

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

1. CWP No.108 of 2012

Apurv and others ..Petitioners

Versus

State of Haryana and another ..Respondents

2. CWP No.11233 of 2012

Surender Singh and others ..Petitioners

Versus

State of Haryana and another ..Respondents

3. CWP No.11640 of 2012

Sandeep Aggarwal and another ..Petitioners

Versus

State of Haryana and another ..Respondents

4. CWP No.12360 of 2012

Bharat Bhushan ..Petitioner

Versus

State of Haryana and another ..Respondents

5. CWP No.12373 of 2012

Vijender ..Petitioner

Versus

State of Haryana and another ..Respondents

6.	CWP No.16008 of 2012
Bhupendra Singh	..Petitioner
Versus	
State of Haryana and another	..Respondents
7.	CWP No.6213 of 2013
Kuldeep Singh	..Petitioner
Versus	
State of Haryana and another	..Respondents
8.	CWP No.27415 of 2013
Anirudh Sharma	..Petitioner
Versus	
State of Haryana and another	..Respondents
9.	CWP No.17990 of 2014
Ms. Susheela	..Petitioner
Versus	
State of Haryana and another	..Respondents
10.	CWP No.7579 of 2014
Pradeep Ahlawat	..Petitioner
Versus	
State of Haryana and another	..Respondents

11.

CWP No.3421 of 2015

Preetpal Singh Mothsara

..Petitioner

Versus

State of Haryana and another

..Respondents

12.

CWP No.3378 of 2015

Surender Lather and others

..Petitioners

Versus

State of Haryana and another

..Respondents

Date of decision: 29.05.2015

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. Jatinder S. Gill, Advocate for the petitioners
in CWP No.11233 of 2012.

Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Inder Pal Goyat, Advocate for the petitioners in
CWP Nos.12360, 12373 of 2012, 27415 of 2013, 3421
and 3378 of 2015.

Mr. Vaibhav Gupta, Advocate for
Mr. K.K. Gupta, Advocate for the petitioners
in CWP Nos.16008 of 2012, 7579 of 2014 and 17990 of
2014.

Mr. B.S. Rathee, Advocate
for the petitioner in CWP No.6213 of 2013.

Mr. D.S. Nalwa, Additional Advocate General, Punjab,
for respondent No.1 – State.

Mr. H.N. Mehtani, Advocate
for respondent No.2 in all the writ petitions.

Daya Chaudhary, J.

By this judgment twelve cases bearing CWP Nos.108, 11233, 11640, 12360, 12373, 16008 of 2012, 6213, 27415 of 2013, 7579, 17990 of 2014 and 3421 and 3378 of 2015 shall stand disposed of as the facts and the question of law involved in all the cases are the same. For facility of reference, the facts are being extracted from CWP No.108 of 2012

As per case of the petitioners, they were selected to the post of HCS (Executive Branch) and their names were recommended by the Haryana Public Service Commission in the year 2004 but appointment letters were not issued as the code of conduct was imposed due to Assembly elections in the State. The appointment was kept in abeyance due to change of Government. Some of the irregularities and illegalities were found in the selection process and, therefore, the vigilance inquiry was conducted. When there was no progress in the inquiry conducted by the Vigilance Bureau, the selected candidates approached this Court for direction to respondents. In the inquiry, total 64 candidates were identified against whom some sort of discrepancies were noticed. The petitioners are stated to be those candidates against whom, no discrepancy or irregularity was found in the selection process.

The case of the petitioners is that no incriminating material was found against them and they are entitled to be appointed in view

of the law laid down in various judgments specially the law laid down in **Inderpreet Singh Kahlon vs. State of Punjab and others, (2006) 11 SCC 356.**

Mr. Gurminder Singh, learned senior counsel for the petitioners submits that the petitioners were duly selected as per their respective merits and were also recommended for appointment against the posts advertised on 24.01.2004. The selection was held in accordance with the Punjab Civil Services (Executive Branch) Rules, 1930 and the Haryana Civil Services (Executive Branch) and Allied Services and other Services Common/Combined Examination Act, 2002. In CWP No. 3768 of 2005 and CWP No.5437 of 2005, directions were issued to respondent No.1 to issue appointment letters to the candidates, who had duly been selected in accordance with law. Learned counsel also submits that the posts are still lying vacant and the petitioners cannot be denied appointment when no incriminating material was found against them. The rights of the petitioners have already been protected by way of an interim order dated 21.04.2009. Learned counsel also submits that final report of Vigilance Bureau has been submitted on 09.11.2011 and still petitioners have not been issued appointment letters. Out of total 102 selected candidates, some irregularities and illegalities have been noticed against 64 candidates only. In the report submitted by Vigilance Bureau, it was specifically mentioned that it was not a case of any irregularity or illegality but it was a case of unusuality.

Mr. Rajiv Atma Ram, learned senior counsel has also submitted that the action of the respondents is not only *mala fide* but arbitrary as well. There is no reason to deny appointment to the petitioners when the petitioners have been selected on merit and no irregularity or illegality has been found in the vigilance inquiry. Learned counsel for the petitioners have relied upon judgment of Hon'ble the Supreme Court in **Inderpreet Singh Kahlon's case (supra)** as well as judgment of this Court in **Sirandip Singh Panag vs. State of Punjab and others, 2008(4) RSJ 288** in support of his contentions.

Learned State counsel submits that no legal right of the petitioners has been infringed and appointment cannot be claimed as a matter of right. The claim of the petitioners in the present writ petitions has already been decided and negated by Hon'ble the Apex Court in **Civil Appeal No.5803 of 2007** along with other connected civil appeals vide judgment dated 11.12.2007. Learned State counsel further submits that in the judgment passed by Hon'ble the Apex Court, it has specifically been mentioned that there is no compelling reason to issue direction to State to offer appointment in case, any vacancy has arisen after advertisement made in January 2004 or after abolition of posts on 13.05.2005. The posts to the petitioners cannot be offered beyond the posts advertised. The advertisement was issued in the year 2004 and recruitment was made on 25.03.2012. Learned State counsel also submits that judgments relied upon by learned counsel for the petitioners in **Inderpreet Singh Kahlon's**

case (supra) is not applicable. Learned State counsel also submits that serious allegations were levelled against members of the Commission by the unsuccessful candidates and it has been found in the vigilance inquiry that not only the tempering of the marks are there but cuttings are also there, which have not been found to be counter signed by the examiner. The posts against which, the petitioners are claiming their right have already been filled up in the year 2009. Learned State counsel has also relied upon judgment of Hon'ble the Supreme Court in **Joginder Pal and others vs. State of Punjab and others, 2014(3) RSJ 752** as well as judgment of this Court in **Mohinder Singh vs. State of Haryana and another, 2007(1) RSJ 758.**

Mr. H.N. Mehtani, learned counsel appearing for respondent No.2-Commission submits that it is for the State to issue appointment to the petitioners. The selection made by the Commission was fair. As per report of the Vigilance Bureau neither any irregularity nor illegality has been found in the inquiry. After selection, the names of the candidates were recommended for appointment.

Heard arguments of learned counsel for the parties and have also perused the documents on the file.

Admittedly, the Haryana Public Service Commission invited applications vide advertisement No.12 dated 24.01.2004 for recruitment to the post of HCS (Executive Branch) and other Allied

Services by way of direct recruitment. The details of the posts are reproduced as under: -

S. No.	Name of serfice/post	Gen.	SC'A of Haryana	SC'B of Haryana	BC of Haryana	Ex Service men of Haryana	Physically handicapped of Haryana	Total
1	H.C.S. (Ex.Br.)	38	06	07	05	02	-	58
2	DSP	06	01	01	-	-	-	08
3	ETO	14	02	02	02	01	-	21
4	A Class Tehsildar	01	-	-	-	-	-	01
5	Asst. Registrar Cooperative Societies	01	-	-	-	-	-	01
6	BDPO	07	01	01	03	-	-	13

After completing all process of the selection, the respondent-Commission issued a final list of 102 candidates recommending appointments to the HCS (Executive Branch) and the Allied Services. Petitioners in all the petitions are the selected candidates. After recommending their names by the H.P.S.C., they were issued appointment letters. The unsuccessful candidates filed a bunch of writ petitions wherein serious allegations were levelled against the then Chief Minister and Chairman as well as other members of the Commission. The allegations of fraud and misuse of political influence were also levelled in the writ petitions filed by unsuccessful candidates, which were disposed of with a direction that an inquiry be conducted by the Vigilance Bureau. The selected

candidates also filed writ petitions praying that they were found meritorious but with the change of government, they were not appointed. The selected candidates filed CWP No. 2130 of 2009 before this Court praying that they were duly selected but still not appointed because of the vigilance inquiry. It was also the grievance of the selected candidates that there was no progress in the vigilance inquiry and posts were not being filled up inspite of the fact that posts were still lying vacant. The said writ petition was dismissed on 20.08.2010. In view of interim order passed on 21.04.2009, it was mentioned that in view of the order passed by Hon'ble the Apex Court that Vigilance inquiry has been initiated to go into the whole matter and the petitioners may take recourse to other remedies if available to them under law if there was any subsequent event, while disposing of the application seeking clarification of the order. While dismissing CWP No.2130 of 2009, it was mentioned that the rights of the petitioners would survive in case, the selection is found to be without any fault in vigilance inquiry.

The petitioners, who have approached this Court now, have stated that no discrepancy has been found in the vigilance inquiry. Neither any cutting was there nor the marks have been increased/decreased. In case, some marks have been increased, still the result is not going to be effected in any manner.

Admittedly, **CWP No.6099 of 2005** titled as **Mohinder Singh vs. State of Haryana and others** and other connected writ

petitions bearing **CWP Nos.5437, 2839, 14371, 6258, 7683, 14317, 4818, 14370, 16951, 18572, 4457, 12540, 3768 and 2897 of 2005** were filed wherein petitioners prayed for direction to respondents to issue appointment letters as they were duly selected. They have also prayed for quashing of a notification dated 13.05.2005 issued by the State of Haryana whereby cadre strength of Haryana Civil Services (Executive Branch) was reduced from 300 to 230. The said writ petitions were decided vide judgment dated 12.10.2006 and the aforesaid judgment was challenged by way of filing **Civil Appeal No.5803 of 2007** and other connected appeals before Hon'ble the Apex Court and all appeals were dismissed on 11.12.2007.

The relevant portion of the judgment is reproduced as under: -

35. The High Court, for good and sufficient reasons, was of the opinion that the State had acted bonafide in issuing the said notification dated 13.05.2005. There cannot be any doubt whatsoever that the State in absence of any other factor was obligated to make appointments keeping in view the reduced cadre strength. Selection process has several stages. The Commission holds a constitutional duty to see that the entire selection process is carried out strictly in accordance with law fairly, impartially and independently. The selectors appointed by the Commission or its Chairman and members are forbidden to take recourse to favouritism. Showing of any favour to any

candidate on an irrelevant or extraneous consideration would be contrary to the constitutional norms of equality envisaged under Articles 14 and 16 of the Constitution of India. Fear or favour on the part of the Commission cannot but be condoned.

36. In this batch of appeals, we are not concerned with the questions which have been raised by the State of Haryana in its counter-affidavit in regard to the acts of omission and commission on the part of the Commission but there cannot be any doubt whatsoever that there existed a cloud which is required to be cleared. Unsuccessful candidates have levelled serious allegations against the members of the Commission. They may or may not be correct. The Vigilance Bureau has initiated an enquiry into the whole matter. Such an enquiry should, in our considered opinion, be allowed to be continued unless the State in terms of the report made by the Vigilance Bureau and upon making an enquiry of its own satisfies itself that the selection process was not tainted. Its disinclination to make an appointment till then cannot be found fault with. It is not a case where in view of the provisions of Act No. 4 of 2002 as also the 1930 Rules, any piecemeal appointment can be made. The examination is a combined examination. It is an integrated process. Selection of candidates whether in the civil service or allied service would depend upon the performance of the candidates. Preference

in the posts is required to be adjusted on the basis of such performance. All appointments, therefore, are inter-linked. Furthermore, no appointment can be made beyond the posts advertised for. [See Ashok Kumar and Others v. Chairman, Banking Service Recruitment Board and Others (1996) 1 SCC 283]

37. It is, therefore, difficult for us to hold that the decision of the State was either mala fide or unreasonable or unfair or arbitrary. It has not been alleged that the State was acting for unauthorized purpose.

38. We are not oblivious of the constitutional scheme that the decisions taken by one government in public interest itself cannot be a ground for review thereof at the hands of the successor government. It is not the government which is in the seat of the power, matters in this behalf, but what matters is the public interest.

45. There is another compelling reason why we think not to issue any direction upon the state to order appointment of the appellants in the vacant posts. Section 4 of the 2002 Act lays down that no appointment can be made beyond the number of posts advertised or against the posts which were not advertised. In terms of the aforementioned provision, therefore, any vacancy which had arisen after the advertisement made in January, 2004 or after abolition of posts on 13.05.2005, which had not been advertised, cannot be offered to the appellants herein. The Government of Haryana

also states that 10 posts are kept vacant for unforeseen demands. It was further stated that on 13.05.2005, 290 officers were holding posts against 230 sanctioned posts. Thus, any vacancy which had arisen by reason of retirement or death having regard to Section 4 of the 2002 Act is also not capable of being offered to the appellants herein.”

Hon'ble the Apex Court of India in the above mentioned judgment dated 11.12.2007 has also recorded the findings as under: -

“We also do not see any reason to interfere with the impugned notification dated 13.05.2005. What would be the need of the State and how an administration shall be run is within the exclusive domain of the State. The power of judicial review in such matter is very limited. The superior judiciary ordinarily would not interfere in a matter involving policy decision. We do not mean to say that the policy decision of the State is beyond the realm of judicial review. However, power of judicial review can be exercised only on the basis of known legal principles.”

It is apparent from the observation made by Hon'ble the Supreme Court that the prayer of the petitioners for appointment and quashing of notification of reducing strength was not accepted. Even after decision of SLP, some of the candidates filed **CWP No.2130 of 2009** titled as **Bharat Bhushan and others vs. State of Haryana and others** praying that the Vigilance inquiry be conducted in a time bound manner but the same was also dismissed as having been

rendered infructuous vide order dated 20.08.2010 as an affidavit was filed by the State that vigilance inquiry shall be completed within a period of six months. The State Vigilance Bureau submitted its report on 09.11.2011 mentioning therein that certain irregularities have been found to have been committed in the selection. Not only irregularities and illegalities have been pointed out but marks of certain candidates were also found to have been increased.

The issue and grievance in the present writ petitions have already been settled by Hon'ble the Apex Court while affirming judgment of this Court. The petitioners have no fresh cause of action.

Moreover, the selected candidates have no right to claim appointment merely on the basis of recommendation made by Haryana Public Service Commission. The cadre strength has been upheld by this Court in judgment dated 12.10.2006 as well as by Hon'ble the Apex Court vide judgment dated 11.12.2007. The relevant observation made by this Court is reproduced as under:-

“(23) We also do not agree with the submission of the learned counsel for the petitioners that the decision of the State Government for fixing the cadre strength at 230 posts is vitiated by mala fide. In our opinion, the learned Advocate General has correctly relied on the judgment of the Supreme Court in the case of S. Partap Singh (Supra). In the aforesaid judgment, the Supreme Court has clearly held as follows:-

“(8). Doubtless, he who seeks to invalidate or nullify any act or order must establish the

*charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may sometimes be done (See **Edgington v. Fitzmaurice, (1884) 29 Ch D 459**). The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting in the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. We must, however, demur to the suggestion that mala fide in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."*

This rule has been reiterated by the Supreme Court in the case of E.P. Royappa (supra) in the following words:-

"(92). Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order

of creditability."

To further justify the determination of cadre strength of 230 posts, the learned Advocate General, Haryana has placed heavy reliance on the observations made by the Supreme Court in the case of N. Ramanatha Pillai (supra). In this case, it has been held by the Supreme Court as follows:-

"14.The first question which falls for determination is whether the Government has a right to abolish a post in the service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Governmental policy. Every sovereign Government has his power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public."

*(24) The law with regard to creation and abolition of posts was again reiterated by the Supreme Court in the case of **S.S.Dhanoa v. Union of India & Ors. JT 1991(3) S.C. 290**. In paragraph 30 of the judgment, it has been clearly held as follows:-*

"30. The last of the contentions advanced on behalf of the petitioner is in two parts. The first part relates to the material loss on account of the cutting short of the tenure of the petitioner.

Such loss is not unknown in a service career and is one of the exigencies of employment. The creation and abolition of post is the prerogative of the executive, and in the present case of the President. Article 324(2) leaves it to the President to fix and appoint such number of Election Commissioners as he may from time to time determine. The power to create the posts is unfettered. So also is the power to reduce or abolish them. If, therefore, the President, finding that there was no work for the Election Commissioners or that the Election Commission could not function, decided to abolish the posts, that was an exigency of the office held by the petitioner. In fairness to the petitioner, we may record here that Sh. Gopal Subramanyam appearing for him made it clear at the very outset that the petitioner had not approached the court to make a grievance of his material loss but to assert the principle that the independence of the Election Commission should not be permitted to be tampered with, either directly or indirectly by the subterfuge of the abolition of the posts. We have dealt with this aspect earlier in quite some detail."

Hon'ble the Apex Court while upholding the decision of this Court has also relied upon judgments in **Dr. Rai Shivendra Bhahadur vs. The Governing Body of the Nalanda College, AIR 1962 SC 1210, Mani Subrat Jain and others vs. State of Haryana and others, (1977) 1 Supreme Court Cases 486, State of Haryana**

vs. Subhash Chander Marwaha, (1974) 3 SCC 220 and Jatinder Kumar and others vs. State of Punjab and others, (1985)1 Supreme Court Cases 122 as well as A.N. D'Silva vs. Union of India, AIR 1962 SC 1130.

The judgment relied upon by learned counsel for the petitioners in **Inderpreet Singh Kahlon's case (supra)** is not applicable in the present writ petitions as in that case, the services of the candidates were terminated but in the present case, petitioners have not been appointed after their recommendation by Haryana Public Service Commission. Moreover, the selection was not fair as allegations against chairman and members of Commission were also levelled. It would also be relevant to mention here that Hon'ble the Supreme Court while deciding the bunch of writ petitions in **Jitender Kumar and others vs. State of Haryana and another, 2008(2) SCC 161** has stated that certain serious allegations are there against the then Chairman and members of the Commission and thereafter, the President of India has also removed the then Chairman and two members on the ground of misbehaviour as per decision of Hon'ble the Supreme Court, which is reproduced as under: -

“Before we proceed to discuss the evidence on each approved article of charge, as well as record our findings in that regard, it is imperative to note, as already held, that we are only examining Charges 1 to 5, 8 and 9. Charges 6 and 7 do not require examination by this Court as they are ex-facie beyond the permissible

scope of the Presidential Reference. The second aspect, which requires to be noticed by this Court, is that though approved articles of charge have been framed against all the private respondents, while the proceedings were pending, private respondents, namely, Duda Ram, Chattar Singh, Yudhir Singh, Satbir Singh, Om Parkash and Dr. Ranbir Singh were suspended vide order dated 9th August 2008 and, thereafter, they have ceased to be the Members of the Commission as their terms of appointment has come to an end by efflux of time during 9th June, 2009 to 9th August 2010. The learned counsel, appearing for the State, submitted that though in view of the judgment of this Court in the case of Reference 1 of 1983 [(1990) 4 SCC 262, para 8], the Court may be called upon to examine the misbehavior even in respect of the Chairman/Member whose term has already expired, still he has specific instructions not to press for recording of findings in the inquiry against these respondents. Consequently, while accepting this request which was unopposed, we further declare that this Court would not be examining the alleged misbehavior of these private respondents.”

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“This charge has been framed against four of the nine private respondents. It is alleged that Mehar Singh Saini along with Duda Ram, O.P. Bishnoi and Chattar Singh as members of the Selection Committee recommended the name of

Pradeep Sangwan for the post of Drug Inspector on the basis of bogus experience certificate.....

..... As a result of the above discussion, we are of the considered view that the conduct of the Members of the Commission, in processing the application of Pradeep Sangwan, endorsing and approving his name for appointment to the post of Senior Drug Inspector, does not meet the standards of behavior, integrity and rectitude required to be maintained by the office they were holding. Thus, their behavior with respect to this article of charge would certainly fall within the ambit of misbehavior justifying their removal from office.....

Article of Charge 3 to 5, 8 and 9

Approved article of charge 3, 5, 8 and 9 pertaining to alleged acts, omissions and commissions amounting to misbehavior have been framed against all the respondents in the present inquiry.....

..... We have dealt with all the above points in issue together for the purposes of convenience and to maintain continuity. We have no doubt in coming to the conclusion that the Chairman and Members of the Commission (private respondents herein) adopted a non-cooperative attitude and declined to furnish relevant records to the concerned authorities/investigating agencies. Furthermore, passing of resolutions and resistance despite directions/observations of the Court to comply with the notices issued by the investigating

agencies to furnish records are acts which lack bona fides. The claim of privilege was sought to be invoked as a ploy to prevent production of records, which would have exposed the irregularities, illegalities and manipulations in the process of selection. In the name of the constitutional authority, the Chairman and Members of the Commission certainly violated the expected standards of behavior. They not only adopted a non-cooperative attitude but also unduly delayed completion of the inquiry/investigations which, in fact, are stated to be pending at different stages even to this day.”

In view of the facts as mentioned above and also the fact that the controversy in dispute has been settled upto Hon'ble the Supreme Court and now there is no ground to issue any direction when the allegations against the then Chairman and members of the Commission have been proved, selection cannot be bifurcated on the ground that some of the candidates were selected fairly in as much as the entire selection process has been found to be based on favouritism and on certain considerations. Thus, it cannot be said that the selection of the petitioners was fair.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioners and the writ petitions being devoid of any merits are hereby dismissed.

29.05.2015
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(DAYA CHAUDHARY)
JUDGE