

SUPREME COURT OF INDIA

Joginder Pal

Vs.

State of Punjab

C.A.Nos.5589-5605 of 2014

(Dr.B.S.Chauhan and A.K.Sikri JJ.)

23.05.2014

JUDGMENT

A.K. SIKRI, J.

1. One Mr. Ravinderpal Singh Sidhu was the Chairman of the Punjab Public Service Commission (for short, 'PSC') between 1996-2002. During his tenure as the Chairman, some appointments were made in the Executive Class "I" between 1998-2001, by way of direct recruit as well as by nomination, as provided in the Rules. Appointments of judicial officers were also made in four batches within the same period. On getting tip to the effect that for making such appointments Mr. Sidhu had received bribe from many people, raids were conducted in his house sometime in the year 2002, on more than one occasion. A huge sum of money, i.e., Rs. 16 crores (approximately), was recovered from his custody and from other relatives of Mr. Sidhu. This led to lodging of the First Information Reports (FIRs) against him, leading to criminal prosecution primarily under the provisions of the Prevention of Corruption Act, 1988. In these FIRs, some of the officers of the Executive Branch and Allied Services of the Punjab Civil Service (for short, 'PCS') were also implicated. Smelling rat in the appointments in the PCS Executive Branch and Allied Services Branch, as well as judicial appointments, result sheets of the nominated candidates and the answer sheets of PCS Executive Branch and Allied Services Branch were seized. On going through the same, Vigilance Bureau of the State of Punjab informed the Chief Secretary, Punjab that most of the examinations held during the tenure of Mr. Sidhu were tainted. This

led to spate of actions taken by the State Government. In the first instance, the services of all officers in the category of Nominated Executive Officers, who were about to complete their period of probation, were terminated on May 23, 2002. This was done by passing orders of termination simpliciter purporting to be in terms of Rules, i.e., by terminating the probation. Thereafter, vide orders dated August 24, 2002, services of the direct recruits, Executive Class-I and II were terminated by way of dismissal on the premise that criminal prosecution had been launched against Mr. Sidhu. So far as judicial officers are concerned, the Chief Justice of the High Court constituted a Committee to go into the allegations and also the news items appearing in the media alleging that wards of some sitting Judges of the Punjab and Haryana High Court had been favoured by the Chairman of the PSC. The said Committee submitted its report recommending cancellation of all the appointments of the judicial officers who were recruited in four batches from 1998 till 2002. This report was accepted by the Full Court and was sent to the Government. Initially, the Government of Punjab raised a query as to what was the basis for recommendation of cancellation of appointments of the 1998 batch candidates, as selection of that batch was not in question. Another Committee was constituted and on the basis of report, which was approved by the Full Court, recommendation was reiterated. As a consequence, the services of all these judicial officers also came to be terminated.

2. All these persons, whose services had been terminated, belonging to Executive, Allied Services as well as Judicial Branches, challenged these actions by filing writ petitions in the High Court. We describe hereinbelow the manner in which the cases of Executive and Allied Services Branches were dealt with and the outcome thereof, as in the present case we are concerned with the officers of PCS Executive Branch and Allied Services Branch. However, since the judgment rendered by this Court in respect of termination of judicial officers has some bearing on the present case, we shall take note of the outcome of the cases filed by the judicial officers as well.

3. Insofar as PCS Executive Branch and Allied Services Branch are concerned, a large number of writ petitions were filed by almost all the officers whose services were terminated; be it direct recruits or nominated officers. The matter was referred to the Full Bench, having regard to the importance of the question of law involved. The Full Bench presided by the then Chief Justice of the High Court and two senior most Judges, after hearing these petitions at length, decided those writ petitions by judgment dated July 07, 2003, which is reported as *Amarbir Singh & Ors. v. State of*

Punjab & Ors., 2003 (5) SLR 398. By means of this judgment, the Full Bench dismissed all the writ petitions, thereby confirming the action of the State Government terminating the services of all the officers of PCS Executive Branch and Allied Services Branch as well as the judicial officers. As per the High Court, the decision of the Government to terminate the services was because of the reason that the entire selection process in respect of PCS Executive Branch and Allied Services Branch was so tainted and vitiated, the Government was left with no alternative but to declare the entire selection as null and void. The case set up by the State of Punjab was that during his tenure as Chairman of PSC from September 1996 to March 26, 2002, Mr. Sidhu completely usurped the powers of the Commission unto himself, to the exclusion of all other members, and manipulated the system for ensuring the selection of those who had paid money or came with the recommendations. It had relied upon the statements of Mr. Jagman Singh, a confident and tout of Mr. Sidhu (who had become approver in the criminal case), who disclosed the modus operandi adopted by Mr. Sidhu. It was pointed out that during the investigation it was revealed that question papers and answer scripts were smuggled out of the headquarters of the PSC. At times, blank answer sheets were given to the prospective candidates and special instructions were given to the examiners towards higher marks to favoured candidates and at the same time less marks were awarded to more meritorious candidates. By accepting the bribes to favour such persons, Mr. Sidhu had amassed assets worth Rs. 22 crores. It was averred that the entire selection process was completely vitiated and it was not possible to separate the meritorious candidates from others and, therefore, a decision was taken to terminate all the appointments.

4. The High Court, after examining the matter, accepted the aforesaid argument of the State Government to the effect that it was not possible to segregate the tainted candidates from untainted ones, leaving no option for the State Government but to cancel the entire selection process. Few judgments of this Court were relied upon to hold that in such circumstances, when the selection process is found to be vitiated, the Administration had a right to cancel the selection process and while doing so it was not necessary to adhere to the principles of natural justice, which had no role to play in matters like these.

5. Aggrieved by the aforesaid judgment in Amarbir Singhs case (supra), all these officers whose services were terminated approached this Court. Special leave was granted in all these petitions and civil appeals were heard and decided by this Court,

with lead case known as *Inderpreet Singh Kahlon & Ors. v. State of Punjab*, (2006) 11 SCC 356. Since this judgment is sheet anchor of the appellants before us, in the second round of litigation, we would like to take note of this judgment in some detail.

6. It can be easily guessed, as it is so obvious, that the case of the appellants in *Inderpreet Singh Kahlon's* case (*supra*) was that the action of the State Government and the stamp of approval of the High Court in cancelling the entire selection process was impermissible. The appellants therein had argued that there was no basis for such a finding, namely, the entire selection process had been vitiated and it was necessary for the Government to separate cases of tainted persons from non-tainted ones and to take action against only those who were tainted. It was argued that by not undertaking such an exercise and clubbing together tainted as well as non-tainted persons, two unequal classes were clubbed together thereby meting out discriminatory treatment *qua* those who were without blemish and it amounted to violation of Articles 14 and 16 of the Constitution of India. The appellants in the said case had also argued that while holding that entire selection process was vitiated by corruption and cancelling the same after appointees had put in few years of service, the High Court had applied the principle of "mass cheating cases", which principle was applicable only in the cases of examination in academic institutions and not the examination for the purpose of public employment. Pertinently, this Court generally accepted the aforesaid submissions of the appellants. From the reading of the judgment, one can discern the following principles:

(a) An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. Since the services of the appellants were terminated not in terms of the rules but in view of the commission of illegality in the selection process involved, the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution need not be considered.

(b) Before a finding that an appointment has been made in violation of Articles 14 and 16 of the Constitution can be arrived at, the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, can the legal principles be applied. When the services of employees are terminated *inter alia* on the ground that they might have aided and abetted 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. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.

(c) A distinction 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. Only in the event it is found to be impossible or highly improbable that the tainted cases can be separated from the non-tainted cases could en masse orders of termination be issued. 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. (d) Cases which may arise where the selection process is perceived to be tainted may be categorised in the following manner:

- (i) Cases where the event has been investigated.
- (ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded.
- (iii) Cases where the selection was made but appointment was not made.
- (iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules. If the services of appointees who had put in a few years of service were terminated, compliance with three principles at the hands of the State was imperative viz.: (1) to establish 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) to determine the question that the illegalities committed went to the root of the matter, which vitiated 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 a satisfaction that the officers in majority had been found to be part of the fraudulent purpose or the system itself was corrupt.

(e) Once the necessary factual findings as enumerated above are arrived at, or it is found impossible or highly improbable to separate tainted from untainted cases, all appointments traceable to the officers concerned could be cancelled. But admittedly, in the present case, although there had been serious imputations against Ravinderpal Singh Sidhu being at the helm of the affairs of the State Public Service Commission, all decisions made by the Commission during his tenure are yet to be set aside.

7. Applying these principles to the facts of the case, the Court found that no candidate for the year 2001 had been appointed and, therefore, persons who were selected in that year were on a different footing as merely a person comes in the selected list, he has no right to be appointed on that ground. However, held the Court, those who had already been appointed and had completed about three years of service, some of them had even passed departmental test and some were given higher responsibilities and had even completed the period of probation or nearing the completion thereof and were working to the satisfaction of the authorities concerned, different yardsticks were to be applied while terminating their services. As a matter of fact, the Court found that apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court, it was difficult to accept the contention of the State Government that it was absolutely impossible for it to separate the innocent candidates from the tainted ones. In the opinion of the Court, by appointing an independent scrutiny committee it was still possible to sift the evidence and separate tainted candidates from the innocent ones. The Court also recorded that relevant records were still available and had not been destroyed, which included question papers, answer sheets and other documents. Since these records were still available, a fair investigation into the whole affair was still possible. Such an exercise was, therefore, needed when it had not been found that all the appointments were made on extraneous considerations, including monetary consideration. It was, thus, held that the High Court was not right in applying the principle of ~mass cheating cases in the instant case. The Court concluded the matter in the following manner:

(a) If services of appointees who had put in a few years of service are to be terminated, compliance with following principles by State is imperative: (1) sufficient materials are to be collected, to be gathered by thorough investigation in fair and transparent manner; (2) illegalities committed must go to the root of

the matter, vitiating entire selection process; and (3) the appointees/officers in majority must be found to be part of the fraudulent purpose or the system itself must be found to be corrupt.

(b) In the present case, above principles not having been adhered to and since it could not be said that a fair investigation into the suspected selection process to the Punjab PCS for the years 1998-2001 was an impossible task, or despite availability of a large part of the 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, High Court was not right in applying the principle of mass cheating cases in the instant case and approve the en masse termination of services of the appellants by the State.

(c) Impugned orders of State Government and High Court were set aside. Matters were remitted to High Court for consideration afresh, status quo to be maintained in the meantime. High Court was directed to constitute two independent Scrutiny Committees, one relating to the executive officers and the other to the judicial officers. Various directions were given for functioning of said Committees and expeditious disposal of the matters, and State was directed to file report in this Court in each individual case. It was further directed to unearth the scam and spare no officer involved in wrongdoing, howsoever high he may be.

8. Dealing with the case of judicial officers whose services were terminated, the Court took the view that they had not been fairly treated by the High Court and deserved better treatment. In their cases also the Court directed fresh inquiry. That aspect we would discuss in detail at the appropriate stage as in the present case we are not concerned with the cases of judicial officers.

9. After the judgment in Inderpreet Singh Kahlons case (supra), a Committee of three Judges of the High Court was constituted with the specified task to separate the tainted candidates from the non-tainted candidates selected to the executive post by the PSC. The said Committee undertook the mammoth and painstaking task with deep scrutiny of the case of each and every candidate. This Committee submitted its report dated February 08, 2007. It is pertinent to note that the Committee could achieve the task of segregating tainted candidates from the innocent ones, meaning thereby the

Committee could pinpoint those candidates who had got selected were selected for oblique considerations. It meant that others against whom no such taint was found had been selected on their own merit and performance in the written examination as well as viva voce. That is the reason that these candidates were put in non-tainted category. However, even when the Committee was able to achieve this result, as mandated by this Court in Inderpreet Singh Kahlons case (supra), the Committee also went into another aspect, namely, whether it could be stated that the process of selection could be described as fraudulent, tainted and arbitrary. Looking into the matter from this angle, the Committee came to the conclusion that the entire processes of selections to the premier executive post was carried out by a well-planned scheme of deception, forgery and fraud and, therefore, deserved to be set aside in their entirety. The final analysis of the report dated February 08, 2007 is as under:

Firstly, it is possible to infer that in the processes of selection to which the present investigation is limited, there were 40 tainted candidates. This inference would, however, be subject to an opportunity to be afforded to them during the course of re-hearing of the matter on the judicial side, in terms of the direction of the Apex Court in Inderpreet Singh Kahlons case (supra).

Secondly, the process of selection under reference (within the ambit of investigation of the Vigilance Department), can be described as fraudulent, tainted and arbitrary. The said processes of selection were clearly rife and abounding with manipulations, carried out by a well planned scheme of deception, forgery and fraud; executed for showing favour, or for consideration. And as such, the entire processes of selection, to the premier executive posts, which were subject matter of investigation at the hands of the Vigilance Department, deserve to be set aside in their entirety.

10. In the light of this report, the original writ petitions were reheard, as a result of remand of these cases to the High Court, as directed in Inderpreet Singh Kahlons case (supra). Matter was referred to the five Judge Bench of the High Court. The High Court has accepted the report thereby giving its approval to that part of the report as well which has treated the entire selection process to be vitiated. As a result, all the writ petitions are dismissed again vide judgment of the Full Bench rendered on May 31, 2013.

11. Insofar as those cases where the petitioners were found to be tainted candidates, after the scrutiny by the Committee, the obvious result was that the writ petitions were dismissed on this ground. However, even in respect of non-tainted candidates, the High Court has held that it was permissible for the Government to cancel the entire selection process, once it is found that the process of selection itself is a result of manipulations carried out by a well-planned scheme of deception, forgery and fraud.

12. We will proceed to discuss the cases of tainted and non-tainted candidates separately.

TAINTED CANDIDATES

13. The particulars of candidates who are facing criminal trial are as under:

S.No.	Case No.	Name	Remarks
1.	CA Nos. 5606-5608/2014	Jiwan Kumar Garg	PCS (EB) Direct
2.	CA No. 5622/2014	P.S. Sodhi	PCS Nominated
3.	CA Nos. 5614-5621/2014	O.P. Verma	PCS Nominated
		Inderdeep Kahlon	
		Jasbir Singh Toor	
		H.L. Bansal	
		Parvinderpal Singh	
		Jarnail Singh	
		Balraj Kaur	
		Rajinder Sidhu	
4.	CA No. 5623/2013	Bhupinderjit Singh	PCS Nominated

14. As far as these cases are concerned, they hardly pose any challenge. As it is specifically found that the aforesaid persons have indulged in unfair means and have been selected either by paying bribe or because of other extraneous reasons and not on their merit, their writ petitions have been rightly dismissed by the High Court. It was argued by Mr. Manoj Swarup, learned counsel appearing for these appellants, that those who are facing trial may be acquitted after investigation. Likewise, some of those who are even convicted, their appeals are pending and there is a possibility that their appeals are allowed thereby setting aside the conviction. Therefore, such a decision to terminate their services could not have been taken at this stage.

This argument is totally unimpressive and does not hold any water. Such candidates who were selected with unfair and illegal means cannot have the audacity to say that they should be reinstated in service and allowed to continue till their appeals are decided. In any case, having found that they are tainted candidates and their entry into public service was soiled, the decision to

terminate their services becomes perfectly justified. In respect of these appellants, the High Court has found that FIRs have been registered against them and they definitely carry a trace, stain or blemish that they were tainted. FIRs were registered when during investigation the Vigilance Bureau recorded statements of Mr. Sidhu, Jagman Singh and Randhir Singh Gill under Sections 161 and 164 Cr.P.C. The modus operandi of conducting the manipulations in the written examination was disclosed by them. Question papers were given to Mr. Jagman Singh to be shown to the candidates who were to appear in the written examination conducted by the PSC. The same were to be collected from the official residence of Mr. Sidhu, i.e. House No. 914, Sector-39, Chandigarh, and some times to be collected from Mrs. Pritpal Kaur, the mother of Mr. Sidhu from House No. 549, Sector-10, Chandigarh. Candidates were then shown these question papers during the night preceding the examination at the residence of Mr. Jagman Singh. The above procedure was also followed at the residence of the mother of Mr. Sidhu. Mr. Jagman Singh was deputed to the residences of influential persons for showing the question papers to the concerned candidates.

In this backdrop, the High Court rightly covered these persons as tainted persons, ascribing following meaning to the expression 'taint':

The word 'taint' as per the New Shorter Oxford English Dictionary (Vol.-II) can be expressed to mean a trace, 'stain' or a 'blemish'. It denotes some evil quality, a contaminating or corrupting influence. It can lead to mean an imbue with any thing objectionable or to contaminate or infect. The word 'taint' when used as a verb means dishonest, destroy integrity, vitiate, tarnish and degenerate morally.

Therefore, all these appeals are dismissed, except Civil Appeal No. 5606 of 2014 filed by one Randeep Singh, inasmuch as against him no case is registered as he is ultimately found innocent. We shall deal with his case along with non-tainted candidates.

NON-TAINTED CANDIDATES/DIRECT RECRUITMENT

15. The particular of those appellants who fall in this category of non-tainted candidates are as under:

|S.No. |Case No. |Name |Remarks | |1. |CA No. 5589/2014 |Joginder Pal |Tehsildar | | |Balkaran Singh | | | |Shishpal | | | |Mandeep Singh | | | |Baljinder Singh | | | |Gurdev Singh | | | |Ramesh Kumar | | |2. |CA No. 5590/2014 |Sarabjot Singh Sidhu |ETO | |3. |CA No. 5591/2014 |Harcharan Singh |PCS (EB) | |4. |CA No. 5592/2014 |Amarjit Singh |PCS (EB) | |5. |CA No. 5593/2014 |Gurjit Singh |PCS (EB) | |6. |CA No. 5594/2014 |Jagjit Singh |PCS (EB) | |7. |CA No. 5595/2014 |Anita Darshi |PCS (EB) | |8. |CA No. 5596/2014 |Jaspal Singh Gill |PCS (EB) | |9. |CA No. 5597/2014 |Rajan Sharma |EO | | |Prabhjot Singh | | | |Dilbagh Singh | | |10. |CA No. 5598/2014 |Balwinder Singh |AR | |11. |CA No. 5599/2014 |Raj Singh |DFSO | |12. |CA No. 5600/2014 |Rupinder Pal Singh |PCS (EB) | |13. |CA No. 5601/2014 |Monish Kumar |PCS (EB) | |14. |CA No. 5602/2014 |Rajesh Dhiman |PCS (EB) | | |Harsuhinder Pal Singh | | |15. |CA No. 5603/2014 |Paramjit Singh |PCS (EB) | |16. |CA No. 5604/2014 |Surinder Kaur |PCS (EB) | |17. |CA No. 5605/2014 |Manpreet Kaur |ETO | |18. |CA No. 5612/2014 |Rubinderjit Singh Brar|PCS (EB) | |19. |CA No. 5613/2014 |Sukhpreet Singh Sidhu |PCS (EB) | |20. |CA No. 5609-5611/2014 |Amit Talwar |PCS (EB) | | |Rajdeep Brar |PCS (EB) | | |Gaurav Duggal |AR | | |Ramandeep Pandher |AR | |21 |CA No. 5624/2014 |Bikramjit Shergill |PCS (EB) |

Before discussing these cases, we would like to have a peek into the Report of the Committee dated February 08, 2007, which is placed on record.

REPORT OF THE COMMITTEE DATED FEBRUARY 08, 2007

16. The report starts with noticing the directives of this Court in Inderpreet Singh Kahlons case (supra). It specifically mentions that to implement the directions contained in the said judgment, the then Acting Chief Justice had constituted a Committee of three Judges to submit a report, on the basis of investigations carried out by officers of the State Government, so as to separate the tainted candidates from the non-tainted candidates, selected to executive posts by the Punjab Public Service Commission, during the Chairmanship of Shri Ravinderpal Singh Sidhu. Thus, the Committee knew the scope of exercise which it was to carry out, namely, to separate the tainted candidates from the non-tainted candidates. This aspect is thereafter gone into in detail with in-depth scrutiny and analysis of the records and material placed before it, which not only pertained to the selection process, i.e. question and answer sheets, etc., but also records which surfaced during investigation into the FIRs filed

against Mr. Sidhu and other persons, including some of those who were the selected candidates. No doubt, it was a mammoth task and it goes to the credit of the Committee that it could successfully achieve the same. After detailed and thorough analysis of all cases individually, the Committee was able to separate grain from the chaff, notwithstanding some handicaps which came its way and are specifically pointed out in the Report.

17. The following observations, after noticing and examining each case individually and separately, need a reproduction as it depicts the state of mental and physical exercise carried out by the Committee: 8. Having narrated and summarized the factual sequence emerging from the investigation carried out by the officers of the Vigilance Department, the next step is to record conclusions. Before attempting to record our conclusions, we have considered it appropriate to deal with. (sic) The veracity of the statements of Shri Jagman Singh son of Shri Autar Singh Sekhon, and Shri Randhir Singh Gill son of Shri Kirpal Singh as their statements are likely to have a strong bearing on the eventual outcome of the task entrusted to us. Accordingly, we have examined the veracity of their statements in sub-paragraph (A), hereunder. In this paragraph, it is also necessary to examine the handicaps, which confronted the Investigating Agency during the course of its deliberation. The Committee on several occasions felt that on some aspects, further material should have been collected during the course of investigation. These handicaps have been summarized in sub-paragraph (B) hereunder. In rendering our conclusions, based on the investigation process carried on by the Vigilance Department of the State Government we have in sub-paragraph (C), hereunder, carried out the task of identifying the tainted candidates i.e. the candidates who, according to the Investigating Agency, are shown to have managed and manipulated their recommendations at the hands of the Punjab Public Service Commission, for reasons other than, or in addition to their own merit. In sub-paragraph (D), we have recorded our conclusions in terms of the parameters expressed in Inderpreet Singh Kahlons case (supra) i.e.: whether or not it is possible to separately identify the tainted candidates from the untainted candidates, and if not, whether there is sufficient material gathered by the Investigating Agency to conclude, that the entire process of selection was bad, as such, deserved to be set aside in terms of the parameters laid down in Inderpreet Singh Kahlons case (supra).

18. Further discussion ensued on the aforesaid parameters and in para 8(C) appears the list of 40 persons who, as per the investigation carried out by the Vigilance

Department and the compilation made by the Committee, ensured their selection by way of manipulation. Out of these who have approached this Court, their cases have already been dealt with in the first category resulting in the dismissal of their appeals. The Committee, thus, found that others, namely, the appellants herein, were not tainted. It thereafter proceeded further to deal with another aspect, namely, whether the entire selection process could be said to be vitiated.

19. The Committee has recorded its reasons for the aforesaid answer/conclusion and concluded at the end that the processes of selection were clearly rife and abounding with manipulations, carried out by a well-planned scheme of deception, forgery and fraud; executed for showing favour or for consideration. As such, the Committee opined that the entire processes of selection deserved to be set aside in their entirety.

IMPUGNED JUDGMENT

20. After taking note of the seminal facts relating to the raids on Mr. Sidhu, the judgment discusses the importance of PSCs, their role and their duties, responsibilities as well as expectation of a common man who is, as per the Preamble to the Constitution of India, entitled to equality of status and opportunities. Thereafter, it poses three questions which needed consideration by the Court as under:

- 1) Whether 23 selected candidates who are facing criminal trial can be described to be tainted:?
- 2) Whether the selection of other candidates who are not facing criminal trial can be described to be vitiated, in view of the detailed investigation carried out by Punjab Vigilance Bureau?
- 3) Whether the State Government was fair in giving chance of second examination in 2003 to all the candidates?

Insofar as the first question is concerned, we have already dealt with and discussed the same while dealing with the first category of cases. It is the second question which concerns this Court at this juncture.

21. After taking note of and discussing various judgments where the Court upheld the

action of the Government in cancelling the selection process when found to be vitiated on account of not following the procedure of selection, smacks of mala fides and malpractices, the Full Bench held that here also the entire process suffered from manipulations and was to be treated as vitiated.

OUR CONCLUSION AND REASONS IN SUPPORT

22. From the Report of the Committee dated February 08, 2007, constituted on the directions of this Court in the case of Inderpreet Singh Kahlon (supra), which has been accepted by the High Court, it is apparent that the Committee has not found anything against these 21 persons, in respect of whom we are deliberating on the issue involved. At the same time, on going through the process, the Committee was of the view that the selection process was vitiated and, therefore, the result warranted to be cancelled in its entirety, including that of these non- tainted persons as well.

23. The question that falls for consideration is as to whether the entire process could be labelled as vitiated because of purported manipulations, forgery and fraud? Or, to put it otherwise, once the non-tainted persons are segregated from tainted ones, would it still be justified to quash the entire selection, even when non-tainted made into the service because of their merit?

24. It was argued by Mr. Raju Ramachandran and Mr. Gurminder Singh, learned senior counsel appearing for the appellants, that the mandate of Inderpreet Singh Kahlon (supra) was limited to one aspect only, namely, to segregate the cases of tainted candidates from non-tainted ones, if it was possible. It was their submission that after this task was successfully accomplished by the Committee, there was no occasion to go into the second aspect, which was not part of any direction of this Court in Inderpreet Singh Kahlon (supra). It was further argued that the findings on two aspects are self- contradictory. Once it was accepted that some of the candidates were innocent, who entered the service by virtue of their merit and not because of any extraneous considerations and these candidates should be segregated as well, such a finding to the effect on the second aspect that the entire selection process was vitiated could not be arrived at.

25. We find force in the aforesaid argument advanced by the learned senior counsel appearing for the appellant in these set of appeals. The two conclusions of the High

Court appear to be antithetical. Once it is found that segregating tainted from non-tainted is possible and is achieved also, other conclusion is incompatible with the first one.

26. We have already narrated the background in which judgment in Inderpreet Singh Kahlon (supra) was rendered by this Court. Those were the appeals filed against the Full Bench judgment in Amarbir Singh (supra) where the Court had held that the action of the Government in cancelling the entire selection process was justified. This very conclusion of the Full Bench was challenged by the appellants in Inderpreet Singh Kahlon (supra) with specific plea that it was not a case for cancelling the entire selection process and, in the first instance, the Court should have attempted to find out as to whether cases of the candidates who were tainted could be segregated from those who were unblemished. The court was convinced with the submission. While setting aside the judgment and remanding the case back, the Court went to the extent of holding that by clubbing together tainted as well as non-tainted persons, two unequal classes were clubbed together and it amounted to violation of Articles 14 and 16 of the Constitution of India. It was also held that no attempt was made in this direction, namely, whether there was a possibility of segregating the two classes of persons. The Court found that as the relevant records were still available a fair investigation into the whole affair was possible. We would like to reproduce hereunder some portions of the judgment of S.B. Sinha, J. in Inderpreet Singh Kahlon (supra) touching upon this aspect:

43. 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.

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45. If fraud in the selection process was established, the State should not have offered to hold a reselection. Seniority of those who were reselected 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.

46. 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.

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

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59. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.

27. After noticing the aforesaid features, the directions which are given for setting up of the Committee to go into the issue are contained in para 94, which reads as under:

94. 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 the tainted from the 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.

28. It becomes crystal clear that the concern of the Court was that for the misdeeds of some candidates, honest and meritorious candidates should not suffer. Therefore, endeavour should be made to segregate the tainted candidates from those who were

without any stigma and had been selected because of their sheer merit and not on account of any illegal considerations. We would also like to reproduce some of the parts of the concurring judgment authored by Justice Dalveer Bhandari (as His Lordship then was) with the aforesaid message, eloquently and impeccably:

118. 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.

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124. 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.

125. 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.

29. In view of the above, the issue of entire selection process having been vitiated would have arisen only if the findings of the Committee were that it was not possible to distinguish the cases of tainted from the non-tainted ones and there was a possibility that all of them would have got the benefit of wrong doings of Mr. Sidhu and his accomplices. Fortunately for these appellants, it is not so as they have been found innocent. The appellants get ensconced, earning a safe place, once they are removed from the category of nefarious persons. Though the tainted candidates have rightly received their comeuppance, but the innocent persons cannot be punished with them. Thus, it is difficult to accept the fallibilistic conclusion of the High Court.

30. We have also gone through the reasons given by the High Court in the impugned judgment, in support of the conclusion that the entire process is to be treated as vitiated. We find that reasons are the same which were placed earlier before the High Court by the Government in Amarbir Singh's case (supra) and they were very much before this Court as well when the judgment in Inderpreet Singh Kahlon (supra) was rendered. Without alluding to them in detail, we may say in nutshell that the reasons given pertain to the conduct and role of Mr. Sidhu and his accomplices who had taken money/bribes from some of the candidates or had given undue favour to some other

candidates because of other influences. The material discussed is the allegations in various FIRs and statements of Mr. Jagman Singh, a confident and tout of Mr. Sidhu (who had become approver in the criminal case), and others recorded under Section 161 of the Code of Criminal Procedure, 1973 and the cases in the criminal trial. However, even after noticing these very reasons, this Court had held that those who are innocent cannot be punished because of the misdeeds of Mr. Sidhu in showing favour to other tainted candidates.

31. There is yet another reason to hold that these persons who have come up clean, meaning thereby, who have entered the service by passing the examination on their own merits, should be allowed to continue in the Government service. We have already mentioned in the earlier part of the judgment, while discussing the case of Inderpreet Singh Kahlon (supra), that the Court had not approved the recommendation of the High Court, on the basis of which the Government had acted, in respect of the judicial officers whose services were also terminated. It is not necessary to state in detail the reasons given by the Court while condemning the action of terminating the services of the judicial officers, which was taken in undue haste. The Court had also remarked that all these judicial officers were subjected to viva voce/interview test as well, which was conducted as per Rule 17(a)(iii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, and no breach of the said Rule had been pointed out. The Committee which interviewed these judicial officers included a Judge of the High Court as well. The Court categorically observed that there may be some cases where marks had been given for extraneous considerations, but only because there was such a possibility, the same by itself, without analysing more, may not be a ground for arriving at a conclusion that the entire selection process was vitiated. The direction was, accordingly, given to consider the entire matter afresh.

32. After remand the Writ petitions of these judicial officers were decided by the High Court in the case titled as Sirandip Singh Panag v. State of Punjab, 2008 (4) RSJ 288. The High Court had allowed those petitions. The said judgment of the High Court was challenged before this Court in the matter of High Court of Punjab and Haryana at Chandigarh v. State of Punjab & Ors., (2010) 11 SCC 684. This Court, by means of the aforesaid judgment, upheld the decision of the High Court. The Court specifically noted that after the directions in Inderpreet Singh Kahlon (supra), a Committee of three Judges was constituted which undertook this exercise and submitted its report. It was a fractured report where two learned Judges of the Committee were of the view

that entire selection process was vitiated and one Judge had appended his dissent thereto on the ground that only those who were found to be tainted and were segregated by the Committee should be dismissed from service and not the non-tainted officers. No doubt, while upholding the directions of the High Court, this Court made it clear that it was not to be construed as giving seal of approval to the judgment of the High Court. At the same time, the Court also stated, in so many words, that in order to work out the equities and to do complete justice, that it was proper to allow those judicial officers to continue in service who were found to be untainted. It would be apposite to quote the following portion of the said judgment in this behalf:

26. It is not in dispute any more that the candidates were given fresh opportunity to appear for selection for the aforesaid post in the exams exclusively held for them in the year 2004. Out of 57 such candidates, 20 candidates were reselected and they were given benefit of original appointment. As many of these candidates are the respondents and have worked as judicial officers for some period and it has also not been proved or established completely against them that they had indulged in malpractice in examinations, we are of the view that they should also be given reappointment and posting orders to the existing vacancies in the State of Punjab and if no vacancy exists, Mr. Sharan has assured the court that the State will create supernumerary posts for them but they would not be entitled to get all the benefits as have been granted to them vide the impugned judgment.

27. However, it should not be construed that our judgment is giving seal of approval to the judgment of the Full Bench of the Punjab and Haryana High Court but with an intention to work out the equities and to do complete justice between the parties and in view of the earlier judgment of his Court in Kahlon case that tainted candidates be separated from untainted, meaning thereby that this Court did not accept the submission that it was not practically possible to do so; and further this Court had taken note of reselection held in 2004 in para 92 of the judgment, but held that the effect thereof would be subject to this case, this is the only via media, through which the respondents could also be granted relief as it could not be established that even otherwise, they would have been declared as unsuccessful candidates. Precisely, that is the reason we have moulded the reliefs granted to the respondents by the High Court as our order is not likely to affect seniority of any of the judicial officers, who had already been

working prior to the respondents. We are conscious of the fact that by this procedure, there is no likelihood of any offshoots of the said order and hopefully the whole controversy triggered in the year 1998, would stand settled for all times to come.

33. There is yet another crucial development which needs to be mentioned here. In the first instance, it is the State which had taken a decision to cancel the entire selection process. However, after the remand order passed in Inderpreet Singh Kahlons case (supra), in the exercise done by the Committee screening out the tainted from non-tainted candidates, the State came forward and showed its willingness to take back these candidates who were non-tainted and were selected on the basis of their merit. A specific affidavit to this effect was filed in the High Court. To the same effect the affidavit has been filed before us also. We are of the opinion that once those untainted officers, who were appointed under the same environment, have been allowed to continue, there is no reason to deprive this benefit of such recourse to the PCS (Executive Branch) and Allied Services. We may note that the High Court has recorded in the impugned judgment that 66% cases were found to be of the persons given appointment who were tainted, which influenced the entire selection process. However, during the course of arguments, it was placed before us that the aforesaid percentage is worked out by taking the cases of direct recruits and nominated candidates together. If the figures are separately taken, out of 93 direct recruits, 76 have joined and only 10 are found to be tainted. In fact, the percentage of such tainted candidates in nominated category was much higher, i.e. 80%. It was, thus, argued that the cases of direct recruits cannot be taken along with those in nominated category, who influenced the decision in their matter as well. This is also a supportive and important fact which goes in favour of these appellants viz. the non-tainted direct recruits.

34. The aforesaid discursive exercise prompt us to set aside the judgment of the High Court in respect of these persons with the direction that the appellants be allowed to join the duties forthwith. It is, however, made clear that the intervening period during which they remained out of service shall not count for seniority or any other benefit. However, these persons shall be given the benefit of service rendered by them earlier viz. from September 1999 till May 22, 2002, when they actually worked, for the purpose of seniority and future promotion, etc. These appeals are partly allowed to the aforesaid extent. There shall, however, be no order as to costs.