

SUPREME COURT OF INDIA

Inderpreet Singh Kahlon
Vs

State of Punjab

Civil Appeal No. 3411-3421 of 2005 [with C.A. Nos. 3422/2005, 3410/2005, 3409/2005, 3405-3408/2005, 3456-3459/2005, 3446-3447/2005, 3402/2005, 3449-3455/2005, 3463-3464/2005, 3460/2005, 3401/2005, 3445/2005, 3399/2005, 3404/2005, 3444/2005, 3441/2005, 3439/2005, 3428- 3436/2005, 3440/2005, 3438/2005, 3442/2005, 3437/2005, 3403/2005, 3427/2005, 3461/2005, 3400/2005, 3477/2005, 3475/2005, W.P. (C) No. 14/2004, C.A. No. 3423/2005, 3448/2005, 3472- 3474/2005, 3489/2005 and 3491/2005]

(S. B. Sinha and Dalveer Bhandari, JJ)

03.05.2006

JUDGMENT

S.B. SINHA, J.

The framers of the Constitution of India created some Constitutional Institutions to uphold the Constitutional values; Public Service Commission being one of them. Article 315 of the Constitution of India mandates that there shall be a Public Service Commission for the Union and a Public Service Commission for each of the State. Article 320 provides for the functions of the Public Service Commission stating that it is the duty of the Union Public Service Commission and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively. In relation to certain matters the Union of India and the States are enjoined with the duties to consult the Public Service Commission. With a view to uphold the dignity and independence of the Public Service Commission, the salaries, allowances and pensions payable to the members or staff of the Commission, are directed to be charged on the Consolidated Fund of India and/or the Consolidated Fund of the State. A Chairman of Public Service Commission is removable only by following the procedure laid down under the Constitution of India.

2. One Shri Ravinderpal Singh Sidhu was the Chairman of the Punjab Public Service Commission between 1996 to 2002. Allegations were made against him that he got a large number of persons appointed on extraneous consideration including monetary consideration. Such appointments were said to have been made during the period 1998 to 2001. Raids were conducted in his house on more than one occasion. A large sum of money (about Rs. 16 crores) was recovered from his custody and other relatives. Two First Information Reports; one on 25.3.2002 being FIR No. 7/02 and the other on 30.4.2002 being FIR No. 24/02; were lodged against him in that behalf. In the said First Information Reports nine officers of PCS (Executive Branch) were named but later on the allegations against two of them, viz., Rahul and Randip were withdrawn. As against sixty three officers involved in the PCS allied services; First Information Report was lodged only against one Kamaljeet Singh. So far as appointment to the posts of Tehsildar is concerned, FIR was lodged against none.3. Result sheets of the nominated candidates were seized on 17.5.2002. Answer sheets of PCS (Executive Branch) were also seized. On or about 21.5.2002 the Vigilance Bureau of the State of Punjab wrote a letter to the Chief Secretary, Punjab alleging that most of the examinations held during the period of Shri Sidhu were tainted. On the next day, a memorandum of 90 pages was issued. So far as the nominated candidates are concerned, Vigilance Department of State, as noticed hereinbefore, received the answer sheets for 1998 examination and sent a report to the investigating agency on 21.5.2002. On that date itself the nominated candidates were given charge of the Executive Magistrate but on the next date, i.e., on 22.5.2002, the Vigilance Bureau on purported receipt of the details of interview of nominated candidates sent a note to a Chief Secretary whereupon orders of termination were passed on 23.5.2002. All the officers in the category of nominated executive officers were about to complete their period of probation. The services of the nominated candidates (Class I Officers) were terminated simpliciter purported to be in terms of the Rules, i.e., by terminating the probation.

4. The appellants herein comprise of four categories of officers, that is to say, (1) Direct recruits in Executive Class I. In the said category services of 28 persons were terminated. (2) Direct recruits (Allied etc.) being in Executive Class II. In the said category services of 63 persons were terminated. (3) Nominated candidates being in Executive Class I. Services of 18 persons from the said category were terminated. (4) Judicial Officers. Judicial Officers were appointed in four batches. Four examinations were held for the respective recruitment years of 1997-98, 1998-99, 1999-2000 and 2000-2001. On the judicial side, following vacancies existed: 1998 - 21 1999 - 14 2000 - 8 2001 - 21 Total – 64

5. The number of officers whose services were terminated in the aforementioned batches are 21, 14, 8, 21 respectively totalling 64 persons respectively.6. A further vigilance report was made on 7.6.2002. Admittedly no appointment was made out from the 2001 batch.

7. Services of the Direct Recruit Executive Class I and Class II were terminated by way of dismissal from services vide order dated 24.8.2002 only on the premise that the criminal prosecution had been initiated against the aforementioned Shri Sidhu.

8. Besides the aforementioned categories some candidates also belong to distinct categories, viz., Freedom Fighter, Handicapped, SCOP, etc.

9. So far as the Judicial Officers are concerned, indisputably, the High Court acted on the basis of media reports alleging that wards of some sitting Judges of the Punjab and Haryana High Court have been favoured by the Chairman of the Public Service Commission. The Chief Justice of the High Court constituted a Committee chaired by a senior Judge. On a request made by the High Court answer sheets of nine candidates were handed over to the said Committee on 30.5.2002. No other record was, however, made available to the Committee. A report was submitted by the said Committee wherein recommendations were made that the appointments made of the judicial officers in all the four batches should stand cancelled although selection of the officers from the 1998 batch was not in question. The said report, however, was accepted by the Full Court.

10. When the recommendations of the High Court were received by the Government of Punjab, a query was raised as to on what basis the recommendations for cancellation of the appointments of the 1998 batch candidates were made. Thereupon, another Committee was constituted. The Chairman of the said Committee was a member of the earlier Committee. The report of the Committee thereafter was again placed before the Full Court and the same was approved on 12.8.2002. The services of the Judicial Officers were terminated on 27.9.2002.

11. Subsequent to the said orders of dismissal, however, no further action was taken by the State for cancellation of other examinations or termination of the officers belonging to other services. However, in regard to the examinations held in respect of the other posts, the Governor of Punjab appointed a committee on 20th July, 2004. A report was submitted by the said Committee on 20th October, 2004 stating that a distinction is possible to be made between the tainted and the non-tainted officers. It made some suggestions and recommendations in relation to the selection process to be resorted to and the appointments to be made in future. 12. At this juncture, we may take note of some other relevant facts. Upon commencement of the investigation by the Vigilance Bureau one Jagman Singh became an approver. He purported to have made a statement under Section 164 of the Code of Criminal Procedure before a learned Magistrate on 24.1.2002. Two other alleged accomplices of Shri Sidhu, viz., Shri Prem Sagar and Shri Paramjit Singh also allegedly made their statements in term of Section 164 of the Code of Criminal Procedure before a learned Magistrate on 13.5.2002. On the basis of the said statements; raids for finding out other and further incriminating materials were conducted on 19th April, 2002 at different places including the lockers/fixed deposits/bank accounts purported to have been opened by Shri Sidhu in his own name as also in the name of his relatives. Approximately a sum of Rs. 16 crores was recovered during the said raids.

13. The Appellants herein along with some others being aggrieved by the said actions on the part of the State filed a large number of writ petitions before the Punjab and Haryana High Court.

14. The said writ petitions ultimately came up for hearing before a Full Bench of the said High Court. Two of the members of the said Bench were Chairmen of the two committees appointed by the learned Chief Justice.

15. At the hearing of the said writ petition, however, the learned counsel appearing on behalf of the writ petitioners stated that they had no objection to the said Hon'ble Judges hearing the writ petitions. On or about 30th January, 2002, the Appellants Judicial Officers filed an application for supply of copies of the reports as also the documents including the answer books which had been relied upon by the High Court at one point of time or the other for the purpose of passing the orders of termination. The High Court claimed privilege as regards the reports of the Committee. The State of Punjab also took a stand that the contents of the report of the Vigilance Bureau could not be disclosed, as by reasons thereof, the investigation of the case may be put in jeopardy. Oral submissions on behalf of the Judicial Officers were closed on 5.2.2003 and they were asked to file written submissions by 6.2.2003; but curiously, however, on 6.2.2003, the reports of the Committee as also the mark-sheets were made available for inspection of the learned counsel. 16. During hearing before the High court, interestingly, the learned counsel appearing on behalf of the State made a statement that those candidates who had become successful in the subsequent re-conducted interviews or re-conducted examinations, as the case may be, shall be taken back in service and their seniority would be maintained.

17. The High Court reserved its judgment on 5.3.2003. On that date, some records were kept in a sealed cover. By reason of the impugned judgment which was delivered on 7.7.2003, the writ petitions were dismissed.

18. The main contentions raised on behalf of the writ petitioners before the High Court were: (1) in terminating the services, the State committed gross violation of the provisions of Article 14, 21 and 311 of the Constitution of India; (2) Principles of natural justice were completely given a go-by by the State in passing the impugned orders of termination. (3) Some of the Appellants having successfully completed three years of probation, they would be deemed to have been confirmed in terms of Rule 23 of the 1976 Rules and, thus, their services could not have been terminated without holding regular inquiry in terms of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, 'the 1970 Rules'); (4) In any event, Rule 23 of the 1970 Rules could not have been invoked for dispensing with the services of such of the Appellants as it had not been shown that their work, conduct and performance were unsatisfactory during the period of probation; (5) No proper material by way of admissible evidence having been made available, on the basis whereof the State could form a bona fide opinion that the entire selection processes were tainted, the impugned orders of termination must be held to be bad in law.

19. The contentions raised on behalf of the State, on the other hand, were that: (1) Shri Sidhu during

his tenure from September, 1996 to March 26, 2002 exercised the powers of the Commission himself to the exclusion of all other members, which itself establishes that the selection processes were bad in law; (2) Writ petitions were filed by the members of the State Commission contending that Shri Sidhu had manipulated the system for ensuring the selection of only those who had paid money or had recommendations of the high authorities. (3) The satisfaction of the State was based upon the report of the Vigilance Bureau which included the statements made by Shri Jagman Singh which clearly pointed to the guilt of Shri Sidhu as he had disclosed that that Shri Sidhu had made a large number of appointments of the prospective candidates and during investigation it was revealed that question papers and answer scripts were smuggled out of the headquarters of the Commission and at times, blank answer sheets had been handed over to the candidates and special instructions had also been issued to the examiners to award higher marks to the less meritorious candidates and at the same time, award less marks to the more meritorious candidates. (5) Shri Sidhu amassed assets worth Rs. 22 crores during his chairmanship by adopting illegal means. (6) The entire selection process was completely vitiated and it was not possible to separate the meritorious candidates from the others although the decision to terminate all the appointments and cancellation of all the examinations was fair and bona fide.²⁰ The contentions raised on behalf of the High Court were that: (1) The services of the judicial officers were terminated as it came to light that the recommendations made during the tenure of Shri Sidhu were manipulated, unfair and vitiated in law. (2) Two sub-committees were constituted to look into the illegalities and irregularities committed by the Commission in the matter of selection of the judicial officers and the reports submitted by them were rightly accepted by the Full Court, pursuant to and in furtherance whereof the State Government terminated their services.

21. The High Court in passing the impugned judgment considered the aforementioned submissions of the parties. It noticed a large number of decisions and opined that the following propositions be culled out therefrom:

<I>(i) The rules of natural justice are not required to be followed in cases of cancellation of selection which is vitiated due to fraud, manipulation, corruption or large scale irregularities and illegalities committed by those responsible for conducting the selection.

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

(iii) The Court cannot sustain the selection of some persons where the process of selection is vitiated due to manipulations, fraud etc. and it is in public interest that the entire selection is nullified.

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

court cannot interfere with its decision."</I>

22. The Full Bench of the High Court, however, did not make any endeavour to make any distinction between the cases of different categories of officers, but relying on or on the basis of the reports and documents submitted by the Vigilance Bureau opined that the same revealed the following features:(a) Either question papers were leaked to the candidates or instructions were given to the examiners to give higher marks.

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

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

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

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

(f) Some of the irregularities found in the answer- books of some of the candidates selected for direct recruitment were taken into consideration by the High Court by way of illustration in arriving at its findings. "

23. The High Court moreover pointed out some irregularities found in the answer sheets of the some of the candidates in regard whereto 13 purported instances were noticed by it. Cases of some of the candidates who were denied selection to PCS (EB) by giving unusually low marks in the interview were highlighted in the judgment. As many as nine such cases were noticed to have been belonging to this category of irregularities. The High Court furthermore noticed the purported irregularities in the recruitments made for appointment to PCS (Judicial Branch) from the written submissions made by the State in respect whereof, cases of 10 candidates had specifically been noticed. So far as the purported similarity in grant of marks in the interview is concerned, the High Court noticed that out of the 263 candidates interviewed for selection for direct recruitment to PCS (Executive Branch) and Allied Services, 172 candidates were given identical marks by the interviewers. 230 candidates had obtained marks having difference of one mark and 58 candidates having difference of two marks. So far as the nominated candidates are concerned, the High Court noticed that no allegation could be made as regards the irregularities and illegalities in conducting the written examination,

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

(2) Even if all the 141 nominated candidates are considered there is a difference of 1 mark in 22 out of 25 cases. Larger difference is found only in 3 cases. Then in 9 cases only one interviewer differs by 1 mark and in 1 case one interviewer differs by 2 marks. This again indicates an unusual pattern showing pre-planning and manipulation. Here also, same number of marks were awarded to more than 98% candidates.

24. It furthermore noticed certain general features in respect of the marks given at the via-voce to the other candidates.

25. The judgment of the High Court can be divided into two parts.

(A) The High Court in general opined: "From the above discussion and examination of the aforesaid illustrative cases and looking into the record including the statements of the alleged touts as made in court under Section 164 of the Code of Criminal Procedure, there is no manner of doubt that it is not in a few cases only that corrupt means were adopted to secure the selection of candidates but the same modus operandi was being adopted in all the selections which vitiated the entire process of selections and that large scale corruption, irregularities, manipulation of marks and other illegalities are writ large in making selections by the Commission during the tenure of Shri Ravinderpal Singh Sidhu. We have perused the statements of the alleged touts who have given the details of the modus operandi adopted by Shri Sidhu. The examiners were instructed to award specific number of marks to the chosen candidates and pull down the others which resulted in the ouster of many meritorious candidates. In some cases, question papers were given to the candidates one evening before the examination. There has been manipulation of marks in large number of cases to ensure the selection of favoured candidates at the cost of other meritorious candidates. The entire selection process during the tenure of Shri Sidhu was indeed a one man show. He appointed the examiners of his confidence who were playing to his tunes and whom he could trust in carrying out his nefarious plans. He could, indeed, get any one selected who could approach him either through money or through "Sifarish". It is difficult to say if one could be selected on merit during the tenure of Shri Sidhu and may be some were selected on merit as well but the whole process of selection having been polluted with corruption, it is not possible to identify them. The statements as made by the alleged touts were cross checked by the Vigilance Department and the government and it was found that corruption was all pervasive in the selection of candidates to different services during the tenure of Shri Sidhu." [Emphasis supplied]

(B) In regard to the Judicial Officers, it was opined:

"In the case of selection of PCS Judicial Officers, the High Court on its administrative side had also examined the records including the answer sheets and noticed that the answer sheets of some of the non-selected candidates were qualitatively better than those selected and that the performance of most of the selected candidates was below average and that the marks given to them were disproportionate to their answers which even by the most liberal standards could not be justified. The High Court also found that there had been large scale tampering of marks in some of the answer sheets and that selections had not been made on merit.

During the course of arguments, the record was produced before us including the answer sheets. We perused quite a few of them and found that the irregularities as pointed out in the earlier part of the judgment are there. Some of the answer sheets show that there are interpolations with the marks originally allotted by the examiners and this was obviously done with a view to ensure the selection of those candidates. The State Government was, therefore, justified in cancelling the selections in entirety and no fault can be found with its decision in this regard because in these circumstances grain could not be separated from the chaff and the meritorious candidates had also to suffer."

[Emphasis supplied]

26. We have heard a large number of counsel appearing in the appeals representing different categories of the appellants.

27. The principal submissions advanced on behalf of the appellants are:

(1) As the appellants had become civil servants, their services were protected in terms of Article 311 of the Constitution of India, and, thus, the orders of termination having been passed without complying with the provisions of the statutory rules as also the principles of natural justice, the same were vitiated in law. (2) As the appellants served the State without any blemish on their part whatsoever, and having passed departmental examinations and having been given higher responsibilities, their services could not have been terminated on the basis of the purported case of mass corruption without making an attempt to separate the non-tainted candidates from the tainted ones and that too in great haste and, that too without taking into consideration the relevant materials. The impugned orders also suffer from total non-application of mind on the part of the authorities of the State. (3) The broad proposition, that all decisions taken during the period of Shri Sidhu were illegal, demonstrates arbitrary approach on the part of the State. (4) The services of the nominated candidates could not have been terminated during and/or on the expiry of the period of probation in view of the protection to the employees conferred under Article 311 of the Constitution of India

could not have been ignored. In any event, during the period of probation, their service could not have been terminated without initiating an appropriate disciplinary proceeding on the ground of misconduct. Some of the probationers in view of Rule 23 of the 1976 Rules having crossed the maximum period of probation would be deemed to have been confirmed. It was pointed out that five probationers had already crossed the specified period of 3 years of probation and remaining 13 were nearing completion of the said period. (5) When an order of termination of services carries a clear imputation of corruption, the same would amount to dismissal from services requiring compliance of principles of natural justice. (6) Before the services of the probationers could be terminated the juristic foundation and stigma attached thereto were required to be considered for determining the question as to whether the dismissal was for non- satisfactory performance of service or stigmatic in nature. (7) While the names are registered after the selection, cancellation of the selection would mean cancellation of the entry from the register and thus, Rule 17 of the Rules were violated. (8) The High Court committed a serious error in holding that the orders passed by the State Government were sustainable in law relying on the decisions of this Court which can be classified as under: (a) Cases where the 'event' has been investigated; (b) Cases where tainted were separated from the non-tainted; (c) Cases where CBI inquiry took place and was completed conclusively; (d) Cases where the selection was made but appointment was not made; (e) Cases where the candidates were ineligible and appointments were found to be contrary to law or rules; (f) Cases where there was hardly any time gap in between appointment and the criminal investigation. (9) Writ petitioners had legitimate expectations that their services would be confirmed. (10) If omnibus orders based on such facts could be issued, there was no reason as to why if all the selections were tainted, no action had been taken in regard to the selections made in other years or for other services. (11) In view of the fact that the State Government itself had constituted a sub-committee is suggestive of the fact that the Government itself was not satisfied that the reports of the Vigilance Bureau were to be treated as sacrosanct. (12) The Vigilance reports were found to be otherwise based on insufficient evidence and, thus, a separate committee was felt necessary to be constituted for finding out the truth. (13) Before any action was taken, it was necessary for the State to satisfy itself about the allegations made therein upon verifying the contents of the reports in regard to the mal-functioning of the Punjab Public Service Commission. (14) The decision of the State having been taken in undue haste, the same was mala fide in nature. (15) The principles of natural justice have been violated as the contents of the reports of the Vigilance were not disclosed to the appellants and in any event the State could not have claimed privilege in respect thereto. (16) For the purpose of punishing the persons who have taken recourse to illegal measures, no honest and innocent candidate could have been punished. (17) The High Court acted illegally and without jurisdiction in relying upon the written submissions made on behalf of the State although, many statements made therein were not made on affidavit. (18) Grant of inspection of the answer sheets alone was not sufficient in the instant case as the orders passed by the State were required to be judged on the basis of the statements contained therein and supported by the affidavits. (19) It is not unusual that the candidates may get higher marks in the written examination and less in the interview. (20) As the State has alleged fraud, a heavy burden lay upon it to prove the same which is utterly failed to comply with. The High Court failed to take into consideration that the interview committees were headed by sitting Judges of the High Court and thus it is preposterous to suggest that any illegality was committed in the interviews. (21) Four different selection processes having been undergone in four different years, all selections could not have been painted with the same brush, so far as advertisements were separate as well as the members of the committees were different and, particularly, having regard to the fact that there was no allegation that the Chairman of the Commission could prevail over the other members as also in view of the fact that it is expert alone who gives the grading. (22) Out of the 10 candidates who were named in the first information

report, 7 candidates belonged to 2001 batch who had not been appointed at all and, thus, only because one or two candidates happened to be the wards of sitting Judges of the High Court, although they were toppers of their batch, the services of all of them could not have been terminated. (23) The sub-committee in its report took notice of answer sheets of only 9 candidates and, furthermore no inquiry having been conducted in relation to the 1998 batch, the Full Court of the High Court must be held to have failed to apply its mind properly. (24) Two of the Hon'ble Judges who headed the sub-committees being biased, they could not have taken part in the decision making process and they should have recused themselves.²⁸ The High Court also committed a serious error in relying upon the decisions where the principles of natural justice have been held to be inapplicable as the said cases relate to:

(1) mass cheating adopted by the students in a Board Examination; (2) Where select lists have been prepared but no appointments have been made; (3) Where appointments have been made but eligibility criteria have been found to have been violated; (4) Where in no way verifications could have been made as answer sheets and other relevant documents were destroyed and the Chairman had resigned; (5) Where commission of mal practices were found to be apparent on the face of the records;

Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State of Punjab, on the other hand, submitted that:

(a) the principles of natural justice were not required to be complied with nor the requirements of the statutory provisions for dispensation of services of the officers in terms of Article 311 of the Constitution of India were required to be followed, as the Chairman of the Public Service Commission has usurped complete control thereover in breach of the rules as would be evident from the fact that two members of the Commission even filed writ petitions being CWP No. 14491 of 1997 and CWP No. 7952 of 2001 alleging that the Chairman had not been convening meetings of the Commission and had usurped complete control thereover.

(b) Materials collected by the State before 23.5.2002 demonstrated commission of large scale fraud in the selection process wherefor two First Information Reports being FIR No. 7 dated 25.3.2002 and FIR No. 24 dated 30.4.2002 were registered.

(c) During investigation, the statements of Jagman Singh were recorded which clearly demonstrated that with the help of various persons, many candidates paid huge amount to Shri Sidhu for getting selected in 1998 examinations and money, so collected, was stashed in the lockers and put in the bank accounts of the relatives of Shri Sidhu, most of whom now have left the country and have been declared as proclaimed offenders. 56 accounts were opened between the period 17.4.2002 and 19.4.2002 and over Rs. 16 crores were recovered from the lockers/bank accounts/fixed deposits

standing in the name of the Shri Sidhu and his relatives. (d) A huge amount has also been transferred through Hawala transactions. The Investigating Officer had also recorded the inculpatory statements of Shri Jaspreet Singh and others which clearly point out that serious illegalities were committed in the selection making process.

(e) It is nobody's case that the Chairman did not indulge in corruption.

(f) Upon analyzing the mark sheets and other materials, the Vigilance Bureau submitted its report wherein inter alia it was found that in 95% cases the Chairman and Members allotted identical marks in the interview to the candidates which is next to impossible as the members and the Chairman were supposed to judge the capabilities of the candidates separately which clearly show that the provision of Rule 17 (a) (iii) of the Commission Rules were flagrantly violated or breached.

29. Mr. P.P. Rao, learned senior counsel appearing on behalf of the High Court submitted that:

(i) as the selection of the Judicial Officers was contaminated at source, keeping in view the nature of judicial posts, the High Court was bound to take remedial measures to restore the credibility of recruitment process and to safeguard the independence of judiciary.

(ii) In view of the fact that the High Court found the matter to be a case of pollution of selection at the source on account of corruption, the Full Court of the High Court was convinced that the selections were vitiated and thus, no illegality has been committed in giving effect to the legal consequences arising thereunder.

(iii) The recommendations of the sub-committees being based on some material and being in the nature of administrative decision, the standard of proof, required to be applied, would be preponderance of probability not beyond all reasonable doubts.

(iv) In view of the well settled principles of law that justice should not only be done but manifestly also seen to be done, the selection of the Judicial Officers was not only required to be fair but also transparent.

(v) In the fresh selection only 13 candidates were selected and 22 were not selected and in view of

the fact that there was no complaint against the fresh selection, the High Court must be held to have proceeded on an objective criteria.(vi) It is not open to the appellants herein to allege bias on the part of the two learned Judges of the High Court on the premise that they were in the Committee as the appellants themselves had consented to their taking part in the hearing and, thus, they must be deemed to have waived their right.

30. We will make endeavours to deal with the cases of different categories of officers separately as far as practicable.

31. Appointments to PCS (Executive Branch) and Allied Services relate to a single recruitment process. The vacancies were of the year 1994 and 1996 and those vacancies were advertised by the Punjab Public Service Commission in terms of Advertisement No. 10 dated 7.2.1998. This advertisement pertained to 93 posts of different cadres of the State Government. Out of the aforementioned 93 posts, 28 posts were in PCS (Executive Branch).

32. There were 25 additional posts to be filled up by the nominated departmental candidates. However, out of the said vacant posts only 18 were filled up. Amongst the 18 nominated candidates, 14 have been named by the witnesses in their statements recorded under Section 164 of the Code of Criminal Procedure and FIRs were lodged against them. We have noticed hereinbefore that out of total 28 candidates PCS (Executive Branch), although, at the initial stage First Information Reports were lodged only against 8 candidates, allegations against Rahul Gupta who is said to be the son of another member of the Commission and Randeep Singh were withdrawn.

33. In the Allied Services out of 63 candidates, First Information Report was lodged as against only one of them. So far as those who were appointed on the post of Tehsildars are concerned, out of 19, First Information Report was lodged against none.

34. It would be of some interest to note that as although in the year 1998, a large number of persons were selected in other services as for example, 365 PCMS Doctors, 60 School Principals, 147 Veterinary Officers, 422 PCMS Doctors and in the year 1999, 52 Medical Officers Dental, 147 Agriculture Development Officers, 69 Veterinary Officers and 81 Veterinary Officers in 2002 but neither any enquiry was conducted by the State in this behalf nor any action was taken to terminate the services of any of the candidates of the said service.35. The State admittedly conducted fresh interview for the nominated candidates and held fresh examinations in respect of the Executive Officers and non-Executive Officers. So far as the nominated members are concerned, three came to be re-selected out of 19 Tehsildars on the basis of PCS Exam, 1998.

36. It has also been pointed out that out of 18 nominated selectees who had filed writ petitions in the High Court, only 15 candidates have filed appeals before us and 12 have been named by the witnesses although First Information Reports were initially lodged against them. So far as direct recruits to PCS (E.B.) are concerned, 18 have filed appeals before us and out of whom 7 were named by the witnesses and the First Information Reports were lodged against them. So far as the candidates selected in the Allied Services are concerned, out of 63 selected candidates only 24 have filed appeals before us and they are not named in the First Information Report or as witnesses.

37. It is not in dispute that as regards PCS (E.B.) and Allied Services, the names of the selectees have been registered in different registers.

38. So far as the judicial officers are concerned, First Information Report has been lodged against the ten of them. Seven candidates, out of the said ten candidates named in the First Information Report, belonged to 2001 Batch. Nobody is named in the First Information Report or figures in the statements of the witnesses in respect of the 1998 batch. The 3 candidates who have been named in the First Information Report are of 1999 batch and 2000 batch. The candidates who were selected in 2001 have not been appointed at all. We have not, thus, taken into consideration their cases.

39. We at the outset would furthermore notice that having regard the submissions made before us by Mr. Dwivedi and Mr. Rao that the services of the appellants before us were terminated not in terms of the Rules but in view of the commission of illegality in the selection process involved, we need not consider the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution of India. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. [See Secretary, State of Karnataka and Others v. Umadevi and Others, 2006 (4) SCALE 247 But before such a finding can be arrived at the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied.⁴⁰ If the services of the appointees who had put in few years of service were terminated; compliance of three principles at the hands of the State was imperative, viz., to establish (1) Satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) Whether the sufficient material present enabled the State to arrive at satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt.

41. Once such findings were arrived at, all appointments traceable to the officers concerned could be cancelled. But admittedly, although there had been serious imputations against Shri Sidhu being at the helm of the affairs of the Commission, all decisions made by the Commission during his tenure are yet to be set aside. We do not intend to enter into the said controversy as we were

informed at the bar that the High Court itself is in session of the matter. We may, however, note that Mr. Dwivedi in his usual frankness stated that there may not be any answer to that query.

42. Apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court which have been repeated by the learned counsel for the State before us, it is difficult to accept that it was demonstrated by the State that it was absolutely impossible for it to separate the innocent people from the tainted ones.

43. It is also not a case where all the relevant records have been destroyed. The Vigilance Bureau does not say so. Questions papers, answer sheets and other documents are available. Reports made by the Bureau were prepared upon examination of the materials collected by it. The High Court itself has noticed that what is not available is the records relating to the procedure adopted in regard to the appointment of paper setters. It may be true that such records could be destroyed only after a period of five years but it has not been pointed out by the State as to how by reason of the non-availability thereof, it became difficult for the authorities to arrive at the correct facts. We have not been informed that connecting materials were also destroyed. It has been noticed by the High Court that all relevant information were available and submitted to the court. It cannot, therefore, be said that a fair investigation into the whole affair was an impossible task or despite availability of all such records a thorough investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large scale fraud. It was also not been found that all appointments were made on extraneous considerations including monetary consideration.⁴⁴ If fraud in the selection process was established, the State should not have offered to hold a re-selection. Seniority of those who were re-selected ordinarily could not have been restored in their favour. Such an offer was evidently made as the State was not sure about the involvement of a large number of employees.

45. A distinction moreover exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved.

46. In *Bihar School Examination Board v. Subhash Chandra Sinha and Others* , the court came to a finding that the high percentage of marks obtained by the candidates who appeared at the selection of the centre in question did give rise to a suspicion that unfair means had been practised and the Board was justified in investigating the case. While the High Court held that despite the same, the principles of natural justice was required to be complied with; this Court noticed the reports of the experts and came to the conclusion that the results thereof speaks for themselves. It was noticed that whereas in other centers the average of successful candidates was 50%, in the center in question, the percentage of passing in different papers were unusually high ranging from 70% to 100%. In that view of the matter, this Court held: "These figures speak for themselves. However, to satisfy ourselves we ordered that some answer books be brought for our inspection and many such were produced. A comparison of the answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an outside source.

Therefore the conclusion that unfair means were adopted stands completely vindicated. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."47. Such is not the case here.

48. In *Anamica Mishra and Others v. U.P. Public Service Commission, Allahabad and Others* , an error was found out at the stage of calling candidates for interview. This Court opined that as no defect was pointed out in regard to the written examination and the sole objection was confined to the exclusion of a group of successful candidates in interview there was no justification for cancelling the written part of the recruitment examination and the situation could have been appropriately met by setting aside the recruitment and asking for fresh interview of all eligible candidates on the basis of the written examination.

49. Yet again in *S.P. Biswas and Others v. State Bank of India* , the court refused to interfere with the result of the examination as it was shown that there had been neither any mass copying nor the final result was shown to have been influenced by the unfair means by any candidate.

50. In those cases also tainted cases were separated from the non-tainted cases. Only, thus, in the event it is found to be an impossible or highly improbable, en masse orders of termination could have been issued.

51. Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.

52. We may, at this stage, notice that the following cases would fall in the different categories which are enumerated herein below:

(i) Cases where the 'event' has been investigated: (a) *Union Territory of Chandigarh v. Dilbagh Singh*, at paragraphs 3 and 7. (b) *Krishan Yadav v. State of Haryana*, at paragraphs 12, 15 and 22. (c) *Union of India v. Anand Kumar Pandey*, at paragraph 4. (d) *Hanuman Prasad v. Union of India*, 0 at paragraph 4. (e) *Union of India v. O. Chakradhar*, 0 at paragraph 9. (f) *B. Ramanjini v. State*

of A.P., 5 at paragraph 4.(ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded: (a) O. Chakradhar (supra) (b) Krishan Yadav (supra) (c) Hanuman Prasad (supra)

(iii) Cases where the selection was made but appointment was not made: (a) Dilbagh Singh (supra) at paragraph 3 (b) Pritpal Singh v. State of Haryana, 8 (c) Anand Kumar Pandey (supra) at paragraph 4. (d) Hanuman Prasad (supra) (e) B. Ramanjini (supra) at paragraph 4. (iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules:

(a) Krishan Yadav (supra) (b) Pramod Lahudas v. State of Maharashtra, 6 wherein appointments had been made without following the selection procedure. (c) O. Chakradhar (supra) wherein appointments had been made without type-writing tests and other procedures of selection having not been followed.

53. It is now well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. [See P.S. Sathappan (Dead) By LRs. v. Andhra Bank Ltd. and Others M.P. Gopalakrishnan Nair v. State of Kerala, and Haryana State Coop. Land Development Bank v. Neelam,

54. In Benny T.D. and Others v. Registrar of Cooperative Societies and Another , this Court repelled a contention raised therein that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, public interest demanded annulment of the entire selection. This Court held that the same could not be done as the same would tantamount to gross violation of principles of natural justice which cannot be brushed aside on the ground that public interest demands annulment of the selection.

55. Yet again in Onkar Lal Bajaj and Others v. Union of India and Another 7, this Court while dealing with a case of en masse cancellation of the licences granted to the LPG Distributors as a result whereof unequals were said to have been clubbed by reason of arbitrary exercise of executive power, the same was held to be impermissible stating: "<I>"The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories tainted and the rest on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution "</I>

56. It was further held:

<I>"The aforesaid observations would apply with equal if not more force to DSBs if media exposure that the allotments were made either to the high political functionaries themselves or their near and dear ones is correct, the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any cases exposed by the media "</I>

57. This Court further observed:

The expression "public interest" or "probity in governance" cannot be put in a straitjacket. "Public interest" takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether government action was taken in public interest or was taken to uphold probity in governance.

58. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate."59. Yet again in Union of India and Others v. Rajesh P.U., Puthuvalnikathu and Another , this Court observed:

<I>" Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."</I>

[See also Ashok Lenka v. Rishi Dikshit & Ors., 2006 (4) SCALE 519, paragraphs 42-50]

60. The High Court, therefore, cannot be said to be right in applying the principle of mass cheating cases in the instant case.

61. Contention of Mr. Dwivedi, as noticed hereinbefore, centers around condemnation of selection and not of the candidate. But, when the services of the employees are terminated inter alia on the ground that they might have aided and abated corruption and, thus, either for the sake of probity in governance or in public interest their services should be terminated; the court must satisfy itself that conditions therefor exist. The court while setting aside a selection may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled. We, however, do not agree with the submission of Mr. Dhavan that the decision of the Commission was collegiate in nature as it is well known that one of the members of the Commission was biased, other members could also be influenced by him. [See *Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others*, 62. In a case of this nature, thus, the question which requires serious consideration is as to whether due to misdeed of some candidates, honest and meritorious candidates should also suffer.

63. It is not in dispute that the State itself appointed a Screening Committee by an order dated 20th July, 2004 in the following terms:

"Whereas during the period 1996-2001, a total number of about 1681 selections involving 141 categories of employees were made by the PPSC. and whereas an enquiry has been held by the Vigilance Bureau in these selections and a report has been submitted by the Vigilance Bureau to the Government. The State Government has now to take a view as to the action it may have to take regarding all these selections made during the years 1996-2001. After detailed deliberation and discussions in this regard with the concerned Departments, Advocate General Punjab, Legal Remembrancer and Vigilance Bureau, the Government has decided to constitute a Committee of Senior Officers to examine the report of the Vigilance Bureau in the light of the records of PPSC and sift the evidence in each case of selection made during the tenure of Sh. Ravinder Pal Singh Sidhu as Chairman, Punjab Public Service Commission and determine whether irregularities or illegalities were committed in making these selections.

64. The composition of the above Screening Committee was:

1. Shri D.S. Guru, IAS, Principal Secretary Department of Health & Family Welfare, Punjab. - Chairman.

2. Legal Remembrancer, Punjab Member.

3. Sh. S.M. Sharma, IPS, Inspector General of Police, (Vigilance) Punjab Member

4. Sh. S.S. Rajput, IAS, Secretary to Govt. of Punjab, Deptt. Of Personnel. Member."

65. The subject reference before the Committee was:

<I>"A total number of 1680 selections involving 141 categories of employees were examined by the Vigilance Bureau. The Punjab Government decided to constitute a Screening Committee to examine the report of the Vigilance Bureau in the light of the records of the Punjab Public Service Commission (PPSC) and to shift the evidence in each case of selection made during the tenure of Shri Ravinder Pal Singh Sidhu as Chairman, Punjab Public Service Commission and determine whether irregularities or illegalities were committed in making these selections."</I>66. The Screening Committee found the following two selections as vitiated:

<I>"(i) Selection to the post of sub-Divisional Engineer (Civil), PWD, B & R & sub-Divisional Officer (Civil) in Panchayati Raj Department;

(ii) Selections of Lecturers Mechanical Engineering for Government Polytechnics."</I>

67. The functions of the Screening Committee in terms of the order of reference were as under:

<I>"(i) The Committee will examine the Vigilance Bureau Reports and the records of PPSC regarding selections made to posts in different departments on the basis of recommendations of Punjab Public Service Commission during the tenure of Shri Ravinder Pal Singh Sidhu and give its findings as to the attendant circumstances of the selections effected.

(ii) The Committee may examine any other issue specially referred to it regarding the selections made during the tenure of Sh. Ravinder Pal Singh Sidhu.

(iii) Original record from the Departments will be obtained and submitted to the Committee by the Vigilance Department. The Committee will hold at least one meeting every week as per its convenience and submit its final report within six months."</I>

68. We are not unmindful of the controversy that the said Committee did not go into the question of illegality in the selection of the Civil Services Examinations or Judicial Examinations. It might or might not have; but we are referring to the said report not only to place on record that such a Committee was constituted inter alia for the purpose of implementing the order of Punjab and Haryana High Court passed in CWP No. 77/02 but also for the purpose that even according to the State sifting of evidence by an independent body was possible. The Committee, as noticed hereinbefore, was furthermore required to determine the question as to whether illegalities and irregularities of such a magnitude had been committed or not. It further appears from the report that the Screening Committee visited the office of the Commission. It noticed that the Vigilance Bureau did not go into the issue of role of experts and did not produce any concrete evidence before the Committee in regard to any other illegality committed by the experts. It although noticed the basis for the Vigilance Bureau to arrive at certain inferences that the selection process had become tainted, but despite the same went into various facts including similarity of marks given at the interview despite the amendments made by the Commission vide a resolution dated 14.3.1995 and other relevant factors.69. The Committee opined:

<I>"The S.P., Vigilance Bureau, Patiala also stated before the Committee that after the submission of the report, no other additional evidence or piece of information has come to their knowledge. The Committee is of the considered view that marks in the interview cannot be given pro rata to the academic qualifications and if this principle is adopted, it will hit at the very base of adjudging the personality, general awareness, general knowledge and other traits in the personality of a candidate by the Selection Board. Although the high marks awarded to some candidates in the interview and low marks awarded to some others are quite striking, vis-a-vis their academic performance, in a number of cases, especially those placed by the Vigilance Bureau in the 'tainted' categories, yet the Committee is of the considered view that in the absence of concrete/conclusive evidence of any extraneous considerations like corruption, favouritism, nepotism, etc., the selections cannot per se be described to be vitiated."</I>

70. Another factor which merits consideration is as to whether even if the statements of approver and other witnesses are taken to be correct, the selection made in the year 1998 could be said to be so tainted so as to vitiate the entire selection process. Jagaman Singh merely stated that only in 1999 Shri Sidhu upon taking him into confidence disclosed that he had some surplus amount with him. It is stated before us that he has not implicated any candidate for the year 1998-99 by name. Some of the statements made by him are said to be with regard to the recovery part and not in regard to the validity or otherwise of the examination and other selection processes. It was, therefore, necessary to establish that the examinations held in 1998 were also tainted. Some evidence in that behalf should have been brought on record to establish the necessary tint.

71. It is not in dispute that in respect of the services where selections were made on the basis of the interview, the same was conducted by the Chairman and two other members. On each subject one expert was also appointed. We place on record that so far as the Judicial Officers are concerned the expert was a sitting High Court Judge and, thus, it is not expected that any irregularity far less illegality would be committed in the matter of allotment of marks at the interview. In any event, it was necessary to arrive at such a finding.⁷² We may notice Rule 17 (a) (iii) of the Rules framed by the Commission which reads as under:

<I>"(iii) Where more than one member constitute a board for holding the interview, the senior most Member shall preside assisted by the 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."</I>

73. No breach of Rule 17 (a) (iii) as such has been pointed out either before the High Court or before us. Thus, the possibility of the Chairman and the Members of the Commission to deliberate on the performance of the candidates with each other and general discussion with the expert which might have led to grant to similar marks cannot be wholly ruled out. Suspicion is no substitution of proof. There may be some cases where such marks had been given for extraneous considerations, but only because there was such a possibility, the same by itself without analyzing more may not be a ground for arriving at the conclusion that the entire selection process was vitiated. Apart from viva voce, other marks remained the same. The Officers had passed other departmental examinations and so far as performance of their duties is concerned presumably there had been no complaint.

74. We may, furthermore, at this stage take note of the fact that so far as the entries in the registers are concerned the same are governed by Rule 8 of the 1976 Rules, in terms whereof the following registers are required to be maintained:

REGISTER CLASS OF OFFICERS RULE

Register A-1 Tehsildars and Naib Tehsildars Rule 8 (1) of the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976 Register A-2 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. Rule 8 (2) of the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976 Register A-3 Excise and Taxation Officers, Block Development and Panchayat Officers and District Development and Panchayat Officers Rule 8 (3) of the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976 Register B Officers accepted as a result of the Main Competitive Examination.

Rule 8 (4) of the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976 Register C Officers and Officials serving in connection with the State of Punjab who are not covered by any of the categories of officers or officials herein before mentioned. Rule 8 (5) of the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976. Different registers were, therefore, required to be maintained for different categories of officers. We have not been apprised that there had been any violation in that behalf.

76. Furthermore, a decision in undue haste was taken. So far as the nominated officers are concerned, whereas a note containing 90 pages was sent to the Chief Secretary of Punjab on 22.5.2002, the services of all the officers were terminated on the next day. Apart from the materials which have been relied on in the report, no further evidence was probably brought in between 23.5.2002 and 24.8.2002 when the services of the Executive Officers were terminated.

77. It is, thus, furthermore, beyond anybody's comprehension as to why action had to be taken in undue haste.

78. We do not intend to suggest that in any emergency it was not permissible but we have not been shown that any such emergent situation existed. It was in any event necessary for the State to show as to how the records moved so as to satisfy the conscience of the court that there had been proper and due application of mind on the part of the concerned authorities. An action taken in undue haste may be held to be mala fide. [See Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Others, 8

79. We may now deal with the orders of termination of the services of the Judicial Officers.

80. We may at the outset notice that no reason as to why copies of the vigilance report could not have been made available to the learned advocates appearing for the judicial officers. At least, they could have been given inspection thereof.

81. From the records produced before us it appears that the Advocate General, Punjab by a letter dated 23.5.2002 handed over 12 envelopes which are as under:

<I>"Envelop No. 1- Report on Judicial Officers (pages 1 to 4)

Envelop No. 2 Question Papers of PCS (J) examination conducted in (a) 1999 (pages 1 to 10) (b)

2000 (Pages 1 to 8) (c) 2001 (pages 1 to 7).

Envelop No. 3- Answer Sheets of Maninder Singh PCS(J)a) English (Pages 1 to 16) b) Punjabi (Pages 1 to 26) c) Civil Law I (Pages 1 to 37) d) Civil Law II (Pages 1 to 27) e) Criminal Law (Pages 1 to 29)

Envelop No. 4 Answer Sheets of Amol Gill PCS (J) a) English (Pages 1 to 10) b) Punjabi (Pages 1 to 9) f) Civil Law I (Pages 1 to 13) g) Civil Law II (Pages 1 to 14) h) Criminal Law (Pages 1 to 10)

Envelop No. 5 Answer Sheets of Ram Saran PCS (J) a) English (Pages 1 to 22) b) Punjabi (Pages 1 to 27) c) Civil Law I (Pages 1 to 35) d) Civil Law II (Pages 1 to 38) e) Criminal Law (Pages 1 to 36) Envelop No. 6 Answer Sheets of Preetwinder Singh PCS (J) a) English (Pages 1 to 13) b) Punjabi (Pages 1 to 16) c) Civil Law I (Pages 1 to 29) d) Civil Law II (Pages 1 to 23) e) Criminal Law (Pages 1 to 25)

Envelop No. 7 Answer Sheets of Mandeep Kaur PCS (J) a) English (Pages 1 to 24) b) Punjabi (Pages 1 to 23) c) Civil Law I (Pages 1 to 26) d) Civil Law II (Pages 1 to 39) e) Criminal Law (Pages 1 to 34) Envelop No. 8 Answer Sheets of Monika Sethi PCS (J) a) English (Pages 1 to 19) b) Punjabi (Pages 1 to 17) c) Civil Law I (Pages 1 to 30) d) Civil Law II (Pages 1 to 40) e) Criminal Law (Pages 1 to 33)

Envelop No. 9 Answer Sheets of Navdeep Singh PCS (J) a) English (Pages 1 to 20) b) Punjabi (Pages 1 to 26) c) Civil Law I (Pages 1 to 28) d) Civil Law II (Pages 1 to 32) e) Criminal Law (Pages 1 to 29)

Envelop No. 10 Answer Sheets of Rajinder Bansal PCS (J) a) English (Pages 1 to 17) b) Punjabi (Pages 1 to 17) c) Civil Law I (Pages 1 to 23) d) Civil Law II (Pages 1 to 26) e) Criminal Law (Pages 1 to 22)

Envelop No. 11 Answer Sheets of Anil Kumar Jindal PCS (J) a) English (Pages 1 to 11) b) Punjabi (Pages 1 to 10) c) Civil Law I (Pages 1 to 14) d) Civil Law II (Pages 1 to 17) e) Criminal Law (Pages 1 to 15)

82. No question paper or any other document as regards the candidates for the year 1998 examination, therefore, was handed over by the State to the High Court on that date.⁸³ The report of the first committee dated 30th May, 2002 is a short one. The said report is based on the extracts of the statements made by some of the persons recorded by the investigating agency and the photostat copies of the answer sheets of nine candidates who, amongst others, had been selected and appointed to the PCS (Judicial) during the period from 1999 to 2001 along with the question papers for the relevant examinations.

84. The materials supplied to the Committee, having regard to the fact that most of the officers named in the First Information Report were of 2001 batch, cannot be held to be sufficient so as to come to the conclusion that the entire selection process for 1999 and 2000 was vitiated. Despite the fact that the selection process for the year 1998 was not the subject matter of the enquiry, recommendations had been made by the Committee for cancellation of appointment of the candidates of 1998 batch also. The Full Court without any basis whatsoever recommended dismissal of all the Judicial Officers. Only when the Additional Secretary of the Government of Punjab vide a letter dated 27.9.2002 which was received by the High Court on 28.9.2002, drew its attention in that behalf, another committee was constituted by the then Acting Chief Justice on 10.10.2002 evidently, after the said matter was discussed in the Full Court. Two of the five member Committee were also the members of the first Committee. The second Committee again considered the statements of the approver and one other witness recorded under Section 164 of the Code of Criminal Procedure as also other documents placed before it and came to the opinion: (1) Performance of most of the selected candidates was below average and the marks awarded to them were disproportionate to the answers given by them. (The aforementioned opinion was made on the basis of some of the answer sheets of some of the selected candidates and those who had not been selected.) (2) The marks originally given to the candidates were scored off and unjustifiably increased obviously with a view to ensure their selection. (3) Another feature which was noticed that the answer sheets of some of the non-selected candidates were qualitatively better than some of those who had been selected but they had been awarded lesser marks, presumably, with a view to push them down.⁸⁵ The number of the candidates of 1998 batch was not that high so as to render examination of each answer book of the candidates difficult. Having regard to the fact that none of the candidates of 1998 batch had been named in the First Information Report or by the witnesses, it was, to our mind, obligatory on the part of the High Court to bestow its attention to the problem more closely. Maintenance of purity of administration of justice so as to uphold the independence of judiciary is indisputably the sole task of the High Court. However, it is important to maintain purity of administration of justice both on the judicial side as also the administrative side. Corruption in the selection process and in any event illegality going to the root of the matter, of course, would not be tolerated. But then even applying the strict standard in the case of the judicial officers, whereas applying liberal standard in the case of others, at least certain basic norms were required to be followed. For the said purpose, minimal requirements of the principles of natural justice must be complied with. We regret to note that judicial officers had not been fairly treated by the High Court. They deserved better treatment. An authority holding an enquiry of such a nature would ordinarily carry out exercises to find out as to whether the selection process was vitiated by fraud or such illegalities which would vitiate the entire selection process. The Committee was dealing with charges of aiding and abetting corruption

on the part of the judicial officers nay only some of them and, thus, it was necessary for it to apply its mind more seriously. The members of the Committee were not reevaluating the answer scripts. The candidates were not before them. Their abilities were not being tested. The learned members of the Committee should have asked unto themselves the right question, mainly because the issue before them was different and distinct from an ordinary departmental enquiry. In any event, there was absolutely no reason why copies of the said reports could not have been supplied to the appellants.⁸⁶ Before us the said reports have been placed. We have allowed the learned counsel appearing on behalf of the Appellants to inspect them. Some brief comments about the said reports had been made. However, we do not intend to delve deep into the matter, as we are of the opinion that the actions taken on the basis of the said reports by the High Court were not justified.

87. We also fail to understand as to why two senior Judges who had headed the Committee should have been made part of the Bench. It was not a case where the doctrine of necessity was required to be invoked. It may be that the counsel appearing on behalf of the Judicial Officers did not object to the learned Judges who were members of the Committee to hear the matter.

88. There is no quarrel with the proposition that the allegation of bias may be capable of waived. [See *Dr. G. Sarana v. University of Lucknow and Others*, However, in this case, bias as regards the subject matter on the part of the members of the Committee who heard the writ petition is apparent on the face of the record. Therein this Court was considering a question as to whether a bias as regards a special matter would invalidate proceedings. What was in question therein was the justifiability of the constitution of selection committee and as the Appellant therein had voluntarily appeared before it and had taken a chance of having favourable recommendation from it, he was not permitted to turn around and question the validity of the constitution of the committee.

89. In *State of Maharashtra v. Ramdas Shrinivas Nayak and Another* the concession of the counsel recorded by the High Court was incorrect. But the Appellant was not permitted to go back from the said concession, stating:

<I>"So the Judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else."</I>

90. In *Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana and Ors. etc. etc.* 1985 (S) SCR 657, this Court held:<I>" The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities

exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner "</I>

91. The manner in which the proceedings were conducted in the High Court leaves much to be desired.

92. The writ petitioners, thus, might have waived their right to raise a contention as regard bias on the part of the Hon'ble Judges but the same would not mean that this Court would ignore such a vital fact. It was clearly a case where the Hon'ble Judges should have recused themselves from hearing the matter. It was for them to remind themselves that justice is not only done but manifestly seen to be done. [See Centre for Public Interest Litigation and Another v. Union of India and another, 2005 (8) SCC 202

93. In Pinochet, 1999 Indlaw HL 37 Lord Browne Wilkinson opined: "The question then arises whether in non-financial litigation, anything other than a financial or proprietary interest in the outcome is sufficient automatically to disqualify a man from sitting as judge in the cause . My Lords, in my judgment, although the cases have all dealt with automatic disqualification on the grounds of pecuniary interest, there is no good reason in principles for so limiting automatic disqualification. The rationale of the whole rule is that man cannot be judge in his own cause."94. It was further opined:

<I>"One of the cornerstones of our legal system is the impartiality of the tribunals by which justice is administered. In civil litigation the guiding principle is that no one may be a judge in his own cause: nemo debet esse iudex in propria causa the nature of the interest is such that public confidence in the administration of justice requires that the judge must withdraw from the case or, if he fails to disclose his interest and sits in judgment upon it, the decision cannot stand. It is no answer for the judge to say that he is in fact impartial and that he will abide by his judicial oath."</I>

95. It was also stated:

<I>"However, I am of the opinion that there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as shareholding in a public company involved in litigation."</I>

[See also AWG Group Limited v. Morrison and Anr., 2006 (1) ALLER 967

96. Pinochet (supra) applies in all force to the fact of the case.

97. The aforementioned principles have been accepted and followed by this Court in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant [7 in the following terms:

<I>"Recently however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2)observed: " In civil litigation the matters in issue will normally have an economic impact; therefore a Judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a Judge applies just as much if the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties." 31. Lord Brown-Wilkinson at p.136 of the report stated: "It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25-11-1998 would lead to a position where Judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a Judge would be disqualified. That is not correct. The facts of this present case are exceptional. The critical elements are (1) that A.I. was a party to the appeal; (2) that A.I. was joined in order to argue for a particular result; (3) the Judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'s objects. Only in cases where a Judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a Judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the Judge would be well advised to disclose a possible interest." 32. Lord Hutton also in Pinochet case observed: "There could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."</I>[See also Rupa Hurra V. Ashok Hurra, 6 and Krishan Yadav (supra)]

98. It is not necessary for us, in the facts and circumstances of this case, to give our final views as regard the current rein in the precedent, i.e., from likelihood of bias to 'real danger of bias' as was observed in M.P. Special Police Establishment v. State of M.P. but we may only observe that if the principles of bias which have been highlighted by Mr. Rao for attacking the conduct of Mr. Sindhu as a Constitutional functionary are correct, there is no reason as to why the same principles would not apply to the case of judicial officers. The apprehension in the mind of judicial officers that inferences had been drawn on the basis of non-existent fact cannot be ruled out. It was in the

aforementioned premise, the officers should have at least been given an opportunity to have a look to the reports on the basis whereof they had been categorized as tainted officers. We fail to understand if ultimately in the opinion of the High Court, the Judicial Offices were found to be entitled to look the said report, why the copies thereof were not made available to them or at least why inspection thereof was not given at an appropriate time so as to enable them to make their submissions. Curiously enough only when after the oral submissions were over and written submissions have been filed, although the writ petition belonging to other categories of services were being heard, the arguments advanced on behalf of the Judicial Officers were directed to be closed and only on the next date when the counsel had no occasion to make comments upon the reports, the same were read out in the Court and allowed to be inspected by the counsel. It may be that the Superior Judiciary always make endeavours to deal with the judicial officers in all seriousness it deserves; but then such harsh punishments may be meted out only when there are sufficient materials on record so as to enable it to satisfy itself upon adopting a fair procedure. We have no hesitation to observe that the Judicial Officers were unfairly treated by the High Court.⁹⁹ The High Court was probably enthralled by the media reports that two of the wards of its sitting Judges obtained appointment wrongly. It is, however, stated at the Bar that they were toppers of the Batch and in the First Information Reports, their names had not been mentioned. Only because wards of its sitting Judges obtained employment, the same by itself would not give rise to a presumption that everything was not well in the selection making process.

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

101. We were, however, told that some new appointments have been made, the effect whereof, would certainly be the subject to the decision of this case. We, however, do not intend to set aside the said appointments at this stage. We also do not intend to disturb the status quo.

102. We must, however, express our satisfaction that no candidate for the year 2001 has been appointed. It is one thing to say that having regard to the nature of selection process, no person is appointed from the select list as no person has right to be appointed only because his name appears in the select list, but, in our opinion, a different standard must be adopted for terminating the services of the officers who had completed about three years of service. Some of them, as noticed hereinbefore, passed departmental tests. Some have been given higher responsibilities. They had completed the period of probation and some were nearing the completion thereof. They presumably had been working to the satisfaction of the authorities concerned.

103. The impugned judgment as also the orders of the State Government and the High Court are, thus, liable to be set aside and directions are issued. Although the impugned judgments cannot be sustained, we are of the opinion that the interest of justice would be subserved if the matters are remitted to the High Court for consideration of the matters afresh. However, with a view to

segregate between the tainted with non-tainted and that in the interest of justice the High Court should be requested to constitute two independent scrutiny committees one relating to the executive officers and the other relating to the judicial officers.104. We would, furthermore, request the High Court to consider the desirability of delineating the area which would fall for consideration by such Committees within a time frame. Copies of such reports of the Committees shall be supplied to the learned counsel for the petitioners and/or at least they should be given inspection thereof. The parties shall be given opportunity to inspect any document including the answer sheets etc. if an application, in that behalf is filed. Such inspection shall, however, be permitted to be made only in presence of an officer of the court. The Appellants shall be given two weeks time only for submitting their objections to such reports and their comments, if any, on any material whereupon the High Court places reliance from the date of supply of copies or inspection is given. Having regard to the fact that the appellants are out of job for a long time, we would request the High Court to consider the desirability disposing of the matter as expeditious as possible and preferably within the period of three months from the date of receipt of the copy of this order. Before parting with the case, however, we may observe that it is expected that the State having regard to the magnitude of the matter shall leave no stone unturned to bring the guilty to book. It is the duty of the State to unearth the scam and spare no officer howsoever high he may be. We expect the State to make a thorough investigation into the matter. These appeals are allowed to the aforementioned extent and with the directions and observations made hereinbefore.

105. In view of the facts and circumstances of the case, there shall be no order as to costs.

Hon'ble Justice DALVEER BHANDARI, J. :-- I had the benefit of reading the erudite judgment of my learned brother Justice Sinha. I concur with the conclusions and findings arrived at by him on all the issues except on the issue of propriety of hearing of the matter by the judges (who were on the Committee), after the appellants gave clear consent to the hearing of cases by the full bench even before the commencement of the hearing of cases. I would therefore, like to write a separate judgment. These appeals emanate from a Full Bench judgment of Punjab and Haryana High Court in Civil Writ Petition No. 8421 of 2002 along with other connected matters.2. The founding fathers of the Constitution perhaps, in their wildest dreams, could not have visualized that the people who are expected to strictly adhere to the constitutional values and guide the destiny of the Nation, in times to come would malign and denigrate the system to such an extent that for his grave misdeeds, the constitutional authority itself, in the larger public interest would be required to be put behind the bars. The Chairman of the Punjab Public Service Commission is an important constitutional authority.

3. This case relates to a period when one Ravinderpal Singh Sidhu (in short, R.S. Sidhu) was the Chairman of the Punjab Public Service Commission (hereinafter called the Commission) from September 1996 to 21.3.2002. His clandestine activities and misdeeds reached the pinnacle of disgrace, ignominy, dishonour, degradation and humiliation. Perhaps, no one could have polluted the entire system in a greater measure. On 25.3.2002 an FIR was registered at Police Station,

Mohali under section 7 read with section 13(2) of the Prevention of Corruption Act, 1988 in relation to the trap organized in which R.S. Sidhu was caught red-handed accepting a bribe of Rs. 5 lakhs.

4. The statement of one of the accused Jagman Singh (who later turned as an approver) was recorded under Section 164 CrPC on 24.1.2002 and 24.4.2002. In three days from 17.4.2002 to 19.4.2002, more than Rs. 16 crores were recovered from the lockers and the bank accounts of the relations of R.S. Sidhu. According to the State, a total cash amount, securities and properties worth about Rs. 22 crores were recovered. Out of the said amount, a sum of Rs. 1.28 crores was recovered from the house of Jagman Singh. In the history of this country, there may not have been many cases of the Prevention of Corruption Act of this magnitude, where such huge amounts were recovered. All this amount was collected by R.S.Sidhu in lieu of ensuring recruitment/appointments to various offices of the PCS (Executive Branch), allied services and PCS (Judicial Branch) in the State of Punjab from the prospective candidates. This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed) affect a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions. The following vacancies which arose during the tenure of R.S. Sidhu as Chairman of the Punjab Public Service Commission are under challenge. On the Administrative side the following vacancies arose: Class I: Direct Recruits: 28 vacancies Class II (allied etc): Direct Recruits: 63 vacancies Class I: Nominated: 18 vacancies Total 1095. Similarly, on the Judicial Side the following vacancies arose:

Class I for 1998 vacancies: 21

Class I for 1999 vacancies : 14

Class I for 2000 vacancies: 8

Class I for 2001 vacancies: 21

Total 64

"By an advertisement issued in February, 1998, the Commission invited applications for recruitment

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

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

6. For the year 1994: There were three vacancies for Register A-I which were to be filled from amongst Tehsildars/Naib Tehsildars. There were two vacancies for Register A-II which were to be filled from amongst Civil Secretariat Ministerial Staff. There was one vacancy for Register A-III which was to be filled from amongst the Excise and Taxation Officers/Block Development Officers/District Development and Panchayat Officers. There was one vacancy for Register 'C' which was to be filled from amongst the officers/officials working in subordinate offices. Interviews for selection for the vacancies to be filled from the four registers were held on 6.4.1999, 28.7.1999 and 29.7.1999, 4.1.1999 and 7.4.1999 respectively.

7. For the year 1996:

There were five vacancies for Register A-I. There was no vacancy for Register A-II. There were two vacancies for Register A-III and there were three vacancies for Register 'C'. Interviews for selection for appointment to Register A-I were held on 26.5.1999. Interviews for selection for appointment to Register A-III from amongst District Development and Panchayat Officers were held on 29.5.1999. For selection from amongst Excise and Taxation Officers, interviews were held on 29.6.1999. For Register 'C', interviews were held on 4.6.1999 and 7.6.1999. PCS (Judicial Branch) made in terms of Punjab Civil Service (Judicial Branch) Rules, 1951 (for short, 'the 1951 Rules')

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

Year Number of vacancies

1998 21

1999 14

2000 8

2001 21

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

10. It may be pertinent to mention that two FIRs were registered. FIR No. 7 was registered at Police Station, Mohali under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 on 25.3.2002 and the FIR No. 24 was registered on 30.4.2002 against R.S. Sidhu and Pritpal Singh, the then Secretary of the Commission in the context of large scale fraud committed in the selections made by the Commission. On the basis of the material on record, it is revealed that a number of candidates paid money to R.S. Sidhu for ensuring selections in the examination and appointment to the PCS (Executive Branch), Allied Services and PCS (Judicial Branch) and in the raids, as mentioned earlier, a huge amount of money was recovered. The Vigilance Bureau highlighted the following irregularities committed by the Commission at the behest of the then Chairman:

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

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

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

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

(v) The procedure for calling experts, paper setting and paper setters, examiners (Markers etc.) were exclusively in the hands of the Chairman as reported by the Secretary, Punjab Service Commission and no such record is available in the Commission, whereas such record can only be destroyed after a lapse of 5 years as per instructions of the PPSC.

(vi) The selections, which are not based on the competitive examination, are based on pass marks (percentage of basic degree + interview marks). The procedure is such that the difference in pass marks can be easily covered by interview marks. For example, if 3 candidates have 50%, 60% and 70% marks in Graduation, their base marks (40% of the percentage in basic degree) will be 20, 24 and 28 respectively. The marks allotted for interview can easily cover the gap of 8 marks between the candidates getting the lowest and highest base marks.

(vii) In some cases the interview marks are out of range of grade marks. For example, B+ (26 to 30) grade is given by the expert but the Board gave him/her 32

marks. This irregularity may be due to clerical mistake committed by the PPSC staff and is therefore being verified.

(viii) There is some evidence on the file that expert(s) was/were asked to be selective."

11. On consideration of the entire material placed before it, the State Government decided to cancel the entire selection made for recruitment of PCS (Executive Branch) and Allied Services in 1998. Consequently, a general order dated 24.8.2002 was issued terminating the services of the appellants. Regarding Judicial Officers appointed to PCS (Judicial Branch), the High Court constituted a sub-committee of five Judges to scrutinize the record of selection. After going through the answer sheets of the candidates, who were selected on the basis of examinations held for recruitment against the vacancies in the years 1999, 2000 and 2001, the sub-committee submitted a report dated 30.5.2002 with the observation that, interpolations and cuttings were made in the marks awarded to some of the candidates and their marks were increased and that the assessment made by the examiners was far from fair. The report of the sub-committee was accepted by the Full Bench of the High Court and a recommendation was made to the government to terminate the services of those who were

appointed on the basis of the selections made during the tenure of R.S. Sidhu. On a reference made by the State Government, the second sub-committee examined the answer sheets of some of those who were selected as well as the answer sheets of those who were not selected and observed that a deliberate attempt had been made to give higher marks to some undeserving candidates and at the same time, lower marks were awarded to more meritorious candidates. The report submitted by the second sub-committee was also approved by the Full Court. On the recommendations made by the High Court, the State Government terminated the services of those who were appointed on the basis of the selections made by the Commission against the vacancies of the years 1998, 1999 and 2000. All the appointments were terminated on the recommendations of the High Court on 27.9.2002. Similarly, the appointments of nominated Executive Class I Officers were terminated by order dated 23.5.2002. These appellants have filed a number of writ petitions before the Punjab & Haryana High Court which were dismissed by the impugned judgment of the Full Bench being devoid of any merit. These appellants, being aggrieved by the said judgment of the Full Bench, have now approached this Court by filing these special leave petitions. After hearing all concerned, this Court granted special leave petitions and these appeals have now been placed for final disposal before this Court.12. Mr. Rajiv Dhawan, learned Senior Advocate and a large number of counsel have appeared on behalf of the appellants. Submissions made by the appellants are summarized as under:

(I) The appellants have challenged the impugned order mainly on the grounds of violation of articles 14, 21 and 311 of the Constitution and the breach of the principles of natural justice.

(II) Some of the appellants have submitted that they had completed 3 years probation and according to Rule 23 of the 1976 Rules they were deemed to have been confirmed in their services and their services could not be terminated without holding regular enquiry in accordance with the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, 'the 1970 Rules') read with Article 311 of the Constitution of India and, in any case, Rule 23 could not have been invoked for dispensing with their services because their work, conduct and performance had remained satisfactory during the period of probation.

(III) The appellants have also submitted that both the Vigilance Bureau and the Chief Secretary had decided the issue of mass dismissal orders in less than 24 hours without proper application of mind. It was also submitted that the Screening Committee of 2004 showed that an exercise separating tainted from the non-tainted candidates could be done in two or three months. It was submitted that the decision of mass dismissal was passed on insufficient material and without application of mind.

(IV) Some of the appellants have submitted that their academic records are very good and they were selected to PCS (Executive Branch) and/or Allied Services and PCS (Judicial Branch) on the basis of their academic records and their good performance in the examinations held and they have nothing to do with the illegalities, irregularities committed by R.S. Sidhu during his tenure as the Chairman of the Punjab Public Service Commission and, therefore, their appointments should not be disturbed.

(V) Those appointed to PCS (Executive Branch) from Registers A-I, A-II, A-III and 'C' have averred that they were selected on the basis of their outstanding service record and the taint, if any, attached to the selections made for appointment by the direct recruitment cannot affect their selections. The candidates belonging to the reserved categories of Scheduled Castes, Backward Classes, Ex- servicemen, Freedom Fighters and Handicapped have averred that they have nothing to do with the selections made by R.S. Sidhu by taking bribe from the candidates or on account of "Sifarish" and their services could not have been terminated on the basis of the reports of the Vigilance Bureau.(VI) The appellants have also challenged that there is no definite or specific material available with the State Government on the basis of which it could form a bonafide opinion that selections were tainted and the reports prepared by the Vigilance Bureau could not be relied upon for terminating their services because the same were entirely based on the statement of approvers recorded under Section 164 of the Code of Criminal Procedure.

(VII) It has also been submitted that the criminal investigations were in relation to the Chairman, PPSC without shedding light on nominated candidates. Even without getting the interview details of nominated candidates the Vigilance Bureau treated this as a case of mass corruption on 21.5.2002. This action was clearly arbitrary and wholly untenable.

(VIII) The appellants submitted that there was no material before the Committee on the basis of which the drastic order of cancelling the selections of three batches comprising of 39 judicial officers could be made. It was further submitted that the examination of material including answer-sheets of selected/non-selected candidates, statements of approvers under Section 164 of the Code of Criminal Procedure was done only in context of 1998 batch on its back reference from the State Government.

(IX) The appellants further submitted that the Full Bench of the High Court lost sight of the fact that there were four separate batches in which four separate sitting High Court judges participated as experts whose opinion was binding under Rule 4 of Part C of the PCS (JB) Rules, 1951. There was no allegation of any impropriety committed by the experts of the Interview Board. (X) The appellants also submitted that the fact finding enquiry which came to the conclusion that the findings of misconduct on the basis of which the services of the appellants were terminated was conducted behind the back of the appellants. They were neither associated with the enquiry nor was any material supplied to them before or after the termination, to enable them from effectively rebutting the findings. The appellants were only permitted to examine their own answer-sheets in which no cutting/overwriting/ irregularity was found.(XI) According to the appellants, the High Court erroneously proceeded on the administrative side to presume that the mere irregularity in 7 papers of 2001 batch meant irregularity of the entire batch. On the basis of this presumption another presumption was raised that there were irregularities in all the four batches from 1998 to 2001. In the case of other selections held by the PPSC under the Chairmanship of R.S. Sidhu, the Government had undertaken to constitute two separate committees which had gone into the record of over 3,500 candidates to ascertain the presence of any taint or otherwise. In the present case, it was not impractical or impossible to have conducted this exercise for the serving judicial officers

who were only 39 in number. According to the appellants, the action of cancelling was taken in extreme haste and without any logical basis.

(XII) The appellants submitted that it was incumbent upon the State Government to establish from the records that prior to 23.5.2002 it had examined all the selections made during the tenure of R.S. Sidhu and it was after such a detailed consideration that it became apparent that the taint was only in respect of the selections in the year 1998 which would necessitate the extremely harsh and punitive decision to terminate en masse selections of all the candidates on the ground that the entire selection process was vitiated.

(XIII) The appellants submitted that the selections were vitiated because, according to the respondents, Mr. Sidhu employed corrupt methods in the selection process of the candidates. From this criterion or yardstick, all the 3,446 selections made during the tenure of R.S. Sidhu would stand 'tainted' and the services of all these candidates are also liable to be terminated.

(XIV) The appellants submitted that it was not a case of large scale irregularities where it was impossible to separate the tainted candidates from the non-tainted candidates. The test for determining whether a set of facts qualifies to be a case of large scale irregularities sustaining a decision to cancel the entire selection was aptly stated by this Court in the case of Union of India v. Rajesh P.U. in the following words : "In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."It is the sacred duty of the Court to sift the grain from the chaff. The expression "public interest" or "probity in governance" cannot be put in a strait-jacket. "Public interest" takes into its fold several factors. There cannot be any hard- and-fast rule to determine what is public interest. The circumstances in each case would determine whether the action was taken in public interest or was taken to uphold probity in governance.

(XV) The appellants submitted that where there are imputations against a key decision maker or a key decision, every decision made by such decision maker during his period of office is not necessarily tainted and to be set aside. In fact, the correct approach is to investigate the issues

thoroughly and to weed out the tainted decisions from the ones that are not.

(XVI) The impugned order of termination is also stigmatic. The order ostensibly discharged the appellants during the period of probation but the order of discharge in fact was because of serious allegations of corruption which appeared in the press against the entire batch. If the veil is lifted it will be seen that the only reason why the appellants's services have been terminated is the so called misconduct attributed to the entire batch. Under these circumstances, since the order is stigmatic in nature the same could not have been passed without conducting an enquiry and giving the appellants an opportunity of explaining their position. The order is, therefore, liable to be quashed.

(XVII) The passing of such an order at this stage of a person's career has serious consequences in the entire course of the individual's life. Today, the appellants would have to suffer a big stigma of having been dismissed from the service on account of their being a part of so called tainted batch.

(XVIII) The appellants submitted that they have spent three best years of their lives taking the departmental examinations and serving the State. Therefore, it is totally arbitrary and illegal on the part of the State Government to throw the appellants out of job at this stage unceremoniously. The order is totally arbitrary and liable to be quashed on this ground.(XIX) The order of termination is in clear violation of Rule 17 of the PCS (EB) (Class 1) Rules 1976 which stipulates thus "the Govt. may at any time, for reasons to be recorded in writing, remove the name of any person from any register of accepted candidates; provided that before taking such action the person concerned will be given an opportunity against the action so proposed".

(XX) The entire case of the respondent State is based on the report of investigation made by the Vigilance Department, which is primarily based upon the statement of the tout turned approver and the matter is still sub-judice before the learned Trial Court, hence there is no veracity of these statements or reports in law and can never be the basis of termination of services. The report and the challan have been presented by the Vigilance Department in the months of July and August 2002 whereas, the impugned order of termination was passed on 23.5.02.

(XXI) That the allegation of pushing up the unmeritorious candidates with a purpose to facilitate their selections by awarding them more marks in the interview is not substantiated by the fact that a large number of candidates who are not named in the FIR have also got very high/low marks. The suggestion of the State Government would in fact amount to a proposition, that marks in the interview are linked with the academic record of the candidate and any discrepancy in the same would give rise to suspicion of taint. If this was so then the entire objective of conducting an interview is lost. An interview is included in the selection process so as to evaluate the personality, leadership quality and ability to be a good administrator by the Selection Board. It is not uncommon where academically sound candidates may prove to be bad administrators due to lack of the above mentioned qualities. Thus, in case the argument of the State is to be accepted, possibly no selection

can hold good and taint can be read into practically any selection process.

(XXII) Reliance has also been placed on the case of *Union of India v. Rajesh P.U., Puthuvalnikathu*. In this case, applications were invited for filling up 134 posts of Constables by the Central Bureau of Investigation. The selection process consisted of a written examination and an interview followed by a physical fitness test. However, the selected candidates including the respondent were informed that the selection list had been cancelled by the Special Committee constituted to enquire into the allegations of favouritism and nepotism on the part of the officers in conducting the Physical Efficiency Test and irregularities committed during the written exam. The respondent approached the High Court after his application was dismissed by the Central Administrative Tribunal. The Division Bench after perusal of the Committee's report and review of the entire process categorically rejected allegations of nepotism/favouritism and came to the conclusion that there was no justification to cancel the entire selection when the impact of irregularities which crept into evaluation on merits could be identified specifically and was found, on a reconsideration of the entire records, to have resulted in about 31 specific number of candidates being selected undeservedly to the detriment of similar such number of candidates. Repelling the plea that a person in the select list has no vested right to get appointed and finding the cancellation of the entire selection arbitrary and unreasonable, the High Court allowed the writ petition. (XXIII) An appeal was preferred to this Court. This Court observed that applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, which was wholly unwarranted and unnecessary. This Court also observed that the High Court had adopted a practical, pragmatic, rational and realistic solution to the problem and the appeal filed by the Union of India was consequently dismissed.

(XXIV) The appellants have also submitted that nominated candidates were entitled to protection under Article 311. The appellants have also placed reliance on a large number of judgments of this Court which indicated that probationers who have crossed the maximum period of probation were deemed to be confirmed.

(XXV) The appellants have also submitted that there is a clear difference between the proven case of mass cheating for an examination and an unproven imputed charge of corruption where the appointment of the civil servant is involved. In *Anamika Mishra v. U.P.P.S.C.*, this Court observed that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination. On the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of the written examination and select those who on the basis of the written and the freshly-held interview became eligible for

selection. In *S.P. Biswas v. State Bank of India*, there were allegations of unfair means adopted in the examination. The Bank got the enquiry conducted and steps were taken to exclude the possibility of results being affected by unfair means. This Court approved the decision of the High Court and observed that the relevant records disclosed that an honest attempt was made on the part of the management of the Bank to examine all the points raised in the report and otherwise, and in cases where an element of use of unfair means was found, a necessary action was taken.(XXVI) The appellants also submitted that, in the instant case, the decisions were collegiate decisions by a number of people and those decisions could not be set aside because of the allegations against the Chairman of the Commission. It was submitted that this is not a mass cheating case but a mass dismissal case based on mere allegations.

13. It was submitted that for cause on imputations of corruption even though the order of 23.5.2002 is "finally a dismissal simpliciter". The various cases of dismissals are based on proper investigation or proven illegality, not mass dismissals based merely on conjectures. It was also submitted that the officers of 1999 were targeted where others of the period 1996- 2002 were given a total go-by. Reliance has been placed on *Onkar Lal Bajaj v. Union of India* 7. This Court, in the said case, on the basis of news item appeared in the Indian Express, making allegation of political patronage in allotment of retail outlets of petroleum products, LPG distributorships and SKO-LDO dealerships examined the entire case. As a result of media exposure the Government in public interest decided to cancel all the allotments. This Court examined the matter in great detail and observed as to how could all the large number of candidates against whom there was not even insinuation be clubbed with the handful of those who were said to have been allotted these dealerships/distributorships on account of political connections and patronage? The Court stated that the two were clearly unequals. Rotten apples cannot be equated with good apples. Under these circumstances, the plea of probity in governance or fair play in action motivating the impugned action cannot be accepted. The impugned order from any angle cannot stand the scrutiny of law.

14. This Court observed that the solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories, tainted and the rest, on par is wholly unjustified, arbitrary and unconstitutional being violative of Article 14 of the Constitution. This Court also observed that the Government instead of fulfilling the duty and obligation, cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any case exposed by the media. If a hue and cry is made that certain allotments have been made to the sitting members of Parliament or their wives or members of legislature or their relations, the public, media and the Opposition would be justified in raising eyebrows. Faced with this situation, the Court appointed a Committee of a retired Judge of this Court along with a retired Judge of Delhi High Court to examine all 413 cases. This Court observed that if a Committee, on preliminary examination of facts and records, formed an opinion that the allotment was made on merit and not as a result of political connections or patronage or other extraneous considerations, it would be open to the Committee not to proceed with the probe in detail. If such large scale matters from all over the country were directed to be reexamined why cannot a small number of cases of one State be scrutinized? Mr. Rakesh Dwivedi, learned counsel appearing for the State of Punjab submitted that the government can set aside the selections if there is some material which is sufficient to come to a conclusion that corruption and manipulation have pervasively influenced the selection process. He

also submitted that the Courts do not sit in appeal and would give wide latitude to the Government with regard to adjudging the fairness of selections.¹⁵ The Courts would be slow at interfering with such decisions of the government. He submitted that probity of public services can only be maintained through fair selection where merit is judged on the basis of capability, whether in the written examination or in the interview. It is the constitutional duty of the Commission and the State Government to ensure that the selections are fair and free of corruption and manipulations. He also submitted that while taking the decision to cancel a selection no stigma is attached to the candidates who are affected as there was no individual charge against them. It is the selection process which is condemned. He submitted that the Government is not required to establish beyond reasonable doubt that there was corruption and manipulation. It is entitled to judge on the basis of probabilities and ordinary course of human conduct and the real possibility of the selections being entirely effected by the likelihood of bias of the Chairman of the Commission who was completely managing the examinations. According to him, it was not possible to separate the tainted candidates from the non-tainted candidates. He submitted that the selection process is found to be vitiated pervasively that all the appointments made on the basis of such selection would be null and void as an issue. He submitted that, therefore, the State Government was justified in terminating the services of the appellants. Mr. P.P. Rao, learned senior counsel appearing for the High Court submitted that the selection of judicial officers is believed to be contaminated at source, having regard to the nature of judicial posts, the High Court had to take appropriate remedial measures to restore the credibility of recruitment and to safeguard the independence of judiciary.

16. The High Court acted after being satisfied *prima facie* on the basis of the reports of the Committees of Judges that all the four selections were vitiated. In the circumstances, the cancellation of selections/appointments and directing a fresh selection was just, fair and reasonable. He submitted that this is a case of condemnation of all four selections made but not of the candidates selected. In such a case, the rule of *audi alteram partem* will not be attracted. He submitted that appointments made on the basis of condemned selections are void *ab initio*. He submitted that, therefore, the appointees cannot be regarded as lawful holders of the offices. He also submitted that it is well settled that justice should not only be done but also seen to be done. The same principle applies to the judicial appointments as well, as the Judiciary survives on its credibility. Selection of judicial officers should not only be fair but also be seen to be transparent, free from any taint or suspicion to retain public confidence. He further submitted that it is not open to allege bias on the part of the two Judges who were on the Committee, having consented to their hearing the matter. No such plea was raised before the High Court in the writ petitions. In any event, without impleading the Judges concerned by name, the plea of bias cannot be urged. He placed reliance on the cases of *Dr. G. Sarana v. University of Lucknow* [], *AShok Kumar Yadav v. State of Haryana* and *State of Maharashtra v. R.S. Nayak* 17. The principal question which needs to be adjudicated is whether, in the facts and circumstances of these cases, the respondents were justified in cancelling the entire selection both of executive and judicial officers? Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R.S. Sidhu, the then Chairman, Punjab Public Service Commission. On careful scrutiny of the facts and circumstances of the case, in my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, it was not an impossible task. The peculiar facts of this case which need to be highlighted are that some of the candidates have worked for about three years and their services were terminated only on the basis of criminal investigation which was at the

initial stage. The termination of their services as a consequence of cancellation of selection would not only prejudice their interests seriously, but would ruin their entire future career. It may be pertinent to mention that during the said period there has been no allegation regarding the integrity or efficiency of these officers. The facts of this case reveal that the material supplied to the Committee having regard to the facts that majority of the officers named in the FIR belonged to 2001 batch, the respondents not only cancelled the entire selection of 2001 batch, but on the basis of the cancellation of selections of 2001 batch the entire process of 1999 and 2002 selections was also cancelled. It is also relevant to mention that the selection process for the year 1998 was not the subject matter nor any recommendation had been made by the Committee, even then the selections of this year were also vitiated.

18. The High Court Committee without there being sufficient and adequate material on record recommended cancellation of selections of both the executive and judicial officers and the Full Bench erred in accepting the recommendation and terminating the services of all the officers. A close scrutiny of the facts of this case clearly reveals that the judicial officers did not get a fair treatment by the High Court. They were not given copies of the Report and other material on which reliance was placed and they virtually had no chance of making effective representation before the Committee or any other forum where they could ventilate their grievances and present their point of view. When the basis of termination is serious allegations of corruption, then it is imperative that the principles of natural justice must be fully complied with.¹⁹ The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.

20. This Court had an occasion to examine a similar controversy in the case of Onkar Lal Bajaj's case (supra). In that case, there were serious allegations of political patronage in allotment of retail outlets of petroleum products, (LPG distributorships and SKO-LDO dealerships). This Court laid down that how could a large number of candidates against whom there was not even insinuation be clubbed with handful of those who were said to have been allotted dealerships/distributorships on account of political connection and patronage? This Court clearly stated that the two were clearly unequals. Equal treatment to unequals is nothing but inequality. This is the most important principle which has been laid down in this case by this Court. The Court further observed that to put both the categories, tainted and the rest, on par is wholly unjustified, arbitrary and unconstitutional, being violative of Article 14 of the Constitution. In somewhat similar circumstances, in this case, the Government, instead of discharging its obligation, unjustly resorted to the cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining their cases. Those officers whose services were affected because of en masse cancellation have not been given an opportunity to represent before the concerned authorities. In the case of Onkar Lal Bajaj there

were 413 cases and the task was indeed difficult to segregate the cases of political connection and patronage with other cases. But, even then, this Court while, setting aside the order of the Government cancelling the allotment, appointed a Committee of two retired Judges, one of this Court and another from the Delhi High Court, and they were requested to examine all 413 cases and decide the matter after getting the report from that Committee appointed by the Court.²¹ While following the ratio in the said case, in the facts and circumstances of the case, we deem it appropriate to set aside the order of the respondents cancelling the en masse selections and direct the respondents to examine each case separately on its merits and submit a report to this Court. In somewhat similar circumstances, in which initially it looked that it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, from the others, even then in the case of *Union of India v. Rajesh P.U.* (supra), this Court observed that the competent authority completely mis-directed itself in taking such an extreme and unreasonable decision of cancelling the entire selections. The appellants submitted that the judicial officers have not been fairly treated by the High Court. It was urged that the two senior judges who were members of the Committee (appointed by the High Court) should not have been part of the Full Bench constituted by the Chief Justice. In the facts and circumstances of this case, I do not find any merit in this submission of the appellants. In these cases, before hearing commenced, the learned counsel appearing for the appellants clearly consented to hearing of the matter by the judges of the full bench. After giving clear consent before the High Court, they cannot be permitted to make any grievance before this Court. This tendency should not be encouraged.

22. The report submitted by the judges of the Committee was placed before the Full Court and after thorough examination and discussion on the report by the full court, the same was approved by all the judges of the High Court unanimously. All the judges after threadbare deliberations on the report had put their seal of approval. The report, in fact became the report of the High Court. On the same analogy no judge of the Punjab and Haryana High Court should have heard this matter.

23. The respondents have placed reliance on famous case *Pinochet* 1999 Indlaw HL 37 which has been referred and relied by the Supreme Court in *Rupa Hurra* 6 at prs.21 read with prs.37-9 and *Kumaon Vikas Mandal* 7 at prs.30-2. There is no quarrel with the principles which have been laid down in *Pinochet's* case. But in the facts and circumstances of this case after giving clear consent before the commencement of the hearing in the High Court, it is not fair and appropriate for the appellants to take this objection before this Court for the first time after the Division Bench's judgment.²⁴ In the facts of this case doctrine of waiver is attracted.

25. In 16 Halsbury's Laws (4th edn) para 1471, the term 'Waiver' has been described in the following words: "Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel, although, unlike estoppel, waiver must always be an intentional act with knowledge. A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted upon it is sufficient consideration. Where the waiver is not express it may be implied from conduct which is inconsistent

with the continuance of the right, without need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver; but mere acts of indulgence will not amount to waiver; nor can a party benefit from the waiver unless he has altered his position in reliance on it. The waiver may be terminated by reasonable but not necessarily formal notice unless the party who benefits by the waiver cannot resume his position, or termination would cause injustice to him.

26. It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration."²⁷ In 45 Halsbury's Laws (4th edn) para 1269, the meaning of the word 'waiver' has been described as follows: "Waiver is the abandonment of a right, and thus is a defence against its subsequent enforcement. Waiver may be express or, where there is knowledge of the right, may be implied from conduct which is inconsistent with the continuance of the right. A mere statement of an intention not to insist on a right does not suffice in the absence of consideration; but a deliberate election not to insist on full rights, although made without first obtaining full disclosure of material facts, and to come to a settlement on that basis will be binding."

28. The two judges, who were part of the full bench, did not have bias of any kind against the appellants. They had no pecuniary or any other interest in the matter. They have discharged their judicial functions as judges. Therefore, I find no merit in the submission that the two judges, who were part of the Committee, ought not to have heard this matter.

29. In the facts and circumstances of the case, in my considered opinion, the appellants are not justified in making any grievance before this Court regarding the hearing of the cases by the full bench of which two judges who had submitted the Report, were also members. Admittedly, those judges constituting the full Bench had no interest of any kind in deciding the matter one way or the other. The appellants before the commencement of hearing categorically submitted that they had no objection whatsoever to the hearing of the matter by the said full bench. Even assuming, those judges had any bias against the appellants, the appellants had waived their right, if any. In these circumstances, the doctrine of 'waiver' is fully applicable.

30. The doctrine of "Waiver" has been explained in *Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd.* 1970 Indlaw HL 6. The Court observed as under: "Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel."³¹ The English Court in *Earl of Darnley v. London, Chatham and Dover Rly Co.* 1867 (2) LR(HL) 43 at 57, per Lord Chelmsford LC] observed that Waiver must always be an intentional act with knowledge.

32. In *Central London Property Trust Ltd. v. High Trees House Ltd.* 1946 Indlaw KBD 1, the Court observed as under: "It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration."

33. The doctrine of 'waiver' has been interpreted by American cases in the same manner.

34. In *Scherer v. Wahlstrom* [Tax Civ. App., 318 S.W.2d 456, 459], the waiver is relinquishment or surrender of a right. The Court observed as under: "A "waiver" is a giving up, relinquishment or surrender of some known right and takes place where a person dispenses with the performance of something which he has a right to exact."

35. In *Smith v. McKnight* [Tax Civ. App., 240 S.W.2d 368, 371, 372], the court observed as under: "A "waiver" is a giving up, relinquishment or surrender of some known right, and takes place where a person dispenses with the performance of something which he has a right to exact."

36. The same principles have been adopted in *Covington Virginian v. Woods* [29 S.E.2d, 406, 410, 182 Va. 538] and *Missouri State Life Ins. Co. v. Le Fevre*, Tex [10 S.W.2d 267, 269]. The doctrine of 'waiver' has been given the same meaning by our Courts also. In the instant case, assuming the appellants had any right, that right was clearly relinquished and given up by them, when they gave no objection to the hearing of the case by the two judges who were part of the full bench. Now, after the case was heard and the judgment has gone against them, it is hardly fair, proper and appropriate for them to raise this as a ground before this Court.³⁷ Another significant aspect of this matter is that the two judges (who were part of the Committee) were not impleaded as parties in the writ petitions before the High Court and they have not been impleaded as parties in these appeals before this Court. In case, the appellants were so keen to level allegations against those two judges, the appellants ought to have impleaded them as parties at least before this Court (with the permission of this Court). This is the minimum requirement of the principles of natural justice.

38. The ratio of *Joseph Vilangandan v. Executive Engineer* , is that before taking any action against a contractor or anyone, a notice has to be given. Applying the principles of the said case, in this case, the conclusion would be that the appellants ought to have impleaded the said two judges as parties to the petition before levelling allegation of bias against them.

39. In *M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal* , this Court laid down that fundamentals of fair play require that the person concerned should be given a notice. The appellants in the instant case are not justified in levelling allegations against the said two judges without impleading them as parties to the appeal before this Court.

40. I respectfully agree with all the findings of my learned brother Justice Sinha expect on this issue. On consideration of the cumulative facts and circumstances I entirely endorse the directions given by my learned brother Justice Sinha. Consequently, the learned Chief Justice of Punjab and Haryana High Court is requested to set up two independent committees, one, with regard to the executive officers and another with regard to the judicial officers. They should delineate the area which falls for consideration by the said Committees and the Committees be requested to reconsider all the cases and submit a Report to the Punjab and Haryana High Court as expeditiously as possible. In consonance with the principles of natural justice the respondents are directed to supply the copies of the report and other material on which reliance has been placed within two weeks. The appellants would also be permitted to inspect the entire record and obtain copies of the documents in accordance with the rules. The Court would also provide the appellants two weeks time to submit their objections to such report and comment, if any, on the material provided by the Court. Since the appellants are out of job, the High Court is requested to dispose of the matter as expeditiously as possible preferably within three months from the date of receipt of the copy of this order. Status quo as of today shall be maintained until the disposal of the matter by the High Court.