

Inderpreet Singh Kahlon & Ors vs State Of Punjab & Ors on 3 May, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2571, 2006 (11) SCC 356, 2006 AIR SCW 3346, (2007) 1 JCR 251 (SC), 2006 (5) SCALE 273, 2006 (7) SRJ 432, (2006) 5 ALL WC 5021, (2007) 6 SERVLR 287, 2006 (3) ALL CJ 1826, (2006) ILR (KANT) 1, (2006) 3 SCT 25, (2006) 6 SCJ 107, (2006) 5 SCALE 273, (2006) 4 SUPREME 8, MANU/SC/2433/2006

Author: S.B. Sinha

Bench: S.B. Sinha

CASE NO.:

Appeal (civil) 3411-3421 of 2005

PETITIONER:

Inderpreet Singh Kahlon & Ors.

RESPONDENT:

State of Punjab & Ors.

DATE OF JUDGMENT: 03/05/2006

BENCH:

S.B. Sinha

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL NOS. 3422, 3410, 3409, 3405-3408, 3456-59, 3446-3447, 3402, 3449-3455, 3463-64, 3460, 3401, 3445, 3399, 3404, 3444, 3441, 3439, 3428-3436, 3440, 3438, 3442, 3437, 3403, 3427, 3461, 3400, 3477, 3475, 3423, 3448, 3472-74, 3489, 3491 of 2005 and W.P (C) No. 14 of 2004 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.

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.

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.

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 The number of officers whose services were terminated in the aforementioned batches are 21, 14, 8, 21 respectively totalling 64 persons respectively.

A further vigilance report was made on 7.6.2002. Admittedly no appointment was made out from the 2001 batch.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 Sindhu 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.

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.

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) 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."

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.

The High Court moreover pointed out some irregularities found in the answer sheets of the some of the candidates in regard where to 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 where of, 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."

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

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

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.

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.

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.

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

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

In *Bihar School Examination Board v. Subhash Chandra Sinha and Others* [(1970) 1 SCC 648], 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."

Such is not the case here.

In *Anamica Mishra and Others v. U.P. Public Service Commission, Allahabad and Others* [1990 (Supp) SCC 692], 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.

Yet again in *S.P. Biswas and Others v. State Bank of India* [1991 Supp (2) SCC 354], 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.

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.

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.

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

(i) Cases where the 'event' has been investigated:

(a) Union Territory of Chandigarh v. Dilbagh Singh, (1993) 1 SCC 154 at paragraphs 3 and 7.

(b) Krishan Yadav v. State of Haryana, (1994) 4 SCC 165 at paragraphs 12, 15 and 22.

(c) Union of India v. Anand Kumar Pandey, (1994) 5 SCC 663 at paragraph 4.

(d) Hanuman Prasad v. Union of India, (1996) 10 SCC 742 at paragraph 4.

(e) Union of India v. O. Chakradhar, (2002) 3 SCC 146 at paragraph 9.

(f) B. Ramanjini v. State of A.P., (2002) 5 SCC 533 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, (1994) 5 SCC 695

(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 Lahudasa v. State of Maharashtra, (1996) 10 SCC 749 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.

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 (2004) 11 SCC 672] M.P. Gopalakrishnan Nair v. State of Kerala, (2005) 11 SCC 45 and Haryana State Coop. Land Development Bank v. Neelam, (2005) 5 SCC 91] In Benny T.D. and Others v. Registrar of Cooperative Societies and Another [(1998) 5 SCC 269], 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.

Yet again in Onkar Lal Bajaj and Others v. Union of India and Another[(2003) 2 SCC 673], 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:

"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 "

It was further held:

"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 "

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.

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."

Yet again in *Union of India and Others v. Rajesh P.U., Puthuvalnikathu and Another* [(2003) 7 SCC 285], this Court observed:

" 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."

[See also *Ashok Lenka v. Rishi Dikshit & Ors.*, 2006 (4) SCALE 519, paragraphs 42-50] The High Court, therefore, cannot be said to be right in applying the principle of mass cheating cases in the instant case.

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*, (1981) 1 SCC 722] 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.

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.

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."

The subject reference before the Committee was:

"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."

The Screening Committee found the following two selections as vitiated:

"(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."

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

"(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."

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.

The Committee opined:

"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-à-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."

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.

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.

We may notice Rule 17 (a) (iii) of the Rules framed by the Commission which reads as under:

"(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."

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.

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.

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.

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

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, (2004) 2 SCC 65] We may now deal with the orders of termination of the services of the Judicial Officers.

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.

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:

"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) Envelop No. 12 Answer Sheets of Sapana Singhal (Dental Demonstrator) Pages 1 to 16."

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.

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.

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.

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.

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.

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.

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, (1976) 3 SCC 585] 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.

In State of Maharashtra v. Ramdas Shrinivas Nayak and Another [(1982) 2 SCC 463], 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:

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

In Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana and Ors. etc. etc. [(1985) Suppl. SCR 657], this Court held:

" 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 "

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

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] In Pinochet, [(1999) 1 All ER 577] 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."

It was further opined:

"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 judex 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."

It was also stated:

"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."

[See also *AWG Group Limited v. Morrison and Anr.*, 2006 (1) All ER 967] *Pinochet* (supra) applies in all force to the fact of the case.

The aforementioned principles have been accepted and followed by this Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant* [(2001) 1 SCC 182] in the following terms:

"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."

[See also *Rupa Hurra V. Ashok Hurra*, (2002) 4 SCC 388 and *Krishan Yadav* (supra)] 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.* [(2004) 8 SCC 788] 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.

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.

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.

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.

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.

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.

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.

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