selection process is quashed, a fresh selection would have to be ordered, which, 20 years down, is wholly unfeasible.

Though both Mr. Khehar and Mr. Syal did vociferously argue that appointment of the petitioners, or other persons deserving of the same, can be ordered on the basis of the other two components of the criteria, or on the basis of service record alone, I cannot agree with the above contention, in view of the fact that,

firstly, this Court would be substituting its own criteria for that which had been laid down by another constitutional body, but moreso because even though it is seen that the selecting body (the Commission) did not, apparently, act in a fair manner as seen, that still would not confer jurisdiction on this Court, to itself become a selecting authority for the Service and to frame its own criteria and thereafter direct selections and appointments on that basis, that too at such a belated point of time.

75. That having been said, it must also be said that any body or institution, constitutional or otherwise, is only as good as the men and women constituting such body. And if honesty of purpose is made sub-servient to personal considerations, obviously, no matter how highly placed the said institution or body, it cannot function in the manner or for the purpose that it was constituted for.

To try and ensure that interview processes are fairly held and that marks commensurate to performance have been awarded, possibly, the only method of determining that, would be by videography of the interview process. However, that not being the case, the Court cannot substitute its own opinion for that of the interview board.

76. In conclusion, having said all of the above, in view of what has been held with regard to the non-feasibility of quashing a selection process after 20 years, this Court has no option but to dismiss the petition, with a pious hope that further selection processes would be made in a more transparent manner.

Practicably, though a direction would otherwise need to be issued, even in terms of what was observed by their Lordships of the Full Bench, that selection criteria must be framed immediately upon receipt of requisition by a selection body and no change in such criteria, which must be duly thought out, can be effected thereafter, till the selection process is wholly complete; however, the Commission itself framing the criteria not being in consonance with what has been held by the Supreme Court in *Dr. Krushna Chandra Sahu's* case (supra), the direction to be issued, has to be in consonance with what has been held in that case, i.e. that the selection criteria for higher posts, especially those of the Civil Services and higher level posts to be manned by technologists and professionals, should be framed by the Government itself and incorporated in the Rules governing such body.

Therefore, to ensure that consistency is maintained in future selections, the respondent State is, consequently, directed to frame the criteria to be adopted by the Commission for selection to the service and to incorporate the same in the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976 within a period of three months from the date of receipt of a certified copy of this order.

With the above, nothing more needs to be said, except that the directions contained herein above, be conveyed to both, the Government as also the Commission, by the Registry of this Court, forthwith.