

(2014) 01 P&H CK 0226
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14018 of 2000

Vijay Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16 32
Penal Code, 1860 (IPC) — Section 120 406 409 467 468
Prevention of Corruption Act, 1988 — Section 13(1)(d)

Citation : (2014) LabIC 2575 : (2014) 2 SCT 526

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Gaurav Singh Hooda in C.W.P. Nos. 14018, 14415, 16483 and 16446 of 2000, Mr. G.K. Chatrath, with Ms. Alka Chatrath in C.W.P. Nos. 14604 and 16614 of 2000, Mr. R.K. Hooda in C.W.P. No. 17030 of 2000, Mr. Lokesh Sinhal in C.W.P. No. 578 of 2010, Mr. Shakti Singh, for Mr. S.N. Yadav in C.W.P. No. 16730 of 2000 and 4892 of 2001, Mr. Nitin Rathee in C.W.P. No. 14260 of 2000, Mr. Sandeep Bansal in C.W.P. No. 15415 of 2000, Mr. S.P. Laler and Mr. Ravinder Malik Ravi in C.W.P. No. 14067 of 2000, Mr. Ravi Verma in C.W.P. No. 17017 and 17684 of 2000, for the Appellant; Arun Bansal, Advocate for Respondent Nos. 5 to 8 and 17 in C.W.P. No. 14260 of 2000, in C.W.P. No. 17030 of 2000, for Respondent Nos. 11, 54, 68 and 78 in C.W.P. No. 14067 of 2000, for Respondent Nos. 5, 6, 9, 10 to 17 in C.W.P. No. 15759 of 2000, Mr. Ram Kumar Saini, Advocate for Mr. R.N. Lohan, Advocate for Respondent Nos. 7, 8, 10, 12 to 15, 18 to 22, 24, 25 and 27 in C.W.P. No. 16446 of 2000, for Respondent No. 39 in C.W.P. No. 16483 of 2000, for Respondent Nos. 7, 8, 10, 12, 13, 14, 15, 18 to 22, 24, 25, 27, 28, 31, 33, 35, 38, 37, 39, 40 to 48 and 52 in C.W.P. No. 14018 of 2000, Mr. Parminder Singh, Advocate for the Private Respondents in C.W.P. No. 578 of 2010, Mr. G.K. Chatrath with Ms. Alka Chatrath, Advocate for Respondent Nos. 4 to 1960 in C.W.P. No. 269 of 2010 and for Respondent Nos. 9, 21, 31, 46, 47, 56, 67, 71, 80, 91, 105, 107 to 110, 113, 116, 133, 163, 172, 177, 183, 200, 201, 206, 211, 216, 217, 228, 231, 237, 242, 246, 251, 252, 257, 265, 266, 270, 277, 282, 285, 296, 303, 315, 328, 329, 334, 339, 343, 346, 352, 355, 362, 365, 366, 378, 395, 403, 406, 413, 434, 440, 444, 448, 453, 457, 501, 509, 510, 511, 513, 516, 521, 530, 531, 533, 567, 569, 573, 578, 580, 599, 603, 661, 679, 697, 698, 699, 704, 709, 711, 750, 753, 755, 761, 762, 764, 775, 779, 782, 783, 789, 792, 815, 822, 826, 832, 838, 879, 884, 891, 896, 902, 905, 908, 917, 923, 943, 947, 953, 963, 978, 892, 985, 997, 998,

1004, 1008, 1027, 1034, 1036, 1042, 1056, 1084, 1099, 1103, 1111, 1123, 1127, 1143, 1150, 1155, 1159, 1167, 1183, 1187, 1191, 1199, 1201, 1207, 1217, 1226, 1232, 1246, 1248, 1251, 1256, 1257, 1273, 1274, 1280, 1283, 1291, 1300, 1315, 1319, 1323, 1334, 1337, 1350, 1352, 1357, 1358, 1366, 1365, 1385, 1386, 1387, 1402, 1421, 1428, 1433, 1439, 1454, 1457, 1459, 1462, 1482, 1494, 1502, 1525, 1524, 1533, 1534, 1535, 1553, 1558, 1576, 1580, 1582, 1596, 1603, 1610, 1619, 1625, 1640, 1643, 1644, 1649, 1652, 1659, 1692, 1699, 1708, 1733, 1755, 1771, 1816, 1821, 1823, 1840, 1843, 1849, 1852, 1856, 1862, 1887, 1894, 1896, 1903, 1920, 1929, 1957, 1962, 1967, 1982, 1990, 2001, 2005, 2007, 2018, 2052, 2053, 2057, 2083, 2097, 2114, 2115, 2118, 2160, 2173, 2195, 2197, 2204, 2255, 2264, 2272, 2287, 2293, 2296, 2329, 2331, 2371, 2412, 2425, 2436, 2455, 2458, 2468, 2486, 2497, 2499, 2504, 2527, 2534, 2536, 2545, 2549, 2565, 2567, 2573, 2569, 2583, 2599, 2603, 2607, 2608, 2642, 2665, 2674, 2680, 2684, 2693, 2698, 2705, 2707, 2711, 2716, 2712, 2727, 2730, 2740, 2744, 2758, 2764, 2771, 2775, 2804, 2817, 2828, 2830, 2833, 2838, 2849, 2851, 2855, 2874, 2894, 2930, 2942, 2952, 2956, 2964, 2998, 3005, 3007, 3012 in C.W.P. No. 578 of 2010, Mr. R.S. Malik with Mr. Samrat Malik, Advocate for Respondent Nos. 38, 41, 77, 137, 147, 177, 230, 255, 265, 275, 290, 292, 296, 305, 312, 325, 373, 374, 396, 445, 472, 515, 522, 531, 541, 555, 561, 570, 580, 582, 633, 637, 647, 699, 705, 730, 751, 763, 780, 867, 889, 897, 904, 934, 963, 1007, 1040, 1047, 1054, 1057, 1059, 1106, 1117, 1129, 1134, 1195, 1215, 1231, 1239, 1244, 1250, 1264, 1265, 1266, 1303, 1304, 1308, 1315, 1341, 1350, 1359, 1364, 1369, 1374, 1381, 1384, 1400, 1403, 1427, 1449, 1455, 1463, 1466, 1471, 1483, 1493, 1508, 1509, 1525, 1533, 1535, 1546, 1547, 1554, 1557, 1563, 1568, 1571, 1574, 1598, 1613, 1632, 1637, 1639, 1641, 1644, 1648, 1660, 1663, 1665, 1715, 1716, 1717, 1720, 1725, 1726, 1730, 1735, 1740, 1756, 1765, 1779, 1785, 1786, 1787, 1803, 1804, 1812, 1813, 1815, 1816, 1820, 1831, 1854, 1860, 1862, 1863, 1868, 1879, 1885, 1893, 1899, 1902, 1903, 1907, 1914, 1932, 1935, 1946, 1959, 1964, 1966, 1970, 1971, 1991, 1998, 2005, 2009, 2015, 2018, 2019, 2021, 2023, 2046, 2050, 2057, 2058, 2067, 2076, 2086, 2089, 2103, 2104, 2106, 2108, 2109, 2112, 2123, 2124, 2134, 2140, 2154, 2158, 2167, 2192, 2207, 2211, 2262, 2270, 2271, 2276, 2281, 2289, 2320, 2321, 2324, 2326, 2331, 2341, 2360, 2362, 2366, 2369, 2371, 2374, 2378, 2385, 2389, 2396, 2407, 2416, 2429, 2434, 2445, 2450, 2459, 2479, 2489, 2501, 2516, 2518, 2521, 2564, 2567, 2572, 2574, 2592, 2600, 2605, 2609, 2613, 2620, 2659, 2676, 2687, 2698, 2701, 2728, 2803, 2810, 2814, 2817, 2823, 2830, 2849, 2865, 2867, 2881, 2902, 2906, 2918, 2930, 2941, 2953, 2956, 2968, 3006, 3009, 3013, 3015 in C.W.P. No. 269 of 2010, Mr. Rajive Atma Ram with Mr. Arjun Pratap Atma Ram, Advocate for Respondent No. 369, 1961 to 2009 in C.W.P. No. 269 of 2010, Dr. Suresh Kumar Redhu, Advocate for respondent No. 196 in C.W.P. No. 269 of 2010, Mr. Ashwani Verma, Advocate, for Respondents 4, 8, 9, 11 and 13 in CWP No. 14962 of 2000, Mr. Tapan Kumar, Advocate, for Respondent No. 36 in CWP No. 14067 of 2000, for Respondent No. 19 in CWP No. 14260 of 2000 and for Respondent No. 20 in CWP No. 15759 of 2000, Mr. D.D. Gupta, Addl. A.G., Haryana for Official Respondents, for the Respondent

Final Decision : Disposed Off

Judgement

K. Kannan, J.

I. JBT Teachers? selection: the genesis of the controversy

1. This batch of writ petitions concerns the selection process of Junior Basic Trained (JBT) Teachers, pursuant to a selection notification issued on 15.11.1999 in Daily Newspaper Tribune by the Director, Primary Education and for posting to be done for 3206 candidates at the Primary Education level within different Districts of State of Haryana. That notification had set out details of various categories of persons who would be recruited and the basic qualification setting out the eligibility criteria for making applications and for consideration for selection. As a preliminary step after appraisal of the eligibility, roll numbers had been assigned to the candidates and the relative grading had been done by taking into reckoning the academic qualifications at 70% with weightage for higher qualifications and experience respectively at 5% each, aggregating to an extent of 80% and 20% marks to be assigned for performance in interview. Some persons, who had higher qualification with graduate degree with B.Ed had filed C.W.P. No. 16410 of 1999 for permitting their applications to be considered and this Court had passed an order allowing them to be interviewed. Total number of persons so interviewed were 7707 candidates. While manipulations were not possible as regards the academic qualification and the grading done on the basis of higher qualifications, the area of controversy was of the appraisal done at the interview. The results were published along with criteria for selection in several newspapers including the Indian Express on 07.10.2000. On the basis of the results, appointment orders had also been issued.

II. The CBI investigation reveals the modus operandi for preparation of the ? supreme court list? and the "directorate list"

The validity of the selection process and the publication of results were brought under cloud when some of the candidates, who had not been selected, had filed writ petitions alleging grave malpractices. As if to secure credence to their versions, a case had been registered against one Sanjiv Kumar, IAS who held the additional charge as Director of Primary Education at the relevant time when the results were published and against whom a FIR No. 312 had been registered on 04.06.2002 and still later yet another FIR No. 293 had been registered on 03.06.2003 at Police Station Sector 17, Chandigarh. The latter was on the basis of a complaint of one Paley Ram, Deputy S.P., Haryana Vigilance Bureau for alleged offences u/s 406, 409, 467, 468, 471, 471A, 120 IPC read with Section 13(1)(d) of Prevention of Corruption Act. The case took another twist when Sanjiv Kumar himself had approached the Supreme Court by means of a Writ petition under Article 32 of the Constitution in Writ Petition (Crl.) No. 93 of 2003 contending that when he was posted as Director, Primary Education Haryana, he had been pressurised by the then Chief Minister Sh. Om Parkash Chautala to replace the list of candidates which had been prepared and was due for publication with an alternative list containing a set of 15 award lists signed by the members of the selection committee which Sanjiv Kumar claimed as the fake

list. When he refused to comply with the pressure for changing the list, a false case had been allegedly filed against him. During the course of investigation, Sanjiv Kumar handed over one set of interview list of District Kaithal and part list of District Kurukshetra to the CBI. The ?15 award list? filed by Sanjiv Kumar at the Supreme Court and one interview list at District Kaithal and part list at District Kurukshetra constituted what could conveniently be called as Supreme Court list. Sanjiv Kumar claimed that the actual list which had been prepared and which was ultimately published for announcing the results was actually approved by the Directorate Primary Education which could conveniently be called as the Directorate list. The Supreme Court found that there was some prima facie material of malpractices when some of the other candidates had also joined the fray and since high ranking political persons were said to have been involved, the Supreme Court directed that case would require to be entrusted with the CBI for further investigation. The further investigation by the CBI had yet another twist to the enquiry when it found that the Directorate list as propounded by Sanjiv Kumar was itself not genuine and that was also a fabricated list having been tampered with the original list which was held in safe custody by the previous incumbent in office Smt. Rajni Sekri Sibal. The investigation found that the list which had been prepared and kept in a sealed cloth cover had been substituted by Sanjiv Kumar himself on 16.09.2000. The person, who claimed to be a whistle blower at whose instance the Supreme Court had ordered an investigation through CBI turned to be a villain of piece himself and he was arrayed as 3rd accused in the case that was prosecuted before the Special Judge-II (Prevention of Corruption Act) CBI, Rohini, Delhi. The report of the CBI revealed a large scale conspiracy amongst higher ranking officials working in the State of Haryana along with the Chief Minister and his son. The Chief Minister and his son were accused Nos. 4 and 5 and Vidya Dhar another IAS Officer who was said to have been responsible for alteration of list had been arrayed as 1st accused. The case proceeded for a few years and the judgment yielded to finding of guilt through judgment delivered on 16.01.2013.

III. The extent of reliance on the judgment of the criminal court-limited to vindication of complaint of manipulation of marks at the interview

2. In the course of trial leading to its judgment, the Criminal Court has collected a large volume of documentary and oral evidence. Sanjiv Kumar examined himself as a witness in defence and subjected himself to cross examination. The Criminal Court entered a finding that Sanjiv Kumar was not just a whistle blower but he was a comrade in crime himself. A whistle blower truly, he was, in that without him going to the Supreme Court, there would not have been a direction to CBI for investigation and revelation of all the materials of how the lists came to be manipulated at various times and particularly the list that was published was itself a fabricated list on the basis of which appointments had been given. He was a comrade in crime to the extent that the list which he claimed to be false namely the Supreme Court list was the genuine list but he had fabricated a new list by tampering with the list which was prepared and which had been kept in

the custody of the previous incumbent. The Court found that his version that he had opened the original list on 07.10.2000 from the almirah was not true and contradicted his own version that the desealing of the first list was done on 16.09.2000. Ms. Rajni Sekri Sibbal had been examined as a witness whose version was relevant to the effect that she had been appointed as Director, Primary Education and she had sent a note to the Ministry of Education on 20.06.2000 for preparation of list and for publication to be passed on to the Chief Minister. There seemed to be some misgiving in the finalization of the list when she was ordered to be transferred and Sanjiv Kumar, who was a State Project Director for Haryana Prathamik Shikshak Pariyojna Parishad was appointed to hold additional charge as Director of Primary Education since 11.07.2000 in the place of Smt. Rajni Sekri Sibbal. The real circumstances about when the list was actually changed and how the conspiracy was hatched to add some marks to some candidates and to reduce marks to some other candidates to secure list that was ultimately favoured and gave birth to a Directorate list, have been subject of adjudication before the Criminal Court. The decision of the Special Judge appears to have been brought under challenge before the High Court at Delhi and the case is pending.

3. I have made skeletal reference to the judgment of the Criminal Court only for the purpose of showing that the Court was principally concerned with whether there had been alteration in the list made and whether there was a conspiracy amongst all the accused persons, who committed the offences for which they were charged with. Since the adjudication has still not become final, I have referred to the judgment only for taking note of some uncontroverted fact that the list which was prepared and went for publication was not the genuine list. It must be remembered that no attempt was made at the time of trial, except by the 3rd accused Sanjeev Kumar that the list on the basis of which results were published was the genuine list and all the persons that had been selected were the meritorious candidates selected after proper appraisal. The area of dispute which is still at large is whether there was a conspiracy involving all the accused persons and whether Sanjiv Kumar at whose instance the prosecution before the Special Court went against all the 64 accused had really brought out truthful contentions before the Supreme Court. After the Criminal Court judgment had been rendered, I had called upon the State Government to indicate its own stand on how it proposed to act on the CBI report and had directed an affidavit to be filed by an officer on the proposed action to be taken not below the rank of Assistant Secretary. In some of the writ petitions, the selected candidates had been impleaded as parties and I had also directed the written statement of all the selected candidates to be brought on record.

IV. The grounds of challenge and defences

4. The petitioners have a simple case to present on the basis of what the CBI report brought and how the Criminal Court dealt with the case. The report and the Criminal Court judgment are a vindication of their contention that there were

serious irregularities in the selection process and the select list on the basis of which persons had been appointed was a fake list and the persons that were ultimately selected were persons who were not entitled to hold the posts.

5. Though several contentions were raised in the writ petition, the entire focus of attention at the time of arguments on the basis of which the counsel appearing for the petitioners would seek for the Court's decision would be: (i) The selection as JBT teachers was to a district cadre and the vacancies in the respective districts had been clearly identified and notified in the advertisement notification and selection committees had also been set up at the respective districts. There was a specific condition in the advertisement notification itself that an application could be filed only through one district centre and a candidate cannot give more than one application. Consequently, according to the petitioners, the selection must have also been done and finalized from only from out of the candidates interviewed at the respective centres for filling vacancies in the respective districts. The State, on the other hand, prepared a State merit list and made an allocation to various districts which were impermissible and against advertisement notification; (ii) The selection was vitiated by fraud and nepotism and the list was fabricated.

6. The State had originally filed the written statement through Registrar Education, Office of the Director Elementary Education, Haryana. The State had taken a non committal stand in the written statement contending that the subject matter of the selection was pending trial before the CBI Court and therefore, the Department could neither consider granting an appointment to the petitioners nor discard the list on the basis of which selection had been made. It would, however, try to show its own affirmation to the fact that the State had granted sanction to prosecute the erring officers and it would be prepared to abide by the Court's decision. On the legal submission made by the petitioners that the select list had been made from the State level merit list but not on the district level merit list, the State did not take any particular stand on what was the appropriate basis for selection. To a direction given by this Court for the State to declare the stand on the basis of CBI report, the State has given a status of the candidates who were actually selected and how such selection had come about. The tabulation is reproduced to disclose the candidates who ultimately stood by the benefit of the list which was found by the CBI to be fake and stated by all the persons in the criminal case to be also fake:--

The list would reveal that out of the selected candidates of 3334, 956 candidates obtained increase of marks while 1950 suffered decrease. There were 123 names which were common to both the list. There were 34 persons whose names had not been found place in the Supreme Court list. The notified vacancies were 3206 and I take it that the State had enlarged the consideration to 3334.

7. The selected candidates themselves have filed replies and the defences could be set forth as under.

8. As a factual submission, it is urged that there was no particular proof that any of the selected candidate had been involved in the manipulation and it would be harsh to punish the candidates without actually identifying the persons who had actually sullied the results. The Court shall be loathe to club the tainted with the untainted and paint with the same brush all candidates and jettison them on the basis that the selection process had been vitiated by manipulation of marks. All of them have worked for more than 12 years and they have not been found to be deficient in their prowess as teachers. Some of them amongst the selected were already working in ad hoc posts and they had resigned and joined the posts after the selection had been made. In the new dispensation, they would be required to pass the Teachers Eligibility Test (TET) and if they are disqualified now, they will not be able to join again without passing TET. They would also contend that there were two or three occasions when the selection to JBT had been undertaken by the State and many of the petitioners have themselves competed for selection and persons who are prosecuting the cases now are those persons who were not able to gain selection in the subsequent selection exercise taken by the State. They cannot still be found to be eligible now. If there are still vacancies, the petitioners could very well be accommodated in such vacancies and the respondents shall not be displaced by any of the petitioners.

9. As a matter of legal submission, it was contended in chorus by various counsel appearing on behalf of the respondents that JBT teachers posts was one single State service and the fact that they constituted a district cadre cannot allow for a selection also to be made for each district, for it would offend the provisions of Articles 14 and 16 of the Constitution. The State Government was justified in preparing a State merit list and the selection made on the basis of a joint merit list cannot be faulted.

10. Some of the selected candidates would have a defence that even as per the State reply, marks had not been added for all the candidates at the interview. To some persons marks had also been reduced and therefore, such of those candidates who have suffered reduction of marks and who have still been shown in the select list cannot be displaced for any reason and hence, their selection cannot be interfered with. Some candidates have same marks in both the lists, such of those persons who have been granted the same marks in both the Supreme Court list and the Directorate list are set out in Annexure R-38/2 and those candidates also cannot be displaced. Even the CBI had made reference to the fact that 34 candidates' names had not been found in the Supreme Court list at all and their names were found ultimately in the Directorate list. The contention is that such of those persons whose names were not found in the list coming before the Supreme Court but who were ultimately selected shall also not be removed. There were also another class of candidates whose marks have been increased but if they have not been increased and they were selected, their selection shall also not be interfered with. As a general submission, it would be contended that all these candidates have served for more than 13 years and they have become over aged and they will not be eligible anywhere else and on that

ground alone, no interference can be called for.

V. District-wise selection discarding state merit list is untenable and constitutionally impermissible

11. To me, the most crucial issue for taking an appropriate criterion for consideration and for enlisting the persons, who would be entitled to appointment shall be seen from a legal context of how the selection shall be made. Some of the writ petitions filed in the year 2000 had a common grouse to make, apart from a contention that the selection was vitiated by fraudulent manipulations, on a plea that the select list had brought out the names of persons from one single State merit list which was contrary to the advertisement notification and the Rules. The vacancy position noted for each district must have been filled up only from out of the candidates who were interviewed at the respective district centres and who belonged to particular districts. They would refer to advertisement notification setting out the respective vacancies which stated that the place of posting would be offered to the selected candidates for appointment in the respective districts according to the merit subject of availability of the vacancies of the concerned district but in the absence of such situation, the Government would be free to appoint those candidates in other districts where the required number of vacancies are available. The Counsel would, therefore, argue that the preference shall, therefore, be to candidates in respective districts and if only the vacancies were still available, the candidates from other districts could be appointed. As a necessary corollary, the contention is that the appointment made from one single State merit list was not competent and the selection was bound to be set aside on this sole basis.

12. It is an accepted principle that the rules of the game regarding selection will not be changed after the advertisement notification. If the State has therefore issued a notification giving preference to candidates from the respective districts and that candidates from other districts would be selected only if the vacancies were not filled up, it could not be taken that the State should persist in error if there was anything legally impermissible about the criterion laid down. I would find that the Rules relating to recruitment are governed by Haryana Primary Education Group C Rules of 1998. The 1994 Rules contained in *pari materia* consideration relating to the recruitment of primary school teachers. Service as defined under both the Rules of 1994 and 1998 referred to the Haryana Primary Education District Cadre Services. The district wise cadre of service would comprise all posts shown in Appendix A. The method of recruitment prescribed in Rule 9 was in the case of Junior Basic Trained Teacher: (i) by direct recruitment or (ii) by transfer on deputation of any official already in the service of any State Government or the Government of India. The service as per Rule 11 *inter se* of the members of the service shall be determined by the length of continuous service of any post in the service. The argument on behalf of the counsel for the respondents was that since the service was one single State service, reference to district cadre would only mean retention of seniority in the respective districts

but recruitment itself could not be merely on the basis of allocation of seats for each district and treating the issue of domicile as of any importance. This would be constitutionally impermissible and in a Full Bench ruling of this Court in *Abhishek Rishi Vs. State of Punjab and Others*, while considering the constitutional vires of Punjab Panchayati Raj Primary Teachers (Recruitment and Conditions of Service) Rules, 2006, the Full Bench directly posed a question of whether the appointment to the post of Elementary Teachers Training through district-wise recruitment was legal and justified. The Full Bench answered that district wise recruitment of the teachers was unconstitutional and not supported by the provisions of the Rules of 2006. The advertisement notification calling for applications district wise was found to be bad in law and was quashed. The Bench ruled that there was no place for inter district discrimination and Punjab was one in the impugned rules of service. There is a large volume of case law on the subject relating to the examination of inter district discrimination and selection process making domicile as relevant as constitutionally impermissible but I am not reproducing them since the point has been dealt with at great length by the Full Bench in *Abhishek Rishi's* case (*supra*) and it would not be necessary to replicate them, save for an observation that the law is too well laid down as reiterated by the Full Bench and the position does not require to be reopened for any elaborate discussion here in this case. I would, therefore, hold that the service was a single service of the State of Haryana and even if there had been a reference in the advertisement notification that the candidates would be filled up in respective vacancies from each district and only in the event of vacancies which were not filled up candidates from other districts would be considered, it must be re-read in the context of the constitutional scheme that such method of recruitment was not possible and the preparation of state wise merit list by the State was perfectly justified even for filling up district cadre posts. The cadre could be maintained district wise but the service itself must be taken as a single State service. I will, therefore, reject the contention of the petitioners in the writ petition that the selection ought to have been made only from as many numbers of vacancies in each district from out of the candidates appearing from the said district. I find that the total number of vacancies as declared would be basis for preparation of a merit list subject to the reservation in various categories and in the manner of distribution of seats for posting, preference could be given to the candidates from the respective districts and in the event of vacancies, persons from other districts would be filled up, care being, however, taken to locate them in nearby districts and if that was not permissible, depending on the preference given to the candidates from other districts to express their option and fill up the vacancies as far as possible depending on the option so exercised.

VI. Selected candidates have held on for 13 years; argument that their selection cannot be interfered with now is rejected

13. Mr. G.K. Chatrath, senior counsel, who was leading the defence for some of the candidates who have been selected, would contend that the petitioners have

themselves not challenged the selection of the respondents but they have asked for consideration of their appointments on the basis of their alleged merit. I do not think this contention is correct, for, though in some writ petitions, there is no direct challenge to the selection of the particular candidates who were ultimately taken on board, there are several other writ petitions where there is a direct challenge to the selection and on an overall consideration, the matter has to be seen only in the context of whether the selection made of the candidates who were cited as the private respondents was correct or not. I would, therefore, hold that it is an open issue for consideration by this Court of the legality of selection of all the candidates who were issued with orders of appointment and whether the persons who have occupied the posts could continue in the said posts or not. There is also the contention that they had worked for more than 13 years and they shall not be removed from the post. While a delayed intervention would be impermissible and it would be unjustified to paint all the candidates with same brush, if there is any definite proof that any one candidate had secured a selection by tainted process, the message to him shall be that he shall go and it will be irrelevant that he cannot compete for a new selection process. If he has come by a wrong method, he shall not hold on to the post irrespective of the inconvenience that he may face for consideration for future selection. The argument cannot be that no specific averment is made against a particular candidate, who had obtained a selection. Corruption is not at all times noted as a two way process: Of a person who was willing to corrupt the other and another person who gave in to such corruption. There could just as well be a situation that there are blue-eyed boys of persons who matter and they are selected only for such a fortuitous endowment. Nepotism is a genre of corruption; a bedfellow of unreasonableness and befriends arbitrariness. If some of the candidates belonging to certain districts were favourably considered for the only reason that they belonged to the District where some of the ministers were interested in, then it would only mean that those candidates have come by favour, not perhaps at their personal bidding but they were beneficiaries all the same by a process which was objectionable and constitutionally impermissible. The Criminal Court has noticed one important factor: on reading the entire list of marks obtained by 7000 candidates and more, that while the weightage was only for the academic qualification and for higher qualification obtained, 20% marks for interview itself had obtained enormous significance and it has been noticed that all the selected candidates have been rewarded with marks more than 17 in the interview accompanied by a uniform reduction of marks to all other candidates to less than 6 marks so that the actual number of candidates picked equaled the vacancies notified. The reduction of marks had been so made that anyone who had secured less than 16 and who had marks in the range of 6 to 16 were further reduced to have marks less than 6 so that a person who had, say, 12 or 13 marks would not overtake a candidate who had been awarded more than 17 marks in the interview but who had less marks in the academic qualification. If, therefore, marks had been increased to 17 and more than 17, it was only to ensure that such a person gets appointed although not included in the original list. I have

already pointed out that the judgment of the Criminal Court is not taken as a basis for approval or rejection of the candidates but I have examined some factual details of what the Court has verified which are not essentially judgmental but deduced by pure logic and arithmetic. While the judgment could be open to variation by the mode of reasoning adopted by a judge, facts themselves cannot change. On the other hand, facts stated flatly shall form the basis of an objective appraisal of what may not admit of two interpretations. The fact taken here in this case is that a candidate who had secured more than 17 had a sure chance of also being selected as a candidate only if it was accompanied by reduction of marks of unwanted candidates to less than 6 marks and the difference so maintained was to finalise a list that would return the tally of the total vacancies notified. Such a candidate whose marks were modified for an escalation did not otherwise deserve to be selected. The candidates who had been reduced in marks less than 6 were also candidates who suffered reduction only in order that they would be disqualified for otherwise their own marks obtained in the academic qualification would have secured them a consideration for selection. Such of those candidates whose marks were reduced but not reduced to less than 6 probably did not suffer any particular disadvantage. Those candidates did not lose their jobs on account of the reappraisal done.

VII. The distinction between the tainted and untainted is required to be maintained-there could be no prescription period to hold on, if tainted

14. In *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, , the challenge had been to the selection for the Punjab Civil Services (Executive Branch) and the Chairman of the Selection Committee was said to have been involved in offence of graft and large sums of money had been recovered from him. The case gives out to a proposition that even if the selection process is vitiated, it is only those who are tainted are required to be thrown out. The point urged on behalf of the respondents is that there was a distinction between en masse cheating on proof of charge of corruption where the appointment of civil servant was involved. The Court was making a distinction between the tainted and untainted candidates. Here in this case, the selection of any of those candidates whose names were not found in the select list, had themselves not been proved before this Court as having done some particular wrong to secure the selection but if something wrong had been indeed done, that wrong was a method of securing higher marks which was not originally in the appraisal made by the interview committee in the list maintained and kept by Ms. Rajni Sekri Sibbal. The taint to the candidates whose marks had been tampered to award them more than 17 after the initial appraisal had secured to them the selection through a fraudulent process. All such candidates who were not in the Supreme Court list but who gained selection in the Directorate list after obtaining additional marks shall go. But, does the delay matter? Is the fact that they have worked for 13 years make any difference? There was also an objection that the petitioners have approached the Court after enormous delay. It may be true of candidates who have come by writ petitions in the year 2010 but the issue was

put to through several writ petitions filed in the year 2000 itself through candidates who claimed that they had better claims to merit but they had been unjustly jettisoned by a defective process of selection. The writ petitions filed by them were still pending. The persons who have joined the boat, as it were, by independent petitions sought to secure the benefit of the litigations started in the year 2000, immediately after the results were announced and whatever benefit the writ petitions filed in the year 2000 would secure, they ought to obtain to all the candidates, so long as no prior adjudication had been made and the petitioners themselves were not taking benefit of a decision already arrived at but they want only a benefit of such a judicial adjudication as it was coming at the instance of candidates who had filed the writ petitions earlier. A decision is referred to by the Counsel appearing for the respondents in *Kishan Gopal v. State of Haryana* 2010 (1) SCT 538 where the Full Bench was holding that selection was in challenge more than 11 years after it was done would not be liable for interference. The Full Bench was holding that where fairness of selection was concerned, upholding the selection process must be confined to situations where two views were possible. In this case, there are no two views about the fact that there had been a serious dent to the selection itself and it was seriously vitiated by facts clearly brought out through the CBI investigation and by the nature of defence taken before the Criminal Court. Each one was trying to exclude himself but not willing to go as far as to state that everything about the selection was appropriate. All the accused in the case were only trading charges against each other and no one was prepared to take a defence that the selection list was proper and it had been done without any form of interference. None among the respondents would vouch for fairness in selection but would take a position that it is ?not me?. That would in my view conclude the subject that the selection was vitiated, though not fully, and it is immaterial that the decision of Criminal Court itself is a subject of challenge before the Appellate Court.

VIII. Disposition

15. In ultimate analysis, the dispensation would, therefore, be:-- (i) that the selection list which was published was not genuine and did not contain all the candidates who were meritorious. It was a mixture of deserving candidates who had an entitlement to be selected and there were candidates who did not secure such entitlement.

(ii) that those candidates who deserved to be selected and who had a right to continue in office shall be those candidates who figure in both the lists. Learned Senior Counsel Sh. Malik has given an annexure that gives only 7 names but the State's reply gives 123 as the number that figure in both the lists. The correct position shall be ascertained and the same be released.

(iii) that such of those candidates whose marks have been reduced and still their names find a place shall also be entitled to be taken as selected and their appointment shall not be interfered with. They are 221 in number and their

names are as follows:--

(iv) The judgment shall not be seen as approval of selection only of 221 candidates. The State shall prepare a single merit list containing marks obtained out of 80% for academic qualification, experience and higher qualification and marks as originally assigned in the interview that would apply all the norms including the reservations to be applied for various categories for the number of vacancies that existed. From out of such a list, a cross checking shall be done that candidates whom we have approved in the above paragraph figure as eligible candidates for selection. The list will be carried out through for selection of the remaining number of candidates as they existed for filling up the existing vacancies.

(v) An actual appraisal of what would be the cut off marks cannot be the same as already found in the list given by Sanjiv Kumar before the Supreme Court for it failed to take notice of three districts namely Kurukshetra, Panipat and Rohtak. That list has come about subsequently when the CBI has taken the lists from Sanjiv Kumar. The appraisal of the cut off marks for the remaining candidates (including persons whose candidatures had been approved in C.W.P. No. 16410 of 1999) will be done as a fresh exercise on the basis of all the lists with marks as originally entered by the respective interview boards. If in that list, there are persons who have been already appointed and serving in the posts and they are allowed to be continued by this order through para (iii) above, the reckoning shall be only for taking stock of the total tally and issuing fresh orders of appointment to the remaining persons. This exercise of determining the cut off marks shall be completed within 4 weeks from the date of this order.

(vi) To the persons who have been appointed already but whose names do not get ticked against the fresh list now ordered to be prepared, they shall be served with orders of termination. No recoveries shall be made for the salary already paid. Whatever compulsory deductions are made and availed to the credit of persons, they shall also be released in their favour within 8 weeks from the date when the orders of termination passed. They shall not be subject to any disqualification for consideration to future appointments. The State may take a policy decision to relax the age for those candidates who are now directed to be removed through this order for filling up any fresh vacancies in the next immediate selection that may be undertaken.

(vii) All the selected candidates are parties in the writ petitions and therefore, it shall not be necessary for the State to engage them in any show cause for removal. This order itself rendered after hearing their submissions will be on the application of the principle laid down thereunder and constitute a justification for removal without issuing any show cause notice.

All the writ petitions are disposed of as above.