

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 18482 of 2010 (O&M)

Date of decision: 20.2.2015

Suman Kumari

.. Petitioner

vs

The State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Argued by : S/Shri Ram Bilas Gupta, Ramesh Goyal and Arihant Goyal, G.C.Shahpuri, Ravinder Malik (Ravi), Jagbir Malik, Sumit Sangwan, Sant Lal Barwal, A.S.Sullar, Arvind Kumar Yadav, Sandeep K.Sharma, J.P.Dhull for M.K.Sangwan, Manoj Makkar, Manohar Lall, Munfaid Khan for Amit Kumar Jain, and Ms.Alka Chatrath, Advocates, for the petitioner (s),

Mr. R. L. Batta, Senior Advocate with
Mr. Nikhil Batta, Advocate, for petitioner nos. 2, 19, 20
in CWP No. 23394 of 2010.

Mr. Gagandeep S. Wasu, Addl. Advocate General, Haryana.

Mr. Vikas Lochab, Advocate for respondents No.35, 80 & 83,
751 and 753,

Mr. Rajvir Singh Sihag, Advocate for respondents No.206,
212, 243 and 820.

Mr. Naveen Kumar, Advocate for Mr. R.N.Lohan, Advocate for
respondents No.293, 295, 296, 299, 301, 302, 304, 305,
313, 314 to 316, 318, 319, 321, 323, 324, 326, 327, 329, 334,
335 and 337

Mr. Manoj Tanwar, Advocate for respondent No.495.

Mr. R.S.Banku, Advocate for respondents No.676 and 682.

Mr. Ashok Tyagi, Advocate for respondent No.32.

Pt. Randhir Sharma, Advocate for respondents No.34 and 35.

Mr. Naveen S.Bhardwaj, Advocate for private respondents.

Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate for respondents No.41, 43 to 45, 47, 48, 50 to 52, 54 to 62, 65, 70, 306, 309, 320, 384, 386, 390, 392 to 394, 398, 401, 407, 413, 423, 426, 431 to 439, 444, 445, 446 to 448, 450, 458, 518, 534, 672, 673, 675, 677, 679, 683, 762 to 799, 800 and 801.

Mr. J.S.Maanipur, Advocate for respondents No.9, 37 and 39.

Mr. D.S.Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate for respondents No.125, 130, 132 to 136, 139, 141, 281, 310, 317, 338, 341, 344, 348, 350, 355, 356, 358 to 364, 368 to 372, 374 to 378, 380, 381, 383, 385, 388, 389, 391, 395 to 397, 399, 400, 402, 404, 405, 409, 411, 414, 415, 418 to 422, 424, 425, 428 to 430, 441, 554 to 556, 558 to 564, 566 to 573, 575 to 578, 580, 582 to 587, 591, 603, 604, 606, 607, 608, 610 to 613, 615, 616, 618, 620 to 625, 714, 747 and 789.

Mr. Ranjit Saini, Advocate, for respondent nos. 71, 73, 76, 77, 86 to 91, 93, 94, 104, 106, 108, 111, 114, 116, 120, 261, 263, 264, 265,

Mr. Vijay Pal, Advocate, for respondent no. 36.

Mr. Jitender Nara, Advocate, for respondent no. 4.

Mr. Gopal Sharma, Advocate, for respondent nos. 126 to 128, 129, 138, 140, 557, 588, 589, 593, 597, 601,

Ms. Neetu Singh, Advocate for Mr. Salil Bali, Advocate, for respondent nos. 535, 630 and 714,

Mr. Rajesh Bansal, Advocate for
Mr. Karamveer Singh Banyana, Advocate
for respondent no. 24
(all in CWP No.25410 of 2012)

Mr. Rajesh Bansal, Advocate for
Mr. Karamveer Singh Banyana, Advocate
for respondent No. 23 in CWP No. 23394 of 2010,
for respondent No. 24 in CWP No. 2965 of 2011 and
for respondent No. 25 in CWP No.778 of 2011.

Mr. Rajvir Singh Sihag, Advocate for respondents No.206, 212, 243 and 820 in CWP No.28439 of 2013.

Pt. Randhir Sharma, Advocate for respondents No.35 and 36 in CWP No.4737 of 2014, for respondents No.37 and 38 in CWP No.778 of 2011, for respondents No.34 and 276 in CWP No.28439 of 2013.

Mr. Ashok Tyagi, Advocate for respondent No.33 in CWP No.778 of 2011.

Mr. J.S.Maaniapur, Advocate for respondent no.8 in CWP No.23394 of 2010, for respondent No.9 in CWP No.2965 of 2011, for respondents No.10, 38 and 40 in CWP No.778 of 2011, for respondents No.10, 38 and 40 in CWP No.4737 of 2014 and for respondents No.9, 37 and 39 in CWP No.28439 of 2013.

Mr. Sandeep Singh Sangwan, Advocate for private respondents in CWP Nos. 23394 of 2010, 7330, 7468, 10486, 778 of 2011, 25410 of 2012 and 28439 of 2013.

Mr. R.K.Malik, Senior Advocate with
Mr. Tejpal Dhull, Advocate, for respondent nos. 4, 7, 8, 10 to 13, 15, 16, 18 to 23, 25 to 31 in CWP No. 2965 of 2011 and for respondent nos. 3, 6, 7, 9, 10, 11, 12, 14, 15, 17 to 22, 24 to 30, in CWP No. 23394/2010 and for respondent nos. 4 to 15 in CWP No. 2333 of 2011.

Mr. Yogesh Chaudhary, Advocate for respondents No.5,8,9,13,14,17,19,20 to 24, 27 to 32 in CWP No.778 of 2011 and for respondents No.4,7,8,12,13,16,18,19 to 23, 26 to 31 in CWP No.4737 of 2014 and CWP No.25410 of 2012 and for respondents No.4, 7, 8, 10, 12, 13, 16, 18 to 23, 26 to 31 and 38 in CWP No.28439 of 2013.

Mr. Vijay Pal, Advocate for
respondent no. 4 in CWP No. 23394 of 2010 and
for respondent no. 5 in CWP No. 2965 of 2011.

Mr. Anmol Rattan Sidhu, Senior Advocate with
Ms. Rajni Narula, Advocate for respondents No. 90, 137, 176 to 184, 187 to 190, 192 to 194, 365, 459, 461, 467 to 493, 498 to 506, 508 to 511, 513, 514, 516, 517, 519 to 523, 525 to 527, 529 to 533, 536 to 544, 546 to 553, 633 to 639, 642, 645 to 651, 653 to 671 in CWP No.25410 of 2012 and 28439 of 2013.

Mr. Ranjit Saini, Advocate, for respondent no. 18 in CWP No. 23394 of 2010.

Rajesh Bindal J.

1. This order will dispose of bunch of petitions bearing CWP Nos. 18482, 18781, 23394 of 2010, 778, 2333, 2747, 2965, 4118, 5631, 7330, 7404, 7468, 7503, 9561, 10486, 10666 of 2011, 25410 of 2012, 27526, 27530, 27542, 28439, 28455 of 2013, 4737, 4851 and 26473 of 2014, as common questions of law and facts are involved.

2. Challenge in the present bunch of petitions is to the selection and appointment to the posts of Art and Craft Teacher.

3. Learned counsel for the petitioners submitted that advertisement No. 6/2006 was issued by Haryana Staff Selection Commission (for short, 'the Commission') on 20.7.2006 for filling up of 816 posts of Art and Craft Teacher. The last date for receipt of applications was 21.8.2006. The essential qualifications prescribed for the post were Matric from Haryana School Education Board or an equivalent qualification recognised by Haryana School Education Board; two years' diploma in Art and Craft Examination conducted by the Haryana Industrial Training Department or an equivalent qualification recognised by the Haryana Education Department and knowledge of Hindi upto Matric standard. While referring to the note appended with the advertisement, it was submitted that the qualifications and eligibility were to be seen on the last date for submission of applications. A public notice was published in the newspapers on 12.6.2008 by the Commission stating that on account of large number of applications received in response to advertisement No. 6/2006 pertaining to the posts of DPE, Art and Craft Teacher and Physical Training Instructor (for short, 'PTI'), it has been decided to hold written test. The date for written test for recruitment as Art and Craft Teacher was provided as 13.7.2008. It was further mentioned that test shall be of 100 objective type multiple choice questions of 2 marks each. The qualifying marks for different categories were also provided. It was further mentioned that candidates three times the number of vacancies shall be called for interview on the basis of their performance in written test. 25 marks were provided for viva-voce and total marks obtained in written test and viva-voce were to determine the merit of the candidates in their categories.

4. Before the aforesaid scheduled date for written test, another public notice dated 11.7.2008 was issued by the Commission mentioning therein that keeping in view large number of applications and as per the conditions in the advertisement, the Commission had decided to shortlist the candidates eight times the number of vacancies in respective categories for interview on the basis of essential academic qualifications for the post. Minimum marks for each category were also provided. The shortlisted candidates were to be interviewed. Before the interview could take place, another public notice dated 31.7.2008 was issued by the Commission mentioning that on re-consideration of the matter, it was decided to call all eligible candidates for interview. After the interviews, the result was declared on 25.3.2010 mentioning the criteria adopted for selection, which now was 60 marks for academic qualifications and 30 marks for interview. The aforesaid 60 marks for academic qualifications were further divided into different qualifications, namely, Matric, 10+2, Diploma in Art and Craft and higher qualification.

5. Learned counsel for the petitioners submitted that in the case in hand, the selection is vitiated for the reason that the criteria for selection was changed midstream. Earlier, it was provided that considering the large number of candidates, written examination will be conducted and the same will be followed by viva-voce of 25 marks and total marks obtained in written test and viva-voce were to determine the merit of the candidates. Lateron, the test was scrapped. The candidates eight times the number of vacancies were to be called for interview. The same was again changed providing that all the eligible candidates will be called for interview. When the result was declared, the criteria adopted for selection was 60 marks for academic qualifications and 30 marks for viva-voce. The same could not be permitted. In fact, the selection pertaining to the PTIs, applications for which were invited vide same advertisement and same process of selection was adopted, has been set aside by this Court in CWP No. 15656 of 2010—Sanjeev Kumar and others v. State of Haryana and others, decided on 11.9.2012. The aforesaid judgment has been upheld by the Division Bench of this Court in LPA No. 1555 of 2012—Vijay Kumar and others v. Sanjeev

Kumar and others, decided on 30.9.2013.

6. It was further submitted that record of the Commission clearly suggested that it was not the Commission, which was working, rather it was one man show of the Chairman of the Commission. All the decisions were taken by him individually without consulting any other member of the Commission. It was further submitted that the decision to call all the eligible candidates for interview was on a direction given by the then Chief Minister just with a view to accommodate the candidates, who were having poor academic record so that they could be awarded more marks in interview. In fact, it has so happened if the entire record of selection is perused.

7. While referring to the cases of some of the candidates, it was submitted that Parvesh Kumari was not eligible on the last date for receipt of applications for the reason that she had passed her first year of Diploma Course in September, 2008, as is evident from certificate (Annexure P-9) in CWP No. 15410 of 2012.

8. Sukhbir Sharma, one of the candidates with roll No. 744, had re-appear in his final year Diploma Examination held in May, 2006, as is evident from the certificate dated 14.8.2006 (Annexure P-10) in CWP No. 25410 of 2012, hence, was not eligible.

9. Renu Hooda, candidate with roll No. 7245, did not have qualification of Diploma in Art and Craft but Bachelor of Fine Arts. She was not only awarded marks treating the same to be the basic qualification but further extra marks were also awarded treating the same to be higher qualification, which was not permissible. Similar was the position with Preni having roll No. 7121.

10. The application of Anita Kamboj having roll No. 10192 was submitted in August, 2008, as even the fee thereof was deposited on 28.8.2008, which was much after the last date prescribed for receipt of applications.

11. In the case of Dalbir Singh, having roll No. 1436, the percentage of marks obtained by him in educational qualifications have been wrongly calculated and as a consequence thereof, wrong marks have been awarded to him even in terms of the criteria laid down.

12. Similarly, the percentage of marks by Suman Lata with roll No. 8520, Krishana Davi with roll No. 3229, Charan Singh with roll No. 8496 and Mohammad Salim with roll No. 1279 have been wrongly calculated.

13. The application of Poonam having roll No. 7208 was not even signed by her.

14. Sunil Kumar, one of the candidates, had passed his Diploma in Art and Craft examination in September, 2006, hence, was not eligible on the last date for receipt of applications.

15. Ms. Alka Chatrath, Advocate appearing for some of the petitioners, submitted that as per the Rules the minimum qualification required was Matric. The award of marks for Matric or 10+2, whichever were higher, was not correct as 10+2 was not the essential qualification.

16. Additional submission made by Mr. Manohar Lall, Advocate, appearing in one of the petitions, is that initially the candidates having Diploma in Art and Craft from Kurukshetra University were declared ineligible. The same was challenged before this Court in CWP No. 20630 of 2006—Suman Lata and others v. The State of Haryana and others, which was allowed on 22.2.2007. The candidates having qualification from Kurukshetra University were declared eligible. Subsequently, the Commission issued corrigendum. However, he did not produce any such corrigendum.

17. Learned counsel for the State submitted that the petitioners in the present case have relied upon the judgment of this Court in Sanjeev Kumar's case (supra) setting aside the selection to the posts of PTIs made at the same time, however, SLP against the same is pending before Hon'ble the Supreme Court and status quo has been granted, hence, the judgment should be awaited. He further submitted that the advertisement itself provided that the Commission may devise its own criteria for selection. The change in criteria was in larger interest of the candidates so that none is prejudiced and there is participation of all candidates in the process of selection. All have been given fair opportunity instead of shortlisting of few candidates. The petitions filed by the candidates, who were rejected after participation in the process of selection, should not be entertained. For the purpose,

reliance was placed upon Chandra Prakash Tiwari and others v. Shakuntala Shukla, 2002 (6) SCC 127. Learned counsel further submitted that award of marks in interview by the Member of the Commission interviewing the candidates cannot be subject-matter of judicial scrutiny as it is on the basis of their performance at the time of interview. No malafide or bias has been alleged. Nothing can be presumed. Reliance was placed upon Avinash Chandra and others v. U. P. Public Services Commission and others, 2014 (3) All. LJ 292. The criteria in the present case was framed on the last date for receipt of applications. The same was not changed midstream. The criteria adopted for shortlisting of candidates can be changed as was opined by this Court in CWP No. 15885 of 2000—Jawahar Lal Goyal and others v. State of Haryana and others, decided on 6.12.2001. The marks for the purpose of selection have been taken from the marks sheets attached by the candidates along with the applications, hence, there is no effect on the merit list prepared on account of some error in mentioning of marks obtained by a candidate in the application or percentage thereof.

18. The error in noticing the marks obtained by the candidate, namely, Krishana Devi having roll No. 3229 is not disputed, as in the select list, it has been shown that she secured 1578 marks out of 2000 marks in Diploma of Art and Craft, whereas as per the application, the marks secured by her were 1420.

19. Mr. D. S. Patwalia, learned senior counsel appearing for some of the private respondents submitted that the contention raised by learned counsel for the petitioners that there was change in the criteria is totally fallacious. In the advertisement, no criteria was given as the stand of the State is that the criteria for selection was finalised on the last date for submission of applications. All other criterias, which were initially notified by the Commission were for the purpose of shortlisting of candidates and that could be changed. Earlier, the candidates upto three times the number of vacancies were to be called, which was increased to eight times and then all the candidates were given opportunity to appear for interview in the process of selection. The criteria was quite reasonable as it provided for weightage for marks obtained in educational qualifications and in interview.

20. Mr. Akshay Bhan, learned senior counsel appearing for some of the private respondents taking lead from the contentions raised by Mr. Patwalia, submitted that merely because some of the candidates, who may have better academic record, could not be selected on account of award of less marks in viva-voce cannot be a ground to set aside the selection. He further submitted that if in some isolated case, a candidate is found to be ineligible or there is any discrepancy found in the process of selection qua him/her, the selection qua him/her can be set aside instead of setting aside the selection of all the candidates as they are not at fault. For some of the issues raised by learned counsel for the petitioners, there are no pleadings.

21. Mr. Amol Rattan Sidhu, learned senior counsel appearing for some of the private respondents, while adopting the contentions, as noticed above, submitted that change of marks for viva-voce from 25 to 30 will not make much of difference. The written test for Art and Craft Teachers had to be cancelled as many problems were faced in the test conducted for the posts of PTI.

22. Heard learned counsel for the parties and perused the paper book and the record produced in court.

Conduct of the Commission, evident from the files produced

23. A bound register from the Commission was produced before the court containing the criterias for selection for different posts. A perusal of the various pages in the register shows that on 14.2.2006, criterias were fixed for as many as 15 posts; on 7.3.2006, criterias were fixed for 67 posts; on 7.4.2006, criterias were fixed for 27 posts; on 2.5.2006, criteria was fixed for one post; on 31.5.2006, criterias were fixed for 22 posts; on 4.7.2006, criterias were fixed for 12 posts; on 21.8.2006, criterias were fixed for 23 posts; on 20.11.2006, criterias were fixed for 17 posts and on 18.1.2007, criterias were fixed for 24 posts.

24. On 21.8.2006, the criterias for selection were fixed for 23 posts. No record has been produced to show that meeting of the Commission was ever called by circulating an agenda for the purpose and in terms thereof any resolution was passed fixing the criteria. What has been bound in the register produced before the court are in the form of loose sheets tagged

together. Even a perusal of the different criterias laid down for different posts in the same date shows that the Members of the Commission have not signed the same at the same time as the pen and ink used in the signatures differ in many of the criterias, though it is claimed that all were fixed on the same date.

25. Further, the criterias fixed on the same date for different posts show different yardsticks, such as for Lecturers in Economics, Geography, English, Hindi, History, Political Science, Punjabi, Sanskrit, Math and Science Masters and DPE, the criteria fixed was written test for 200 marks and viva-voce of 25 marks. For the posts of Hindi Teacher, Sanskrit Teacher, Punjabi Teacher and Art and Craft Teacher, the criteria fixed was 55 marks for minimum educational qualifications required, 5 marks for higher qualification and 30 marks for viva voce, whereas for the posts of Lecturers in Fine Arts, Home Science, Public Administration, Physics and Sociology, the criteria fixed was 45 marks for minimum educational qualifications, 5 marks for higher qualification and 25 marks for viva-voce.

26. It shows that even for the purpose of selection of teachers only, there were different yardsticks were applied, from which it could not be understood as to what was the object to be achieved. The only thing which can be inferred is that tailor-made criterias were laid down considering the applications or the candidates to be selected. Even the criterias laid down for other different posts, as is evident from the register, shows that different yardsticks had been applied. For the posts of Assistant Lineman, LDC, UDC and Store Keeper, the criteria provided for written examination with 200 marks with viva-voce of 20 marks. For the posts of Excise and Taxation Inspector, the written examination required was of 400 marks with viva-voce of 50 marks.

27. During the course of hearing, it was submitted that the criteria was to be fixed on the last date for receipt of applications, however, a perusal of the register shows that some of the criterias were either fixed before the last date for receipt of applications or after the last date of submission of applications.

28. There is no single file maintained for the purpose of selection for the posts in question. Different issues have been dealt with in different files which do not inspire confidence.

29. In file No. 1/2 /2006-1 RI, at page 19, there is a note dated 16.3.2007 with reference to advertisement in question, namely, 6/2006. It refers to a draft for holding of written test or interview in the recruitment process. The note was approved by the Chairman of the Commission on the same date. In the files produced before the court, despite repeated adjournments, the draft, as has been referred to in the aforesaid note, was not produced. The note does not, in any manner, suggest that any criteria before this date had been fixed for selection of the Art and Craft Teachers or of any other category and there had to be some process for short-listing. All other notings in the file, which may not be directly related as such to the process of recruitment, were signed by the Chairman only. There is a note dated 10.3.2007 at page 27 mentioning that the advertisement was under challenge in this Court in CWP No. 13887 of 2006—Mahender Kumar and others v. State of Haryana and others on the ground of reservation for rural youth and female. It has been further noticed that reservation provided for rural youth was quashed. The matter was sought to be referred to the Education Department to give break-up of vacancies in terms of the judgment in the aforesaid case. Though the note proposed was on 10.3.2007, however, it was approved by the Chairman of the Commission on 11.3.2008. There is a note dated 24.11.2008 at page 33 in the file pertaining to the posts of Art and Craft Teacher in question. In the aforesaid note, the order passed by this Court in CWP No. 16214 of 2008—Sunita and others v. State of Haryana and others has been noticed, in which a corrigendum was issued to treat all the candidates who had attained the age of 17 years as on 21.8.2006 to be eligible in case they had acquired the requisite qualification on or before that date. It was required as in the advertisement earlier issued the minimum age prescribed was 18 years, the candidates who could not apply earlier were also given opportunity to apply upto 10.12.2008. This only shows that at the time of issuance of advertisement initially even service rules were not taken care of. This Court

is not commenting on the minimum age of 17 years fixed in the Rules as it is not even the age of majority and further none could possibly acquire the minimum qualification required at that age.

30. Regarding file No. 1/242/2008-IS; even though it is claimed that the criteria for final selection of the candidates had been approved by the Commission in its meeting held on 21.8.2006, however, this fact could not be corroborated from any notings in the file or any document from record. There is nothing on record to show as to how much applications were received and how the process of selection was to be followed. If the criteria for selection on the basis of academic marks and the interview had been finalised, then to issue first public notice calling the candidates for written test and interview claiming the same to be for the purpose of shortlisting only could not be justified under any circumstances, as in that eventuality, the merit of the candidates in terms of their academic qualifications could have been prepared and the candidates called for interview.

31. In file No. 1/242/2008-IS, a note dated 11.7.2008 suggested that approval was sought for issuing a public notice for shortlisting of the applications by interviewing the candidates. The note did not suggest the manner of shortlisting, if any. It was approved on the same day by the Chairman only. The opening lines in the aforesaid note suggest that decision was taken by the Chairman of the Commission. The Commission was functioning like a private limited company as the note suggested that there was discussion amongst the Chairman and the Secretary of the Commission and in terms of the oral orders issued by the Chairman, the note was being put up. Another note in the file dated 18.7.2008 suggested that it had to be done on the basis of marks obtained in essential qualifications. The note refers to the Art and Craft Teachers and also PTIs, besides others. This change was also approved by the Chairman only on 18.7.2008. Apparently, the public notice dated 11.7.2008 (Annexure P-3) in CWP No. 25410 of 2012 was issued thereafter, however, the note nowhere suggested that the candidates eight times the number of posts were to be called for interview on the date so fixed.

32. There is nothing in the file to suggest that any decision was taken by the Commission to cancel the decision already taken for holding written test with 100 questions of two marks each and viva-voce for 25 marks. The public notice dated 11.7.2008 (Annexure P-3) in CWP No. 25410 of 2012 mentioned the minimum marks secured by a candidate in different categories for calling them for interview. Though there is nothing in the file, referred to above, regarding fixation of the aforesaid minimum marks or calling the number of candidates, however, another file No. 1/251/2008-IS was produced which only contains the note whereby the aforesaid minimum marks were prescribed. The opening lines in the aforesaid note also suggested that note was put up after discussion of the Chairman with the Secretary of the Commission and as per the oral directions issued by the Chairman. In this file, this is the only note available which was initiated and approved on the same date, i.e., 10.7.2008.

33. The note dated 31.7.2008 shows that there was protest before the house of the then Chief Minister after notice dated 11.7.2008 was published in the newspapers regarding shortlisting of the candidates for the posts of Art and Craft Teacher and PTI. It was mentioned in the note that only 5,000 candidates had been left out on account of shortlisting. With the aforesaid facts, the matter was put up before the Commission for consideration. The Chairman individually directed that all eligible candidates be called. The file does not suggest that the matter was ever put up before the Commission for taking a conscious decision being a statutory body.

34. Another file No. 2/9/2006IRI was produced showing a noting pertaining to holding of written test for the posts of PTI on 21.1.2007. The note dated 10.6.2008 suggested that the Commission decided to hold written test as per the schedule given which for Art and Craft Teachers was on 13.7.2008. There is nothing in the file produced showing that the decision to hold written test was ever taken for selection to the posts of Art and Craft Teacher. The note dated 10.6.2008 was approved by the Chairman only on the same date. In the aforesaid file, a note was put up on 30.6.2008 that the

Chairman had directed for cancellation of the written test for the posts of Art and Craft Teacher and PTI on account of administrative reasons. The same was approved by the Chairman only on the same date, i.e., 30.6.2008. The aforesaid file does not contain any other noting.

35. Further, from the files it was evident that for the same period and same subject-matter, the issue was being dealt with in different files. The manner in which the issues in the aforesaid files have been dealt with show that those were not maintained in the regular course of business.

36. The conduct of the Commission pertaining to selection to the post of PTI advertised at the same time with the same process of selection was commented upon by a Division Bench of this Court in Vijay Kumar's case (supra), in the following terms:-

“Was the Chairman competent to take policy decisions like ‘selection criteria’ or ‘mode of selection’ ?

(38) It is an admitted fact that the Commission (earlier known as ‘Subordinate Services Selection Board’) is a creation of the Notification dated 28th January, 1970 issued under *proviso* to Article 309 of the Constitution of India. The terms and conditions of service of the Members and its functions find mention in that Notification. Learned Single Judge has referred to relevant clause(s) of the Notification to explain that the Board (now Commission) is a multi-Member body. Vide subsequent Notification dated 28th July, 1998, the ‘Board’ was re-named as ‘Commission’. Para 6(d) of the original Notification was also substituted and the amended clause reads as follows:-

“(iv) in paragraph 6, for clause (d), the following clause shall be substituted and shall be deemed to have been substituted with effect from 10th January, 2006, namely:-

*“(d) methods of recruitment and the principles to be followed in making appointments to the Group B, Group C and Group D posts under the State Government. **The Commission shall***

devise the mode of selection and fix the criteria for selection of posts for which requisition is sent to it by a department or an office, as it may deem appropriate and the criteria for the selection of posts fixed earlier by the Board/Commission shall be deemed to have been fixed under this clause.”

(Emphasis applied)

(39) The Commission owes its existence to the Notification dated 28.01.1970 as modified from time to time by subsequent Notifications issued under *proviso* to Article 309 of the Constitution. These Notifications are statutory in character and have not been superseded by any principal legislation. Under these Notifications, no power exercisable by the ‘Commission’ can be delegated to its Chairman nor any enabling provision to this effect has been pointed out. There is no decision of the Commission also delegating its functions to the Chairman.

(40) Since the decisions regarding ‘method of recruitment’, ‘mode of selection’ and the ‘criteria for selection’, are required to be taken by the ‘Commission’ alone, the Chairman could not have usurped those powers and assumed the role of ‘Commission’. The fact that instead of defending his single-member decisions, the Chairman finally took shelter behind the so-called decision of the ‘Commission’ dated 03.08.2008 before the learned Single Judge, also reinforces our conclusion that the Chairman was incompetent to take one decision after the other.

(41) It is unfortunate that instead of reversing his unlawful decisions, taken by side-tracking eight other Members (as it was a nine-Member body since 21.06.2007), the Chairman involved those other Members

in a mock-drill and flashed a surprise on the learned Single Judge by producing the magical 'single loose sheet' of their purported decision dated 03.08.2008 laying down the 'criteria for selection'.

(42) We have also perused the decision dated 03.08.2008 produced in a sealed envelope. We firmly affirm the findings returned by the learned Single Judge to discard the same. We say so for the reasons that (i) various administrative decisions whether taken by the Commission as a multi-Member body (only one such decision found in the Files) or by the Chairman contained in the Files produced before us, are preceded by an 'Office Note' or 'proposal' and are invariably forwarded by the Secretary of the Commission; (ii) the original record of decisions taken by the Chairman in the last week of September, 2008 or in first week of October, 2008 do not even whisper about any meeting of the Commission held on 03.08.2008 or the decision taken therein; and (iii) the unusual manner in which the 'loose sheet' has been prepared casts a serious doubt on its genuineness. The so-called decision dated 03.08.2008 was thus apparently contrived to defeat the cause of the writ-petitioners and to mislead the learned Single Judge, who has rightly held that it was only when he directed to produce the criteria of selection that this 'loose sheet' "was prepared and produced in Court".

37. Further observations of Hon'ble the Supreme Court in Krishan Yadav and another vs State of Haryana and others 1994 (2) SLR 719, while setting aside the selection of Excise & Taxation Inspectors in the State of Haryana are also relevant on the issue, which are as under:-

"20. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a Minister to a menial

everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating, in view of the destruction of records, it was helpless. It should have helped itself. Law is not that powerless.

21. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.

22. The effect of setting aside the selection would mean the appointments held by these 96 candidates (including the respondents) will have no right to go to the office. Normally speaking, we should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But, here we show a streak of sympathy. For more than 4 years they were enjoying the benefit of "office". The proper lesson would be learnt by them if their appointments are set aside teaching them that dishonesty could never pay."

Publication of corrigendum

38. There is a communication dated 24.11.2008 on record from the Commission to the Director, Information & Cultural Affairs, Haryana with a request for publication of the corrigendum in different newspapers on 25.11.2008. The same reads as under:

“Reference Commissioner's advertisement No. 6/2006, Cat. No. 22, dated 20.7.2006 published in the Indian Express, the Tribune, Amar Ujala & Dainik Jagran Newspapers on 21.7.2006.

In compliance of the orders of the Hon'ble High Court dated 20.11.2008 in CWP No. 16214 of 2008—Sunita and others V/s State of Haryana and others, the Commission has considered such candidates eligible for the post of Art & Crafts Teachers, who has attained the age of 17 years and also acquired the advertised qualification for the said post on or before the cut off date i.e. 21.8.2006 for determining the eligibility against the aforesaid advertisement. Such candidates who fulfill the aforesaid both the conditions and could not apply earlier may apply now upto 10.12.2008. However who have already applied and their applications have been rejected solely on the aforesaid ground need not require to apply again as their earlier applications will be considered. Rest of the terms and conditions will remain the same.”

39. From the record, nothing has been referred to show that any other corrigendum or public notice was published in the newspapers.

ON MERITS

40. In the present case, the process of selection started with the issuance of advertisement No. 6/2006 by the Commission on 20.7.2006. The last date for receipt of applications was 21.8.2006. Though it is claimed that the criteria for final selection was fixed on the last date fixed for receipt of applications, i.e., 21.8.2006, but the manner the same was fixed, as has been dealt with in the files maintained by the Commission, and the criteria produced before the court do not inspire confidence, rather, it goes to

establish that the criteria was not fixed on that date. It was a tailor-made criteria for making selection of some candidates, who could otherwise not make to the select list. A notice was published in the newspapers on 12.6.2008 mentioning that in view of large number of applications received, the Commission has decided to hold written examination subject to final determination of their eligibility lateron. The written test consisted of 100 objective type multiple choice questions, 60 questions relating to academic knowledge of the respective subject, whereas 40 questions relating to general knowledge, general English and Hindi. Each question was of two marks. The minimum qualifying marks required to be secured by a candidate in the written test were specified, which are as under:

“a)	General Category Candidates	50%
b)	SC, BC categories candidates	45%
c)	ESM candidates	40%
d)	DESM and outstanding sportsperson	As per General, SC, BC candidates, as the case may be.”

41. The public notice further provided that as per the law laid down by Hon'ble the Apex Court, the candidates equal to three times the number of vacancies will be called for interview based on their performance in the written test and total marks obtained in written test and viva-voce will determine the merit of the candidates of their respective categories. The relevant part of pubic notice is extracted below:

“ VIVA-VOCE WILL BE OF 25 MARKS

However, as per law laid down by the Hon'ble Apex Court, candidates equal to three times of the number of vacancies will be called for interview based on their performance in the written test. The total marks obtained in the written test and viva voce will determine the merit of the candidates of their respective categories.”

42. If the criteria for selection had been approved prior to the public notice for written test and viva-voce, the aforesaid process being adopted for short-listing was quite strange. The public notice did not

mention that written test and viva-voce was being conducted for the purpose of short-listing. It is the stand being taken at the time of arguments. The shortlisting by way of written test is normally in cases where there are two examinations, namely, preliminary for short-listing and final for selection followed by viva-voce. Further, addition of viva-voce along with the written test and calling candidates for viva-voce shows that it was the process being followed for final selection and not for short-listing.

43. The manner in which the aforesaid process was being conducted established that it was not for the purpose of short-listing, rather, for the purpose of final selection, as for short-listing only a written test could be conducted providing for minimum qualifying marks keeping in view over-all merit. Once viva-voce had also been added in the process, that too mentioning that the candidates equal to three times the number of vacancies will be called and even the marks had been ear-marked for viva-voce, it was a process for final selection. From the files of the Commission produced before the court, nothing has been referred to show that the Commission ever took a decision in terms of which public notice for written test prescribing qualifications, the marks thereof and viva-voce for 25 marks was published.

44. Before the date of test, another public notice dated 11.7.2008 appeared in the newspapers mentioning that keeping in view large number of applications and as per the conditions of advertisement, the Commission has decided to short-list eight times candidates of the advertised posts in their respective categories for interview on the basis of marks obtained in essential academic qualification. This was a change in criteria for selection as now the public notice provided for shortlisting of candidates eight times the number of vacancies. The minimum marks required by a candidate to be eligible were also prescribed. The same are extracted below:-

"S. No.	Category	%age
1.	General	53%
2.	SC	33%
3.	BC-A	33%
4.	BC-B	42%

5.	ESM-GEN	33%
6.	ESM-SC	49%
7.	ESM-BCA	33%
8.	ESM-BCB	52%
9.	OSP-GEN	48%
10.	OSP-SC	37%
11.	OSP-BCA	46%
12.	OSP-BCB	42%”

45. The short-listed candidates were to be interviewed. No marks were specified for interview. Another separate file bearing No. 1/251/2008 IS was produced mentioning that the issue regarding short-listing of candidates for interview was discussed by the Chairman and the Secretary of the Commission and on the basis of oral directions of the Chairman, certain minimum marks were prescribed for each category of candidate to be eligible for interview.

46. Even this note, which was approved only by the Chairman of the Commission did not suggest that the criteria for selection shall be as per the marks obtained in educational qualification and followed by viva-voce. The marks ear-marked for educational qualification and viva-voce were not even mentioned in the note or the public notice issued. The schedule for viva-voce was also notified starting from 19.8.2008 to 22.8.2008 at different stations.

47. Before the date for interview, another decision was taken, as is evident from the note dated 31.7.2008 in file No. 1/242/2008-IS that there had been protest in front of the house of the then Chief Minister after notice dated 11.7.2008 was published in the newspapers regarding short-listing of candidates for the posts of Art and Craft Teacher and PTI. It was mentioned in the note that only 5,000 candidates had been left out on account of short-listing. The Chairman of the Commission, without there being any meeting of the Commission approved the note on 31.7.2008 that all the eligible candidates be called for interview.

48. The aforesaid developments clearly established that the object apparently was to select the candidates, who were not meritorious. The

actions of the Commission step by step suggested that merit was to be compromised. Firstly, the written test was cancelled, then the decision to call candidates 8 times the number of vacancies advertised on the basis of marks obtained in essential qualification was diluted by taking a decision to call all the eligible candidates. Commensurate with the note approved on 31.7.2008, a public notice of the even date was issued notifying that all eligible candidates be called for interview. The schedule for different districts was notified. Even this public notice did not mention the criteria to be followed by the Commission for selection. The matter after the interview remained pending for 1-1/2 years as the result was notified on 25.3.2010. In the aforesaid result, the criteria adopted for selection was mentioned. It provided for 60 marks for academic qualification and 30 marks for viva-voce.

49. Learned counsel for the State provided the data of all the candidates in two CDs, one containing the data of the selected candidates, whereas in other one the data of all the candidates. A perusal of the data clearly establishes the fact that the criteria was prepared commensurate to the candidates to be selected, which is generally called 'tailor-made'.

The Commission was smart enough to produce in court the record pertaining to selection, where the marks secured by a candidate in academic qualification and in viva-voce were mentioned, but the merit position of a candidate prepared in terms of the marks secured by him/her as per educational qualification was not mentioned. From the CDs produced in court, the exercise was got done. The result is alarming. The cat was out of the bag. A complete list of 7106 candidates, who appeared at the time of interview was prepared. Out of first 100 candidates in the merit list prepared on the basis of marks secured on the basis of educational qualification only, the selected candidates were merely 44 as the marks awarded to them in viva-voce were quite less. Out of next 100 candidates top in the merit list prepared on the basis of marks secured on the basis of educational qualification only, the selected candidates were merely 24. Out of first 1000 candidates in the merit list prepared on the basis of educational qualification, only 196 candidates were selected. As the marks secured by

the candidates in academic qualification decreased, the corresponding marks in the viva-voce increased, except in the cases of the candidates who were selected as in those isolated cases, there was a jump. Going to the bottom of the list, the candidate at merit No. 7071, who secured 26.916 marks in educational qualification, was given 24 marks in interview, hence selected. The candidate at merit No. 7050, who secured 27.455 marks in educational qualification, was given 24 marks in interview, hence selected. The candidate at merit No. 7044, who secured 28.04 marks in educational qualification, was given 27 marks in interview, hence selected. The candidate at merit No. 6998, who secured 28.12 marks in educational qualification, was given 26 marks in interview. Similar is the position with regard to certain other candidates, who were more meritorious as far as educational qualification is concerned but were excluded from selection by awarding them less marks in viva-voce so that total marks secured by them are little less than the last selected candidate or the candidate in the waiting list. This could be possible only if the selection is made not on merits but with some pre-determined mind seeing the candidate. It cannot be believed that performance of most of the candidates, who were quite higher in merit list prepared only on the basis of academic qualification, would be so poor in viva-voce. This could be possible only if Interview Committee was knowing the marks secured by the candidates in educational qualification and they were awarded the marks keeping in view the fact that the candidates, who were to be selected, secured marks more than them. The extract of the list is as under:-

ROLL No.	NAME FATHER NAME	QUALI.	RANK AS PER QUALIFICATION	VIVA	TOTAL	RANK IN SELECT LIST
6897	SAVITA MALIK SUBE SINGH MALIK	46	1	10	56	290
9782	CHAKSHU VINOD NARANG	45.47	2	7	52.47	800
8422	BIJENDER DALBIR SINGH	45.366	3	8	53.366	725
5449	SUMAN DEVI BALRAJ SINGH	45.033	4	7	52.033	823
5928	GEETANJLI PREM SINGH	44.566	6	8	52.566	794
4471	NEHA DHARMVIR SINGH	44.433	7	7	51.433	856
1517	PANKAJ ROHILLA D S ROHILLA	44.077	9	9	53.077	766
6976	RAM KUMAR GOPI RAM	44.072	10	8	52.072	821
6091	ABHILASHA VED PARKASH	43.754	11	12	55.754	320
4454	SEEMA KUMARI RAJARAM	43.6	12	10	53.6	704
1475	MONIKA HAWA SINGH	43.59	13	10	53.59	705
4107	KAVITA KUMARI SAJJAN SINGH	43.1	17	13	56.1	271
9471	ASHA KUMARI JAGDISH PRASAD	42.933	20	11	53.933	651
4132	USHA GUGAN SINGH	42.711	22	9	51.711	839
4436	MONIKA SUMER SINGH	42.666	23	9	51.666	840
3122	SANDEEP MAHENDER	42.666	24	19	61.666	2
8980	KAVITA CHANDGI RAM	42.632	26	11	53.632	700

6775	SACHIN GARG RAKESH KUMAR	42.597	27	9	51.597	844
3085	KAPIL KUMAR PRITHVI SINGH	42.528	28	12	54.528	502
4448	PARVEEN KUMAR RAJ KUMAR	42.52	29	9	51.52	846
3571	ASHA ROSHAN LAL	42.475	31	8	50.475	887
5328	VIRENDER SINGH RAJ KUMAR	42.41	34	15	57.41	99
6735	SATISH SUJAN SINGH	42.347	36	9	51.347	861
6462	DEEPTI RANI DAYANAND	42.212	39	9	51.212	866
1922	SUKHVEER SINGH TARSEM SINGH	42.18	41	9	51.18	871
6264	SARITA TEJINDER KUMAR	42.14	42	14	56.14	268
611	NITIN SURESH KUMAR	42.133	45	9	51.133	872
6302	RITU DEVI RAM KUMAR	42.066	47	11	53.066	767
3284	SUMAN OM PAL	41.9	53	12	53.9	656
9354	GARGI KAMBOJ PARVEEN KAMBOJ	41.88	54	12	53.88	660
8532	SUKHVINDER KUMAR RAJBIR	41.737	62	9	50.737	882
9224	SANNI GAUTAM GOPAL GAUTAM	41.733	63	20	61.733	1
3020	SUMAN RANI OM PARKASH	41.707	65	12	53.707	683
1757	INDU YADAV DEVINDER SINGH	41.606	70	12	53.606	701
6108	MANISH KUMAR RANBIR SINGH	41.492	74	10	51.492	850
9275	AMITA BALWANT SINGH	41.466	75	14	55.466	359
4382	VIRENDER KUMAR MAHENDER SINGH	41.333	81	20	61.333	3
222	JAYANT KUMAR KARTAR SINGH	41.266	83	13	54.266	575
6667	RAMAN KUMAR SURESH KUMAR GERA	41.194	84	10	51.194	869
6712	KANTA DEVI MAHABIR SINGH	41.095	86	12	53.095	762
2869	KAILASH CHANDER SURAJ BHAN	41.012	92	9	50.012	894
7465	NAVNEEN KUMAR SHER SINGH	41.012	93	11	52.012	825
218	LEKHRAJ GURMUKH RAM	40.947	99	10	50.947	877
3768	MANJU NIROTTAM DAS	40.946	100	13	53.946	649
6258	MAMTA VERMA RAJKAPOOR VERMA	40.915	104	13	53.915	655
185	SHIV CHARAN JAI RAM	40.787	113	14	54.787	429
6341	PARDEEP KUMAR RAJENDER SINGH	40.766	114	13	53.766	673
4829	PARDEEP LAMBA RAJENDER SINGH	40.633	124	14	54.633	475
5250	SUMAN DEVI SAMUNDER SINGH	40.518	131	15	55.518	355
4374	SANDEEP RATTEWAL PREM VIR SINGH	40.5	134	14	54.5	511
752	VIRENDR SINGH GOPAL SINGH	40.488	135	20	60.488	4
392	MANJU LATA ATTAR SINGH	40.482	137	13	53.482	715
9879	VINAY SHARMA VINOD SHARMA	40.477	138	20	60.477	5
6293	RAKESH KUMAR OM PAL SINGH	40.466	142	20	60.466	6
10327	SUKHJINDER SINGH JANTA SINGH	40.466	143	11	51.466	853
4395	DEVENDER BHANKHAR OM PARKASH	40.366	155	10	50.366	890
3430	SUNITA RANI SHRI RAM	40.301	161	13	53.301	739
2274	POOJA ADLAKHA BALWANT LAL	40.3	163	16	56.3	259
1004	CHITRA YADAV RATTAN SINGH YADAV	40.263	167	11	51.263	863
4472	RAVINDER KUMAR RAM KANWAR	40.2	172	14	54.2	594
5933	AARTI RAJENDER VASISHTA	40.183	175	12	52.183	819
236	NARENDER KUMAR RAMESHWAR DAYAL	40.142	182	10	50.142	893
6317	RAJNI YADAV SURENDER SINGH	40.133	184	13	53.133	756
1897	SEEMA RAM KISHAN	40.103	186	16	56.103	270
5331	RAVINDER SINGH GURMAIL SINGH	40.102	187	20	60.102	7
8268	SAKET DAYA NAND	40.086	189	20	60.086	8
6224	KAVITA ABHEY RAM	40.05	194	16	56.05	281
925	SUMAN DEVI RAJ SINGH	40.033	197	13	53.033	771
9448	PANKAJ KUMAR ISHWAR DAYAL	39.995	203	20	59.995	9
8078	NEERU BALA ROSHAN LAL	39.985	206	11	50.985	875
4787	KULDEEP RAJARAM	39.966	209	12	51.966	828
3121	RESHAM KANWER SINGH	39.919	214	14	53.919	654
4335	VIJAY PAL BISHAN SINGH	39.9	220	20	59.9	10
6361	SANDEEP KUMAR RAJENDER SINGH	39.866	225	20	59.866	11
876	MEENU PREM SINGH	39.866	227	10	49.866	895
1501	SHASHI KANT MAHENDER KUMAR	39.865	228	20	59.865	12
2861	NEELAM KUMARI BALBIR SINGH	39.85	232	13	52.85	785
8456	SUMIT RAJ KANWAR	39.685	257	20	59.685	13
10148	GURDEEP KAUR KARNAIL SINGH	39.661	260	16	55.661	335
9527	SUNIL DUTT KRISHAN CHAND	39.633	265	20	59.633	14
6777	SONAL RANI MAHENDER SINGH	39.633	267	16	55.633	337
4118	SEEMA SURAJBHAN	39.615	272	16	55.615	339

List from the bottom

216	RAJESH CHOHAN BHAGAT SINGH	29.865	6634	25	54.865	418
8988	RASHPAL SINGH BABU RAM	29.835	6643	25	54.835	421
1279	MOHAMMAD SALIM NATHU MOHAMMAD	29.78	6668	25	54.78	431
7344	POONAM YADAV DALIP SINGH	29.775	6669	19	48.775	902
2657	MOTI LAL RAM SWARUP	29.55	6733	25	54.55	495
3160	ANIL KUMAR VIJAY SINGH	29.538	6735	23	52.538	795
6197	MADAN PAL RAM SINGH	29.535	6736	23	52.535	796
6104	DEVENDER KUMAR CHAMEL SINGH	29.53	6739	27	56.53	250
7127	SURESH KUMAR SHIV LAL	29.5	6748	22	51.5	849
6078	RAJESH KUMAR GYASI RAM	29.429	6764	25	54.429	531
9831	JITENDER SINGH BHUP SINGH	29.405	6770	23	52.405	806
8483	SHIV CHARAN MEHAR CHAND	29.4	6773	22	51.4	857
4224	AJAY PAL LAKHMI CHAND	29.367	6777	25	54.367	547
503	SANJAY KUMAR RAM PAL	29.27	6797	25	54.27	573
838	BALJEET SINGH LACHHMAN SINGH	29.24	6804	23	52.24	812
4860	MAMTA DEVI BACHNA RAM	29.222	6809	23	52.222	814
6744	SHRI PAL OM PARKASH	29.166	6822	25	54.166	608
1194	RAVI DUTT MANGE RAM	29.005	6866	24	53.005	776
1839	AMAN SINGH SHYAM LAL	28.969	6874	22	50.969	876
10139	VIJAY SINGH HUKAM CHAND	28.733	6906	24	52.733	790
6706	BALJIT SINGH LALJI RAM	28.689	6911	25	53.689	689
5838	UMED SINGH JOHAR SINGH	28.535	6930	26	54.535	497
1436	DALBIR SINGH MAN SINGH	28.53	6931	26	54.53	501
4451	SUBHASH CHAND MEHAR CHAND	28.52	6932	26	54.52	508
10150	RAJ KUMAR CHHATTER SINGH	28.19	6986	24	52.19	817
9827	ASHAN KUMAR CHANDGI RAM	28.184	6987	24	52.184	818
598	JITENDER SINGH DESHRAJ	28.12	6998	26	54.12	617
1312	RUPINDER KAUR MOHINDER SINGH	28.04	7004	27	55.04	387
8968	SUKHVIR SINGH RATAN LAL	27.455	7050	24	51.455	855
4950	PUSHPA DEVI PARTAP SINGH	26.916	7071	24	50.916	878

50. This Court in Suman Lata's case (supra) had considered the issue whether the candidates who possessed Diploma in Art and Craft from Kurukshetra University are eligible or not. The writ petition was allowed on 22.2.2007. The judgment was challenged before Hon'ble the Supreme Court in SLP (Civil) No. 8670 of 2007-Davender Bhankhar and others v. State of Haryana and others, wherein vide order dated 10.7.2008, status quo was granted. Still the result of selection was declared on 25.3.2010. The candidates with qualification of Diploma in Art and Craft from Kurukshetra University were declared eligible and even appointed. The State was not able to produce any record where the issue was considered by the Commission after the judgment of this Court in Suman Lata's case (supra) or the interim order passed by Hon'ble the Supreme Court in Davender Bhankhar's case (supra) against the aforesaid judgment of this court.

51. From the aforesaid facts, it is established that the Commission was not even aware of the fact that the issue regarding eligibility of the

candidates was pending consideration before this court and after the same was decided in favour of the candidates in Suman Lata's case (supra), the matter was pending before Hon'ble the Supreme Court, where status quo had been granted. Still in violation thereof, the result was declared and the selections were finalised.

DISCREPANCIES IN QUALIFICATIONS

52. The subjects being taught by the Institutions imparting Diploma, which was the essential qualification, were different. There were different parameters for award of marks. In the case of Kurukshetra University, marks for both years were to be taken for the purpose of percentage, whereas in the case of Diploma being awarded by Department of Industrial Training & Vocational Education, Haryana, only one year marks are to be counted. In the case of Diploma being awarded under the control of Department of Technical Education, Haryana, the marks of all six semesters (three years) are to be counted for the purpose of percentage. There is no uniformity. The State should ensure that such types of discrepancies are not there.

53. From the record, it was evident that the candidates, who were selected, were having two years Art and Craft Diploma from different institutions, namely, as run by Director General, Industrial Training Department, Haryana; Kurukshetra University; Department of Industrial Training and Vocational Education, Haryana and Haryana State Board of Technical Education. Apparently, there is no regulatory body in the State to control this area of the education and if it is there, the same is not discharging its duty. It is evident from the fact that the diploma awarded by Kurukshetra University was not recognised initially. The candidates had to approach this court. In Suman Lata's case (supra), this court opined that the diploma awarded by Kurukshetra University is a valid qualification.

54. The discrepancies in the manner the diploma was being awarded by different institutions is evident from the following facts:

- (i) the total marks;
- (ii) the period for which the marks were counted;
- (iii) the subjects; and

(iv) the minimum pass marks.

55. In the diploma being controlled by Director General, Industrial Training Department, there were 11 subjects which are as under:

“Certificate is awarded on the basis of final year marks as given below subject wise:

Sr. No.	Subjects	Maximum Marks	Marks Assmt.	Total Marks	Pass Marks
1.	Education theory	50		50	20
2.	History Art and Art Appreciation	100		100	40
3.	Landscape Painting & Memory Drawing (Practical)	80	20	100	50
4.	Still Life (Practical)	80	20	100	50
5.	Design (Practical)	80	20	100	50
6.	Commercial Art/ Applied Art (Practical)	80	20	100	50
7.	Geometrical Drawing and Scale Drawing (Practical)	80	20	100	50
8.	Computer Graphics (Theory & Practical)	50,30	20	100	50
9.	Clay Modelling (Theory & Practical)	20,20	10	50	25
10.	Graphics Print Making (Theory & Practical)	30,50	20	100	50
11.	Skill in Teaching (Hindi/English/Punjabi)	80	20	100	50
	Grand Total	830	170	1000”	

56. In Kurukshetra University, the marks obtained by a candidate for both the years is counted. The subjects taught are as under:

“Subjects/Papers	Total	
	MM	MPM
Still Life	150	60
2 D Design	150	60
Scale, Geometry, Lettering	150	60
Nature Drawing	150	60
History of Art	100	40

Psychology	100	40
Craft/C.B./ Leather (N.W.)	100	40
Teach. Practice (Less P1)	100	40”

57. In diploma being controlled by Department of Industrial Training & Vocational Education, Haryana, the subjects taught are as under:

Sr. No.	Subjects	Max. Marks	Min. Pass marks
1.	Principles of Education	75	30
2.	Skill in Teaching Practice	150	75
3.	History of Arts and Art Appreciation	75	30
4.	Still-life	100	40
5.	Design	100	40
6.	Land-Scape, Painting	100	40
7.	Geometry, Scale Drawing	100	40
8.	Applied Art	100	40
9.	Wood Work	150	60
10.	Sculpture	100	40
	Total	1050	”

58. In the case of Pushpa Devi, roll no. 4950, the candidate has annexed the marks sheet of Diploma in Arts & Craft (Second Year), 2006 from Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, in which marks have been awarded for two years out of 1000.

59. In the case of Jagbir Singh, roll no. 3293, the mark sheet produced by the candidate is from the Punjab State Board of Technical Education and Industrial Training. The same does not suggest that it is one year or two year course/ diploma. It only mentioned, 'Trade Art & Crafts'. Marks have been awarded out of 950.

60. A perusal of the aforesaid subjects, total marks and minimum pass marks in the courses run by different institutes/University show that there is no uniform standard prescribed. Kurukshetra University is counting marks for both the years as the diploma is for two years, whereas the Industrial Training Department and Department of Industrial Training and Vocational Education is counting marks only for one year.

61. The Director General, Industrial Training Department, Haryana was called in court to clarify the position. He submitted that the course being run by Industrial Training Department is 'tailor-made' for educational qualification as required for a teacher in school, however, the course has now been discontinued as the qualification required for drawing teacher has been upgraded in service rules. He further pointed out that the diploma course is of two years, however, for first year, there is internal examination and the marks are awarded only on the basis of examination for second year.

62. The clarification was also sought from Technical Education Department, Haryana. Mr. D. P. Chauhan, Additional Secretary, office of Haryana State Board of Technical Education, Haryana appeared in court in person. He submitted that the diploma being run by the institutes affiliated with the Board have been approved by All India Council for Technical Education. This is a three years course. The candidates are eligible for teaching as well as industrial job. It depends on the requirement of the employer. He further submitted that three years' course consist of six semesters and marks obtained by a candidate in all six semesters are to be taken together for considering the percentage of marks secured by him/ her. The subjects taught in six semesters were quite different than the subjects being taught in other institutions.

EARLIER SELECTION OF PTIs

63. The issue pertaining to selection for the posts of PTIs, for which applications were called vide same advertisement, i.e., No. 6/2006 was considered by this Court in Sanjeev Kumar's case (supra), where all the steps were taken similar to what were taken in the case in hand, namely, first advertisement for written test and viva-voce by fixing minimum qualifying marks in the written test and for calling the candidates three times the number of vacancies for interview on the basis of performance in written test. As there was large scale of bungling in the test, the same was cancelled and a fresh test was notified, which was again cancelled on account of administrative reasons. A notice was published that the Commission decided to short-list candidates eight times the number of the advertised posts in their respective categories for interview on the basis of

essential academic qualifications. Minimum marks were also specified. Thereafter, it was decided to call all the eligible candidates for interview. In the result, the criteria for selection was published, which was changed to 30 marks for viva-voce instead of 25 marks earlier notified. To show that criteria had been laid down prior to initiation of process of selection, a loose sheet showing the decision taken by the Commission on 3.8.2008 prescribing the criteria was produced. The Court opined that no agenda or meeting note of the Commission having been produced in support thereof, the criteria produced in court was prepared for the purpose of production in Court only. The same did not inspire confidence.

64. In the aforesaid case, this court further opined that despite the Commission being a multi-member body, consisting of Chairman and Members, all the decision were being taken by the Chairman only, hence, it could not be called decisions of the Commission. The Members had only conducted interviews. The matter went in appeal before a Division Bench of this Court. In Vijay Kumar's case (supra), the judgment of Hon'ble Single Bench was upheld. The matter is now pending before Hon'ble the Supreme Court in SLPs filed by the selected candidates.

65. In the case in hand, the Commission became wiser as different criterias laid down for different posts at different times on loose sheets without there being any supporting document were bound in a register and the register was produced in Court.

Discrepancies pointed out in the cases of selected candidates

66. In the case of Sunil Kumar, roll No. 3169, he had appeared in Art and Craft Teachers Training Course examination in September, 2006 and could not possibly be eligible on the cut-off date, i.e., 21.8.2006.

67. In the case of Anita Kamboj, roll No. 10192, the date of application is 26.2.2008. Even the requisite fee was also deposited on 28.8.2008.

68. In the case of Sukhvir Singh, roll No. 8968, no certificate of Diploma in Art and Craft was attached. He was working on the rank of Chelar in Military, which is stated to be equal to Craft Instructor and not Art and Craft Teacher. There are other similar instances.

69. In the case of Parvesh Kumari, roll No. 2250, the only certificate produced on record is the result-cum-detailed marks card from Kurukshetra University for final year examination conducted in May, 2006. The result card does not mention the marks secured by the candidate in the first year. It is not even mentioned in the application form. From the documents submitted with the application, it is not clear as to whether she had passed her first year in diploma or not. In any case, percentage of total marks secured out of 2000 marks are to be counted in the case of diploma from Kurukshetra University, hence, the eligibility of the aforesaid candidate is also questionable.

70. In the case of Sunder, roll No. 3150, he produced a detailed marks certificate of six semesters diploma course in Applied Art and Craft issued by Haryana State Board of Technical Education. The certificate contains the marks secured by the candidate in all six semesters, however, while giving him weightage for educational qualification, his marks only for 6th semester were taken into consideration, which make a lot of difference as the percentage of marks in 6th semester were 81.17, whereas in six semester together the percentage was 74.4.

71. In case of Aman Singh, roll no. 1839, the application does not mention any qualification in Art and Craft. Along with the application, one detailed marks certificate of 'Final Art and Crafts Teachers Training Examination, 1981,' from Department of Industrial Training, Haryana, has been annexed. The certificate does not suggest in any manner that it was two years diploma course or what was the kind of qualification. The marks obtained in the final examination out of 950 were taken for determining the merit of the candidate.

72. Certain candidates, who were having the qualification of Bachelor of Fine Arts, were treated eligible, as the same was found to be higher qualification in the same line. But they were not only awarded marks for the basic qualification but also for higher qualification, which is erroneous, as in terms of Full Bench judgment of this Court in Manjit Singh vs State of Punjab and others 2011(1)SLR 583, a candidate having higher qualification in the same line though cannot be held ineligible but he is not

entitled to extra marks for that qualification, once he is not having the basic qualification required.

73. The contention raised by learned counsel for the private respondents that the petitioners having participated in the process of selection cannot be permitted to assail the same after they were not selected, is merely to be noticed and rejected. It is not in dispute that the criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared. In fact, as has already been noticed in preceding paragraph of the judgment, the criteria was changed. Initially, the selection was to be made on the basis of written test and interview. Then it was changed to interview and later to marks in academic qualification and interview. Similar contention has been rejected by this court in the case of selection for the posts of PTI carried out at the same time in Vijay Kumar's case (supra).

74. Another contention raised by learned counsel for the selected candidates that in case there is discrepancy found in the cases of some of the candidates, their selection can be set aside instead of entire selection. Even this argument is also misconceived considering the fact that there are basic defects in the process of selection from the very beginning as the Commission had not been working as a multi member body. There was no decision taken by the Commission as such. The entire decision making was by the Chairman individually in consultation with the Secretary of the Commission. No criteria was laid down for selection before or immediately after the advertisement was issued, rather, the criteria, on the basis of which the selections are sought to be justified, was 'tailor-made' to ensure selection of particular candidates, as is evident from the marks awarded to the candidates in viva-voce. There was change of criteria after the process of selection was initiated. Hence, the entire selection is vitiated and not in some isolated cases on account of eligibility or otherwise.

75. For the reasons mentioned above, the writ petitions are allowed. The selection of Art & Craft Teachers is quashed. A direction is issued to the Commission to hold a fresh selection in accordance with law, within a period of five months from the date of receipt of copy of the order.

76. Record produced by Mr. Gagandeep S. Wasu, learned Additional Advocate General, Haryana be handed over to him.

20.2.2015

vs

(Rajesh Bindal)
Judge

(Refer to Reporter)