

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.8555 of 2008(O&M)

Date of Decision:-23 -12-2016

Rajesh Dhiman.

.....Petitioners.

Versus

The State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. M.S.Sindhu, Advocate for Petitioners.

Mr. Harkesh Manuja, Additional Advocate General, Punjab
for State-respondent nos.1 to 4.

None for respondent no.5
(earlier represented by Mr. S.S. Deol, Advocate).

None for respondent no.6
(earlier represented by Mr. A.S. Ahluwalia, Advocate).

JASWANT SINGH, J.

1. The present Writ Petition has been filed by the Petitioner for quashing of the impugned order dated **03.03.2008** (Annexure P-11) passed by Respondent No. 1 i.e. State of Punjab; and order dated **18.03.2008** (Annexure P-12) by Respondent No. 3 i.e. Punjab Public Service Commissioner (for short PPSC) whereby the claim of the Petitioner for allocation to PCS (Executive Branch) based upon his merit in the PCS (EB) and Allied Services Examination-1998 (Reconducted in 2003) (hereinafter referred as Re-Conduct 2003 Exam) has been rejected; and further prayed

for issuance of directions to the respondents to allocate the Petitioner to PCS (Executive Branch) on the basis of his merit against 4th post reserved for Backward Class category of Punjab, with all consequential benefits.

The petitioner filed an affidavit dated **27/28.09.2016** in para 2 thereof he has specifically submitted as under:-

“ That in case the Writ Petition is allowed by this Hon’ble Court, the deponent will forego his actual financial claims and he will be satisfied with the notional financial benefits resulting from the re-allocation as PCE(EB) on the basis of 1998 Examination (Re-Conduct 2003 Exam) ”

In para 11 of the additional affidavit, the petitioner confined his claim for re-allocation as PCS(EB) on the basis of 2003 re-conduct exam alongwith consequential benefits including notional monetary benefits.

2. It is argued on behalf of the petitioner that petitioner is entitled to allocation to PCS(EB) on the basis of merit against the 4th post reserved for BC category in Re-Conduct 2003 Exam due to the following reasons:-

- i) In 1998 PCS (EB) Examination he stood at No.1 in the merit list of BC category and was appointed as PCS(EB) in the year 1999.
- ii) In Re-Conduct 2003 Exam he was at Sr.No. 5 in the merit list of OBC and was appointed as Tehsildar.
- iii) Again on the basis of 2009 PCS Examination he was selected and appointed as PCS (EB) and continuing as such.
- iv) One Sh. Dinesh Singh, who was at Sr. No. 5 of the combined merit list of Re-Conduct 2003 Exam resigned immediately after joining and thus one more vacancy became available in the PCS (EB).

Sh. Upkar Singh, who was at No. 1 in the merit list of BC of Re-Conduct 2003 Exam could be adjusted against that vacancy even without disturbing any other candidate being within the zone of appointment against the advertised posts in the General Category on account of his higher merit than the candidates in the General category.

- v) Even otherwise the State Government has admitted in their additional affidavit dated 22.08.2012 filed by the Deputy Secretary that vacancy caused consequent upon the resignation of Sh. Dinesh Singh has been occupied by the petitioner in 2009 examination and as such this vacancy was of the earlier to 2003 Re-Conduct Exam. Therefore, there is no need to shift anyone in view of the fact that petitioner is already working as PCS (EB) against that vacancy.
- vi) Undisputedly the petitioner has been granted the benefit of past service as PCS (EB) rendered from 1999 to May 2003 in compliance of the judgment of Hon'ble Supreme Court in **Joginder Pal Singh's case**.

It has been candidly submitted on behalf of the petitioner that he is not claiming any financial benefits, rather he will confine his prayer only to notional pay fixation etc and he will be satisfied if he is assigned his correct placement in the seniority list as per the merit list prepared on the basis of 2003 Re-Conduct Exam.

On the other hand it is argued on behalf of the official respondents that there is no merit in the present writ petition and the same deserves to be dismissed in view of the fact that there is no provision under the Rules of 1976 that if a reserved category candidate secures more marks

than the general category candidate, then he (reserved category candidate) is required to be considered against a vacancy meant for general category and a strong reliance is placed upon single Bench judgment rendered in **Hari Ram Yadav's case (*supra*)** which finds mention in the impugned order as well. It is also argued that there is a considerable delay as the selection pertains to the year 2003 Re-Conduct Exam and the present writ petition is filed in the year 2008. It is further argued that even otherwise the acceptance of the claim of the petitioner for reallocation to PCS(EB) at this stage will cause a great reshuffling amongst the members of the service and that being a very complicated exercise will also disentitle the relief in the present writ petition.

3. To appreciate the controversy involved in the present case, it will be relevant to discuss the background leading to the conduct of PCS Re-Conduct 2003 Exam.

4. The PPSC advertised 92 posts of PCS (Executive Branch) and Allied Services in February 1998 which included 28 posts of PCS(EB), out of which 03 posts were reserved for BC Category of Punjab and 01 for BC Ex-Service Men Punjab, 16 posts were for general category and remaining for other reserved categories. The Petitioner had applied under BC Category. The written examination was held between 02.07.1998 and 02.08.1998 and the result was declared on 25.01.1999. Total 273 candidates were called for interview held between 20.04.1999 to 22.06.1999 and final result was declared on 11.07.1999. The petitioner stood at Sr. No. 01 of the merit list of under BC category having Roll No. 1664 and secured 427.87 marks. He was declared successful and was selected and appointed as PCS(EB) in Sept. 1999. After joining of the candidates on the

basis of 1998 examination, there were allegations against the then Chairman of PPSC, namely, Mr. Ravinder Pal Singh Sidhu, and on consideration of the matter the State Govt. decided to cancel the entire selection made for recruitment to PCS(EB) allied service as well as PCS (Judicial) during the period 1998. Consequently, in May 2002, all recruitments made during the tenure of Mr. Sidhu were annulled by the Government of Punjab and the services of the petitioners alongwith other candidates were dispensed with by way of identical orders, for illustration one of such order pertaining to Jaspal Singh Gill, PCS(EB) passed on 23.05.2002 reads as under:-

“ Whereas Sh. Jaspal Singh Gill was appointed to PCS (EB) from Register ‘B’ vide order No. 1/5/94-5 PCS/3020 dated 06.10.1999 and he joined his duties as such on 08.10.1999. As per rule 23 of the Punjab Civil Services (Executive Branch) (Class I) Rules, 1976 he was put on probation of two years extendable up to a maximum of three years. The Governor of Punjab is pleased to dispense with the services Sh. Jaspal Singh Gill with immediate effect. ”

5. The aggrieved persons filed various Writ Petitions before this High Court against the action of the State Government and Petitioner also filed CWP No. 8589 of 2003. All the Writ Petitions including that of petitioner were dismissed by the Full Bench by way of common order dated **07.07.2003** alongwith CWP No. 8421 of 2002 titled **Amarbir Singh and others Vs State of Punjab and Others** being the lead case reported as **2003 (5) SLR 398.**

6. Aggrieved against the aforesaid judgment/order dated **07.07.2003**, the Writ Petitioners approached Hon’ble Supreme Court by way of Civil Appeals No. 3411-21 of 2005, and which were disposed vide

judgment dated **03.05.2006** and reported as **Inderpreet Singh Kahlon & others Vs State of Punjab, (2006) 11 Supreme Court Cases 356** and para nos. 91 to 95 of the Judgment being relevant read as under:-

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

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

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

94 The impugned judgment as also the orders of the State Government and the High Court are, thus, liable to be set aside and directions are issued. Although the impugned judgments cannot be sustained, we are of the opinion that the interest of justice would be sub served if the matters are remitted to the High Court for consideration of the matter

afresh. However, with a view to segregate the tainted from the non-tainted, and that in the interest of justice the High Court should be requested to constitute two independent Scrutiny Committees – one relating to the executive officers and the other relating to the judicial officers.

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

Emphasis supplied

Kahlon's case (*supra*), the matter/issue was referred to a larger Bench of Hon'ble five Judges in the High Court on the judicial side and simultaneously a Committee of three Judges of the High Court was constituted with the specific task to separate the tainted candidates from the non-tainted candidates selected to the Executive posts in 1998 Examination by the PPSC. The said Committee submitted its report dated 08.02.2007 while observing as under:-

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

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

Recommendations of the Committee with regard to PCS (Executive) Exams 1998 were accepted by the Bench of Five Judges of the High Court and dismissed the Writ Petitions (including CWP No.8589 of 2003 filed by the petitioner) again vide judgment dated **31.05.2013**.

8. It is pertinent to mention here that so far as the cancellation of selections to PCS (Judicial) Exam for 1999, 2000, 2001 after remand in

Kahlon's case, the High Court allowed the Writ Petitions filed by the terminated candidates on 27.05.2008 in a case titled as **Sirandip Singh Panag Versus State of Punjab** reported as **2008(4) SLR 432**, which were challenged before the Hon'ble Supreme Court by the High Court of Punjab and Haryana and the same was upheld vide judgment dated **18.03.2010** in a case reported as **High Court of Punjab and Haryana Versus State of Punjab, 2010(11) SCC 684**.

9. The petitioner being placed in the category of non-tainted candidates by the Committee filed Civil Appeal No. 5602 of 2014 against the judgment dated **31.05.2013**, which was heard alongwith Civil Appeal No.5589 of 2014 and other connected appeals by the Hon'ble Supreme Court and the same were partly allowed vide judgment dated **23.05.2014** reported as **Joginder Pal and others Versus State of Punjab and others, (2014) 6 Supreme Court Cases 644**. The relevant para Nos. 45 to 48 of the judgment being material, read as under:-

“ 45. *There is yet another crucial development which needs to be mentioned here. In the first instance, it is the State which had taken a decision to cancel the entire selection process. However, after the remand order passed in Inderpreet Singh Kahlon case , in the exercise done by the Committee screening out the tainted from non-tainted candidates, the State came forward and showed its willingness to take back these candidates who were non tainted and were selected on the basis of their merit. A specific affidavit to this effect was filed in the High Court. To the same effect the affidavit has been filed before us also.*

46. *We are of the opinion that once those untainted officers, who were appointed under the same environment, have been allowed to continue, there is no reason to deprive this benefit*

of such recourse to the PCS(EB) and allied Services.

47. We may note that the High Court has recorded in the impugned judgment that 66% cases were found to be of the persons given appointment who were tainted, which influenced the entire selection process. However, during the course of arguments, it was placed before us that the aforesaid percentage is worked out by taking the case of direct recruits and nominated candidates together. If the figures are separately taken, out of 93 direct recruits, 76 have joined and only 10 are found to be tainted. In fact, the percentage of such tainted candidates in nominated category was much high i.e. 80%. It was, thus, argued that the cases of direct recruits cannot be taken along with those in nominated category, who influenced the decision in their matter as well. This is also a supportive and important fact which goes in favour of these appellants viz. the non tainted direct recruits.

48. The aforesaid discursive exercise prompts us to set aside the judgment of the High Court in respect of these persons with the direction that the appellants be allowed to join the duties forthwith. It is, however, made clear that the intervening period during which they remained out of service shall not count for seniority or any other benefits. However, these persons shall be given the benefits of service tendered by them earlier viz. from September 1999 till 22.05.2002, when they actually worked, for the purpose of seniority and future promotion, etc. These appeals are partly allowed to the aforesaid extent. There shall, however, be no order as to costs. ”

Emphasis supplied

Thus from the above narration of the admitted facts, it is evident that the selection of the petitioner to PCS (Executive Branch) in the category of BC based upon 1998 Combined Competitive Examination was

upheld by the Hon'ble Supreme Court, the termination of services in May

2002 was set aside with stated consequential benefits.

10. It so transpires that after termination of 1998 selected PCS Officers in May 2002 and during the pendency of first round of litigation before this Court, the Govt. of Punjab took a decision to reconduct the 1998 PCS (EB) and Allied Services Exams called the 2003 Reconduct Exam restricted to the candidates who had appeared in the 1998 examination. The petitioner again appeared in the 2003 Re-Conduct Exam and the result was declared on 25.11.2003. The petitioner was placed at Sr. No.5 of the merit list of Backward Class category. The first four candidates placed in the merit of Backward Class were allocated to PCS (Executive Branch) whereas petitioner was appointed as Tehsildar. The factual position in the BC category is as under:-

S.No	Roll No.	Name of the Candidate	Marks obtained
1	10270	Upkar Singh	471.46
2	10812	Gurpreet Singh Thind	464.60
3	10300	Dalwinder Singh	432.99
4	10839	Paramjit Singh	427.48

The petitioner was at Sr. No.5 and his particulars are as under:-

S.No	Roll No.	Name of the Candidate	Marks obtained
5	10521	Rajesh Dhiman	420.91

11. The last General Category candidate bearing Roll No. 10555, namely, Rahul Chabba (respondent no.5) obtained 453.60 marks and his name appears at Sr. No. 19 of the combined result (Annexure P-15). Upkar Singh (respondent no.6) and Gurpreet Singh Thind both from BC category obtained higher marks than the last General Category candidate i.e. Rahul Chabba and therefore, they were entitled and ought to have been shifted to

General category; but in fact they were wrongly adjusted against the B.C. category. The petitioner was at Sr. No. 5 in the B.C. category, therefore, was erroneously offered appointment as Tehsildar instead of PCS (Executive Branch).

The petitioner joined his duties in the month of July 2004 as Tehsildar and made a representation dated 04.03.2005 (P-5) for his encadrement in the cadre of PCS (EB), relying upon the instructions dated 10/12.07.1995 (Annexure P-3) issued by the Govt. of Punjab, Department of welfare of SCs and BCs (Reservation Cell) which, as per principle of law provided that reserved category candidates could compete for non reserved posts and in the event of their appointment to the said posts (non reserved), their numbers could not be added and taken into consideration for working out the percentage of reservation simply because some of the members of the reserved class have been appointed/permitted to join against the general seats.

12. The claim of the petitioner was not considered by the respondents, hence he filed CWP No. 11061 of 2005 inter-alia praying for the following reliefs:-

“ a) a writ in the nature of mandamus directing the respondents to consider and appoint the petitioner in PCS(EB) against the four vacancies of Backward Class available after adjusting the first Backward Class candidate against the general vacancy as he has secured more marks than the last candidate selected in the general category in accordance with the law laid down by the Division Bench of the Hon’ble High Court in Jaskaran Singh vs. State of Punjab and others, 1995(1) RSJ page 510 and other subsequent judgments. ”

13. The Writ Petition was disposed of by this Court vide order dated 22.07.2005 in the following terms:-

“ Notice of motion, Mr. A.G. Masih, DAG, Punjab, who is present in Court accepts notice on our asking and very fairly states that the petitioner may approach the respondents for seeking decision upon the representation.

In view of the above, the respondents are directed to take a conscious and cautious decision upon the representation dated 04.03.2005, copy Annexure P-6 filed by the petitioner, within a period of one month from today. It shall be appreciated if the decision is taken after giving appropriate opportunity of hearing to the petitioner and that a speaking order be passed accordingly. If the relief is granted to the petitioner, be granted within 15 days thereafter. ”

14. Govt. of Punjab/Respondent No.1 passed order dated 28.01.2006 (P-8) rejecting the claim of the petitioner on the ground that petitioner had been placed at Serial No. 5 in the merit list of candidates belonging to B.C. category and that only first 4 candidates in the B.C. category could be appointed against the 4 posts of PCS(EB) meant for Backward Class category. Similarly Respondent No.3, Punjab Public Service Commission also rejected claim of the petitioner vide order dated 13.03.2006 (Annexure P-9) in identical terms.

15. After rejection petitioner again submitted representation dated 20.08.2007 (P-10) but the same was not decided, therefore, he again filed CWP No. 19423 of 2007 challenging the order dated 28.01.2006 (P-8) and 13.03.2006 (P-9). The aforesaid Writ Petition was disposed of on

21.12.2007 by a Hon'ble Division Bench of this court with a direction to the

respondents to take a final decision and to pass a fresh speaking order within three months. Thereafter respondent No.1 passed the impugned order dated 03.03.2008 (P-11) rejecting the claim of the petitioner. Similarly respondent No.3 (PPSC) also passed the impugned rejection order dated 18.03.2008 (P-12). While rejecting the claim of the petitioner, respondents have mainly relied upon judgment dated 05.10.2005 passed by the Ld. Single Bench of High Court of Allahabad in **Civil Misc. Writ Petition No. 42041 of 2000 Hari Ram Yadav Vs. State of U.P. and others.**

After rejection, petitioner filed the present Writ Petition challenging orders dated 03.03.2008 (P-11) and 18.03.2008 (P-12).

16. Upon notice PPSC-respondent No. 3 filed Counter affidavit dated 27.08.2008 denying the contention of the petitioner primarily on the ground that neither there is any provision in the PCS(EB) Class-I Rules, 1976; nor there are any instructions that if a reserved category candidate secures more marks than the General Category candidate, then he is required to be considered against a vacancy meant for General Category on the basis of competitive examination. Respondent no.3 in support of their contention again relied upon judgment of Hari Ram Yadav's case (*supra*) and also mentioned that in view of letter dated 08.09.2005 (P-7) of the Welfare Department, the Commission had sought clarification from the Personnel Department, Government of Punjab vide letter No. P&G 49/2005/A-12/4186 dated 12.09.2005 as to whether any policy has been framed by the Government that if a candidate belonging to reserved category secures more marks than a general category candidate in the Competitive Examination, whether he can be considered for the general category post but no clarification has been received so far.

However, a perusal of memo dated 8.09.2005 (P-7) issued by the competent Authority i.e. Govt. of Punjab in the Welfare Department, in response to letter dated 2.9.2005 issued by PPSC on the issue of claim set up for allocation to PCS (Executive Branch) has categorically opined as under:-

“
*No.9/25/05-RC3/1976
Government of Punjab
Department of Welfare
(Reservation Cell)*

To

*The Secretary,
Punjab Public Service Commission,
Patiala.*

Dated, Chandigarh 08.09.2005
Subject: Encadrement in the cadre of PCS (Ex.) 2003-Sh.
Rajesh Dhiman.

Sir,

I am directed to refer to your letter No.Ex.21/93/A-12/4161 dated 02.09.2005 on the subject noted above and to inform you that the State Government has already made a policy on the basis of the decision given by the Hon'ble Supreme Court of India in case of R.K. Sabharwal Vs. State of Punjab vide instruction No.3/8/95-RC-3/4853, dated 10/12.07.1995 (copy enclosed). In this circular it has been clearly laid down that while calculating the percentage of reservation is prescribed in Govt. instructions from time to time the officials/officers appointed/promoted on seniority-cum-merit basis belonging to reserved categories working in the particular cadre.

Thus the reserved category candidate appointed on Merit cannot be considered against a reserved category point and will be considered as general category candidates.

It is, therefore, requested that the instructions of the State Government are very much clear on this issue and

therefore necessary action may be taken accordingly under intimation to Government. As requested the copy of the reference letter No.9/25/2003-R.S.3/621 dated 05.04.2005 is enclosed herewith.

Yours faithfully,

*Sd/-
(S.S. Sidhu)
Joint Secretary Welfare ”*

Emphasis Supplied

17. Similarly reply by way of affidavit was filed on behalf of Respondent No. 1 and 2-Govt. of Punjab and contended that as terms and conditions mentioned in the Information Brochure-cum-Application Form of the Punjab Public Service Commission, brought out for the PCS(EB) and Allied Services examination, no change in the category as per the entries made in the original form would be allowed under any circumstances and also relied upon the judgment in Hari Ram Yadav's case(supra). It was also contended that instructions dated **10/12.07.1995** referred to by the petitioner are relevant in cases of promotions of Government employees belonging to reserved Categories when considered on seniority basis and there is no provision in the PCS (Executive Branch Class-I) Rules that if a reserved category candidate secure more marks than the general category candidate, then he is required to be considered against a vacancy meant for general category according to placement in the merit list and that the main motive of the provision of reservation is to ensure adequate representation to the reserved categories in the services.

18. On filing **C.M. No. 6259 of 2009** by the petitioner, this Court vide order dated 01.04.2009 allowed impleadment of Mr. Rahul Chabba as

02.09.2009 and pleaded that judgment in **R.K. Sabharwal Versus State of Punjab (1995) 2 SCC 745** deals with Punjab Service of Engineers, which is governed by rules called the Punjab Service of Engineers Class I PWD (IB) Rules, 1964 and this case deals with the question of seniority-cum-merit during promotion while in service and not direct recruitment through competitive examination as is in the present case and that in this judgment direction has nowhere been given by the Hon'ble Courts that a reserved category candidate having higher merit than the general category candidate have to be adjusted amongst the general seats. Citing the implication that if the claim of the petitioner is accepted, it will not only have a major adverse impact from administrative point of view; but will also jeopardize the lives and careers of affected persons since all the selected on the basis of "PCS(EB) and Allied Services Examination, 1998 (Re-conduct 2003)" have put in over 5 years of government service and that three candidates belonging to general category will lose their jobs; eighteen candidates will find their service changed after putting in over five years of service, if adjustment of reserved category candidates is now made against the general category seats as demanded by the petitioner. Further stated that a water-tight approach was kept right from beginning i.e. no adjustment of reserved category candidates into general category was allowed during any stage of the examination and that the adjustment of reserved category candidates against general category seats was not done since there is no such policy of the state Government.

19. It so transpires that one post in the PCS (Executive Branch) out of 16 filled up from general category based on merit of 2003 Re-Conduct

placed at Sr. No.5 of merit list. In the light of claim set up by the petitioner, Upkar Singh could be assigned that vacancy and resultantly petitioner is assigned the 4th BC Post/vacancy in the PCS (Executive Branch), this Court vide order dated 18.07.2012 directed the State Govt. to file an additional affidavit to examine the impact upon already allocated candidates.

Accordingly an additional affidavit dated 22.08.2012 of Kuldip Singh, Deputy Secretary was also filed on behalf of Respondent No.1 and 2 refuting the claim of the petitioner on the basis of instructions issued by the Government on 19.11.1992 as well as the Regulation No. 44(v) of Punjab Public Service Commission (Conditions of Serviced) Regulations. Para 3 of the additional affidavit reads as under:-

“ That it would be pertinent to mention here that in December, 2008, requisition of vacant posts of PCS (Executive) had already been sent to Punjab Public Service Commission, which included the post, that had fallen vacant due to the resignation of Sh. Dinesh Singh, against which the petitioner has claimed reallocation. The Commission had advertised the posts in the year 2009 and the result has been declared in the month of June, 2012. Allocation have already been made in the month of July, 2012. Thus the post, which had fallen vacant due to the resignation of Sh. Dinesh Singh, has already been filled up. It would not be out of place to mention here that the petitioner has been selected for the post of PCS (Executive Branch) and has already joined.”

In para 4, reference has been given about two cases on the similar issue of reallocation having been decided in favour of the Government, which are CWP No. 486 of 2002 titled as Amarjit Singh Vs. State of Punjab, decided on 6.1.2005 and CWP No. 10183 of 1991 titled as

Kuljit Singh Dullet Versus State of Punjab, decided on 9.5.2012, copies of the judgments were attached as Annexure **R-2** and **R-3** respectively and also mentioned about another case CWP No. 14546 of 2010 titled as Harpreet Singh Mansahia Versus State of Punjab stated to be pending adjudication.

20. Petitioner placed on record final seniority list dated 14.06.2016 (**P-13**) through C.M. No. 8202-CWP of 2016 and stated that he had participated in subsequent selection also in 2009 and was selected and appointed to the PCS (Executive Branch) in the year 2012 and is working as a Member of the PCS Cadre since then. Thus in the light of changed scenario, now there would be no displacement of any selected candidate and the petitioner can be safely assigned a deemed date of appointment as PCS (EB) with reference to his earlier selection in 2003 Re-Conduct Exam. In the seniority list of PCS (EB), petitioner has been placed at Sr. No. 318 based on his subsequent selection, without granting him the benefit of service in pursuance to his selection in the Re-Conduct Exam 2003, wherein the petitioner should have been allocated to PCS(EB) instead of Tehsildar, had the State followed the settled principles of law pertaining to allocation of reserved candidates viz-a-viz general category posts.

21. Petitioner also filed additional affidavit dated **27/28.09.2016** placed on record Rank-wise list of 1998 PCS Examination (**P-14**), Re-conduct Examination Rank List of 2003 (**P-15**), Result of 2009 PCS Examination (**P-16**) order dated 30.03.2015 (**P-17**), Re-allocation orders PCS Allied to PCS (EB) dated 26.05.1997 and 13.06.2001 (**P-18**) and (**P-19**) respectively, Final Result of PCS(Judicial) Exam 2010 (**P-20**), Merit list of PCS(Judicial) (**P-21**) and Merit list of ADJ Direct Recruitment Exam

11.09.2015 was also produced and its translated copy is taken on record as Annexure P-23 during the course of hearing on 19.10.2016, which has been issued by the Government of Punjab, Department of Welfare (Reservation Cell) on the subject ‘candidates belonging to Scheduled Castes and Backward categories selected on merit should not be counted in reserved quota’.

22. From the detailed discussion as above, it becomes clear that in Re-conduct Examination 2003, the position of the candidates in Combined Rank Wise List of Successful Candidates of PCS (EB) (P-15) was as under:-

Sr. No.	Name	Roll No.	Category	Total Marks in Written & Viva-Voce	Maximum Marks	Percent age	Rank
1	Amit Talwar	10557	71	519.81	750.0	69.308	1
2	Uma Shankar	10581	71	490.27	750.0	65.369	2
3.	Sandeep Rishi	10578	71	487.70	750.0	65.027	3
4.	Rajesh Tripathi	10095	71	475.74	750.0	63.432	4
5.	<u>Dinesh Singh</u>	10321	71	<u>475.17</u>	750.0	<u>63.356</u>	5
6.	<u>Upkar Singh</u>	10270	85	<u>471.46</u>	750.0	<u>62.861</u>	6
7.	Jasdeep Singh Aulakh	10589	71	470.21	750.0	62.695	7
8.	<u>Karnail Singh</u>	10216	72	<u>281.85</u>	<u>450.0</u>	<u>62.633</u>	8
9.	Rahul Gupta	10901	71	468.89	750.0	62.519	9
10.	Rajiv Kumar Gupta	10512	71	466.40	750.0	62.187	10

11.	<u>Gurpreet Singh Thind</u>	10812	85	<u>464.06</u>	750.0	<u>61.875</u>	11
12.	Jaswinderjit Singh Grewal	10545	71	463.66	750.0	61.821	12
13.	Amandeep Bansal	10066	71	462.83	750.0	61.711	13
14.	Parminder Pal Singh	10881	71	461.47	750.0	61.529	14
15.	Hargunjit Kaur	10594	71	458.82	750.0	61.176	15
16.	Neeru Katyal	10255	71	458.65	750.0	61.153	16
17.	Kamal Kumar	10628	71	458.64	750.0	61.152	17
18.	Ravinder Singh	10586	71	454.07	750.0	60.543	18
19.	Rahul Chaba	10555	71	453.60	750.0	60.480	19
20-57	XX	XX	XX	XX	XX	XX	XX
58.	Dalwinder Jit Singh	10300	85	432.99	750.0	57.732	58
59-63	XX	XX	XX	XX	XX	XX	XX
64.	Paramjit Singh	10838	85	427.48	750.0	56.997	64
65-70	XX	XX	XX	XX	XX	XX	XX
71.	<u>Rajesh Dhiman</u>	10521	85	<u>420.91</u>	750.0	<u>56.121</u>	71

Category Code 71 denotes General Category, 85 denotes Backward Classes Punjab. A copy of the Combined Rank wise list of Successful Candidates has been attached by petitioner as Annexure **P-15**.

23. Private Respondent No. 5-Rahul Chabba himself with his reply has attached the list of Marks secured by all the 91 candidates declared successful on 25.11.2003 by respondent No.3-PPSC in 2003 Re-conduct Examination. In the list he has given details of successful candidates. From Sr. No. 1 to 49 are the candidates of General Category (Code No. 71), from

50 to 55 are the candidates belonging to Category 72 (**Gen ESM**) and from

82 to 91 are the candidates belonging to BC Category (category Code 85). From the details given above, it becomes clear that Respondent No. 5-Rahul Chabha is at Sr.No. 19 in the Combined Rank Wise List of Successful Candidates and he secured 453.60 marks and thus the official respondents have excluded the meritorious candidates belonging to reserved category (Upkar Singh, Gurpreet Singh Thind and Karnail Singh) and brought the Respondent-Rahul Chabha within zone of appointment in General Category.

24. As detailed in para 5 of the Writ Petition, which is not disputed by respondents, there were total 28 posts of PCS(EB), out of which 16 posts were for General, 01 for ESM/DESM Pb., 01 Physically Handicapped Punjab, 02 SCOP, 01 SC ESM, 02 B/M Sikh Pb., 01 B/M Sikh ESM Pb., 03 BCP, 01 ESM. The dispute in the present Writ Petition is qua General Category and BC and there is no dispute against any other category. In Re-Conduct 2003 Exam, in BC category, the four candidates who were higher in merit than the petitioner and were declared qualified, their particulars with the marks obtained by them are repeated below:

S.No	Roll No.	Name of the Candidate	Marks obtained
1	10270	Upkar Singh	471.46
2	10812	Gurpreet Singh Thind	464.06
3	10300	Dalwinder Singh	432.99
4	10839	Paramjit Singh	427.48

The petitioner was at Sr. No.5 in BC whose particulars are as under:-

S.No	Roll No.	Name of the Candidate	Marks obtained
1	10521	Rajesh Dhiman	420.91

Perusal of the combined rank wise list(Annexure P-15) of successful candidates shows that candidate at S.No. 6 (Upkar Singh) belongs to BC category with category Code No. 85. Similarly candidate at

S.No 11 (Gurpreet Singh Thind) also belongs to BC category and they had secured 471.46 and 464.06 marks respectively. Candidate at S.No. 8 (Karnail Singh) belongs to General Ex-Service men category. There were 16 posts of PCS(EB) ear-marked for General Category. If Upkar Singh, Gurpreet Singh Thind and Karnail Singh were considered correctly as per their merit in the general category, then the candidate up to S.No. 16 i.e. Neeru Katyal would have fallen as the last candidate in the General Category as she secured 458.65 marks out of 750.0 i.e. 61.153%. Thus the three candidates after Neeru Katyal i.e. Kamal Kumar, Ravinder Singh and Rahul Chabha Sr. No. 17, 18 and 19 respectively ought to have been shifted to PCS (Allied) instead of PCS(EB); but perhaps just to accommodate all these three, the State of Punjab has shifted Upkar Singh, Karnail Singh and Gurpreet Singh Thind (Sr. No. 6, 8 and 11) to their respective reserved category despite the fact that they were higher in merit than these three candidates of general category mentioned above.

25. Govt. of Punjab, Department of Welfare of SCs & BCs issued policy letter No. 3/B/95-RC-3/4053 dated 10/12.07.1995 (Annexure P-3) governing such aforesaid situation, *inter-alia*, envisages as under:-

“ After giving due consideration and thoughts to the arguments advanced by the counsel for the petitioners, the Hon’ble Supreme Court has observed that in case of first issue, the High Court while deciding Joginder Singh Sethi’s case fell into a patent error by including the officials promoted on the basis of seniority cum merits for calculating the total percentage of reserved categories in a given cadre. This case was also considered by a Full Bench of Punjab and Haryana High Court in Jaswant Singh Vs Secretary to

Government of Punjab. Education Department (1989 (4) Services Law Reporter 257). The Full Bench did not agree with the ratio in Joginder Singh Sethi's case and reversed the same. It has further been observed that when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the position shown at the reserved categories and the candidates belonging to the General Category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for the non reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working for the percentage of reservation simply because some of the members of reserved class have also been appointed promoted against the general seats on seniority cum merit. The roster point which is reserved for category has to be filled by way of appointment/promotion of the numbers of the said class. According to the judgment, despite any number of appointees/promotees belonging to the reserved class against the General Category posts, the given percentage has to be provided in addition."

26. It is a conceded position that in continuation of instructions dated 10.07.1995 (P-3), Govt. of Punjab, Department of Welfare has also issued instructions dated 11.09.2015 (P-23) reiterating in the following terms:-

" Regarding candidates belonging to Schedules Castes and Backward Categories candidates selected on merit should not be counted in reserved quota.

Sir,

On the subject cited above, your attention is invited to the Govt. letter No. 3/3/95 RC 3/4853-54, dated 10.07.1995, No. 2/27/2004-RC1/1763-71, dated 30.12.2004 and no. 3/28/2009-RC1/1601, dated

09.11.2009, it has come to the notice of Government that many Departments/Selection Boards/Public Service Commissions, while preparing merit list for selection and calculating reservation, Scheduled Caste and Backward category candidates/students selected on merit in General Category are not counted in General Category and they are considered in reserved category only.

2. It is clarified here that only one merit list should be prepared for employees/officers while recruitment and those candidates who belong to Scheduled Castes/Backward Class categories comes in merit list then those candidates will be counted in General Category only.

3. It is again clarified that in case any official/officer violates reservation policy then action will be taken against them as per provisions of section 8 of Reservation Act, 2006 on the basis of harassment or discrimination and in addition to this action can be taken as per other provisions of the Act.

4. These instructions may please be brought to the notice of all Departments and officials/officers working under you so that these instructions can be implemented in letter and spirit.

Sd/ 9/9/15
Secretary, Welfare ”

Emphasis supplied

27. The State Govt. has mainly refuted the claim of the petitioner on the basis of judgment dated 05.10.2005 rendered by Ld. Singh Bench of Allahabad High Court in Hari Ram Yadav’ case (*supra*); but as a matter of fact the same has already been set aside and reversed by the learned Division Bench of Allahabad High Court in Special Appeal No. 1308 of 2005 decided on 29.10.2007 along with other appeals titled as **Shiv Parkash Yadav & Ors. Vs. State of U.P.** Decided on 29.10.2007 after relying upon the Division Bench Judgment of Allahabad High Court in case reported as **Sanjeev Kumar Singh Vs State of UP and Others, 2007 (2) ALJ 86** and the relevant part of the judgment dated 29.10.2007

Sanjeev Kumar Singh's case (*supra*) are reproduced below for ready reference:-

“ We have heard learned Counsel for the parties and perused the record. The question as to whether Section 3 Sub Section 6 would be applicable to such candidates who have opted to be considered against reserved vacancies has been considered by this Bench in Sanjeev Kumar Singh's case (*supra*) and in para 39, 40, 51, 52 & 55 of the judgment we have held as under:-

“39. This leads us to the manner mechanism and inter relationship of various concessions and reservation, which may operate together or individually, as the case may be. It cannot be doubted that any concession provided by the competent authority to achieve the goal under Article 16(4) without keeping a seat reserved for a backward class of citizen is permissible. Simultaneously without providing any concession it may make provision for reservation of seat. The third contingency would be where certain concession and benefits are provided as also seats are reserved and both may operate together or separately, as the case may be. In the cases where the concessions and reservation operate separately there is no difficulty in giving effect to since in such a case the question of adjustment or application of Section 3(6) of the Act of 1994 to the reserved candidates availing both would not arise. The grievance germane where availing concession, a backward class candidate competes, and, it secure marks more than general category candidates, claims unreserved seat instead of

reserved seat.

40. *At this stage, it would be prudent to notice when certain seats are reserved, it would not result in making unreserved seats compartmentalized for general category candidates i.e. unreserved candidates. There is no reservation for general category candidates. In other words we can say, when certain seats are reserved, a reserved category candidate in addition to reserved seats can always compete for unreserved seats. The unreserved seats are available to all the candidates who participate in the selection irrespective of category for which they belong but a reserved seat is available only to the category of the candidate to which such reserved seat is meant for. To illustrate, if out of 100 seats, 27 are reserved for OBCs, 18 for SC and 2 for ST candidates, it would mean that an OBC candidate would be able to compete against 27 seats reserved for OBC as well as remaining 53 unreserved seats. Similarly a SC candidate would be able to compete against 18 seats reserved for SC as well as remaining 53 unreserved seats and a ST candidate would be able to compete against 2 seats reserved for ST as well as remaining 53 unreserved seats. On the contrary a general category candidate would be able to compete only against 53 unreserved seats. The zone of consideration, therefore, against the unreserved seats is much wider and extend to 100% of the candidates who participate in the selection but it is not so for reserved seats. The only rider would be, if in the selection process, the test of assessment, merit etc. is different qua*

unreserved seats and reserved seats, and the candidates belonging to reserved seats enbloc are considered, separately at any stage, the such difference in standard or criteria or indicia having a material bearing in the assessment of merit and influence the open competition and in such case the reserved category candidate may not compete for unreserved seats on account of variation in the standard and not otherwise. It is true and as already observed above, a reasonable balance has to truck between the rival claim of respective categories.

51. *It is true that interpretation of statute would not depend on the understanding of the executive but the fact remains that on and after the enforcement of Act of 1994 in the State of UP , Section 3(6) is being implemented by giving adjustment to reserved category candidates against unreserved seats provided they are selected in open competition with general category candidates without availing any concession or relaxation in the standard of selection which does not include relaxation in age or fee. The state therefore, has not treated relaxation in age and fee as relaxation in the standard of selection and the crucial question up for consideration before us whether such relaxation can deprive a reserved category candidate denuding his status as a candidate competing in open competition with general category candidate when all other things are equal except the fact that such candidate has availed concession in fee and / or age limit. Having given out very serious, indepth thoughts to*

the question, we are of the view that relaxation in age and fee can not be treated to be a relaxation in standard of selection and shall not deny a reserved category candidates selection in open competition with general category candidates. As we have observed, the term “reservation” comprises various kinds of concession, relaxation etc. but section 8(1) of Act of 19947 is confined to only two kinds of relaxation/concession namely “concession in fee” and “relaxation in upper age limit”. Sub Section 2 of Section 8 however provides that if any Government order is in force on the date of commencement of the Act, providing any concession, relaxation including concession in fee for any competitive examination, interview and relaxation in upper age limit relating to reservation in direct recruitment or promotion which are not inconsistent with the provisions of the Act, shall continue to be applicable till they are modified or revoked as the case may be. We are informed that presently and for selection in dispute, only concession in fee and relaxation in upper age limit and no other concession or relaxation is available to the reserved category candidates specified under section 3(1) of the Act of 1994.

52.In other words we can say that concession in fee or relaxation in upper age limit are the provision not concerned with the process of selection i.e. open competition itself but are the provisions pertaining to eligibility i.e. to bring in a candidate in the zone of consideration. Once a person is included in the zone of consideration, he is entitled to participate

in the open competition, irrespective of difference in the eligibility qualification. Further, if on account of his identity belonging to particular category, any procedural defence is observed in the selection itself, in that case only, such an adjustment under section 3(6) of Act of 1994 would not be applicable and not otherwise. To elaborate our view, in the case in hand, the identity of the individual candidate whether general, scheduled caste, scheduled tribe or OBC has no relevance in the entire process of selection and it is only when the final list is prepared, selection qua respective category vacancies would be made. For example in the present case, all the candidates securing 50% marks and more in the preliminary qualifying written test participated in the physical test irrespective of the number of candidates qualifying against individual category. The standard selection is common to all. Similarly, in the physical test also all the candidates irrespective of their category, securing at least 50% marks qualify and appear in the main written test. Again all the candidates who secured 40% and above in the main Written Test were declared successful in the written test and thereafter, all of them appeared in interview. It is only after interview, a final merit list on the basis of marks secured in Main Written Test and Interview is prepared and thereafter the final select list is prepared applying reservation. At any stage prior thereto, the candidate's identity has no relation or relevance in the process of selection whatsoever. Thus, in our view ex-facie and undoubtedly, at the time of final select list,

section 3(6) of the Act of 1994 would be applicable and if a reserved category candidate has secured marks more than a last general category candidate, he is entitled to be selected against unreserved seat without being adjusted against a reserved seat.

55. The reason for considering reserved category candidates against unreserved seats is Writ large. As said earlier and unreserved seat is available to all the candidates who are in the zone of consideration but a reserved seat is confined a candidate of that particular person. In an open competition, general category candidate is entitled to compete only against an unreserved seat but a reserved category candidate in addition to right to be considered against the reserved seat is also entitled to be considered against unreserved seats. His option in the application for consideration of his candidature for reserved seat is only a declaration of his intention to be considered against reserved seat without depriving himself right to be considered against an unreserved seat..... ”

In view of the Division Bench Judgment of this Court, the view taken by the Hon’ble Single Judge in the impugned judgment that as soon as a reserved category candidate opt to be considered for reserved vacancies, he cannot be considered against general vacancies, cannot be said to be correct and being inconsistent with the aforesaid Division Bench Judgment of this court to that extent findings of the Hon’ble Single Judge in the impugned judgment cannot sustain and, therefore, are set aside. ”

Emphasis supplied

Therefore, the approach of the official respondents no.1 to 3 while rejecting the claim of the petitioner on the basis of Single Judge judgment in Hari Ram Yadav's case is not only casual but contemptuous in view of the fact that the same has already been set aside by the Division Bench vide judgment dated 29.10.2007.

28. That so far as the reliance by the respondents on judgments in *Amarjit Singh* and *Kuljit Singh Dullet's* cases (*supra*) are concerned, the same are not helpful to the stand of the respondents as the those cases were entirely different and legal proposition as involved in the present case was not under consideration.

In the case of Amarjit Singh, the petitioner had competed for PCS(Executive Branch) and Allied Services Examination in the year 1987. He was placed at merit no. 3 against one vacancy reserved for the other than Balmiki/Mazbi Sikhs in the Scheduled Caste Category. Due to non availability of sufficient number of posts in the PCS(Executive Branch), he was appointed as District Food and Supplies Controller. He joined the said post in July 1989. As per facts mentioned in the judgment, the candidate at merit no. 1 did not join as PCS (EB) as he had been selected as an IPS Officer, even prior to completion of appointment process. The next candidate Rajinder Singh who was originally allocated and appointed as an Excise and Taxation Officer(Allied Services) was reallocated to PCS (Executive Branch) and joined on 18.10.1989, but resigned on 13.09.1991, having been selected as an IPS officer. The Petitioner-Amarjit Singh in that case claimed appointment on the vacancy caused on account of the resignation of Rajinder Singh by way of his representation dated 09.12.1996

said Amarjit Singh filed writ petition on 8.1.2002 i.e. after more than 11 years of cause of action. Even otherwise the issue involved in the present case was not under consideration in that case.

Similarly, in the case of Kuljit Singh Dullet and others case (*supra*), two Writ Petitions were filed. One by Kuljit Singh Dullet (CWP No.10183 of 1991)and another by Mrs. Namrata Noorpuri (CWP No.15664 of 1993) and both were dismissed by a common judgment dated 09.05.2012 by learned Single Bench. In Kuljit Singh Dullet's case the initial selection was made in 1990 on the basis of Punjab Civil Services (Executive Branch) and Allied Services, Examination of 1988, when 16 posts were advertised in PCS and Allied Services. The contention of Mr Kuljit Singh was that he had been declared successful and figured at Sr.No. 9 in the order of merit of 10 names recommended for appointment in the General Category and he had been appointed as Assistant Employment Officer vide Appointment letter dated 08.06.1990. His case was that candidate at Sr. No.6 & 8 did not join, therefore, he was entitled for reallocation.

So far as petitioner in CWP No. 15664 of 1993 she had figured in the list of successful candidates of General Category at Sr.No.3 and was offered appointment on the post of Excise and Taxation Officer in the order of merit, although she opted for the post of PCS(EB). She could not be recommended in the post to which she had opted due to the reasons that there were only two posts of PCS (EB) and there were two other candidates from general category who were admittedly higher in merit than her, therefore, she was not considered for PCS(EB). Her case was that later on one B.K. Uppal who had joined PCS (EB) on 09.11.1990 but resigned on 04.09.1991 on account of his selection as IPS. Thus she claimed her right

against the vacancy caused by the resignation of said B.K. Uppal but both these Writ Petitions were dismissed by learned Single Bench primarily on the ground that a period of approximately 20 years have lapsed after filing of the writ petition till its decision on 09.05.2012 and moreover the petitioners could not prove any vested right in their favour. Thus the said judgment cannot be considered as a precedent on point of legal principle as involved in the present case.

29. This High Court in **CWP No. 18419 of 2013** titled **Harinder Pal Singh Vs State of Punjab and Others** decided on 03.11.2014 (2015(1) RSJ 725 after relying upon the judgment of Hon'ble Supreme Court in the celebrated Constitution Bench judgment in **Indira Sawhney Vs. Union of India, AIR 1993 SC 477; R.K.Sabharwal Vs. State of Punjab, 1997(6) SCC 538** and **Ajit Singh II cases, AIR 1999(7) SCC 209, Ashok Kumar Gupta Vs State of UP 1997(5) SCC 201** in which it has been held that rights of reserved category candidates under Article 16(4), Article 16(4-A) are Fundamental Rights and not merely Statutory in nature which are normally operated by executive instruction issued under Article 162 of the Constitution have to be read into Rules as authoritatively. In the case of Harinder Pal Singh (*supra*), the petitioner, who was belonging to Ramdasia (R&O) category notified in the list of Schedule caste in the State of Punjab for employment in Public Service had competed for direct recruitment to the post of Junior Engineer (Mechanical) advertised in the Irrigation Department, Punjab Chandigarh. Nine posts in the general category were advertised in the Mechanical Branch while 06 posts were advertised in the Scheduled Caste category. One candidate, namely, Varun Kumar in the

category candidate was directed to be shifted to General Category and Harinder Pal Singh (petitioner therein) being next in merit in SC category directed to be offered appointment. This High Court allowed the Writ Petition, the operative part of the judgment reads as under:-

“8. In the result, the petition is allowed. A mandamus is issued to the official respondents to shift Varun Kumar to the general category as per his open general merit which would actually bring him at Sr. No. 3 of the list of general category candidates which is higher than 6 other general category candidates who have secured appointments and stand above Navtej Singh. Consequently, the petitioner would be offered appointment as Junior Engineer (Mechanical) subject to medical and police verification etc. while Navtej Singh would be relieved of the agony of discharge from service on having fallen from the list of 9 general category candidates in the manner indicated above and as a consequence of this protective order. He would however not have a right to claim arrears of salary for the period prior to joining / appointment but will take all consequential benefits from the date of appointment of his batch-mates. The petitioner be offered appointment on the expiration of the period of limitation of call this order in question has expired. If the appointment is delayed thereafter right to salary would accrue on the expiration of one month thereafter.

9. The petitioner will have costs of Rs.25,000/- from the State to defray expenses incurred on this unwarranted and unnecessary litigation forced upon him and being compelled to come to Court to vindicate his fundamental rights on a genuine grievance in order to secure relief for himself. If there is any other adverse fallout on any third party as a result of this order which

may involve readjustment of a reserved category candidate etc. as may have secured higher merit points than Navtej Singh, it is for the Government to look into this aspect benevolently since the mess created is of its own making by grossly misapplying the scheme of reservation. The State would be free to recover the costs from erring officials found responsible and remiss in discharge of their sacrosanct constitutional duty to give effect to reservation policy of the State as there has been an apparent failure to act honestly and faithfully despite the law on the subject matter having been settled and reiterated time and again by the Supreme Court and this Court in a large number of rulings to which no referenced is necessary as it would unnecessarily burden this order with what is well established by law and long settled involving, coincidentally, in some major cases originating from the State of Punjab itself as in Sabharwal and Ajit Singh-II cases. The same is the position in Punjab Government policy circulars on reservation issued from time to time and the provisions of Act, 2006 which all have been breached with impunity. Insofar as erring officers are concerned, the Secretary to Government in the respondent department would keep in mind the provisions of Section 8 of the Act which deal with punishments on guilt established, in the event action is contemplated. He would also ensure that such acts of omission and commission are not repeated in the future failing which this Court may consider in writ jurisdiction increasing imposition of costs to a level which is far more than merely compensatory nature and which might hurt pockets and then to meet out by itself appropriate punishments on erring officials including initiation of proceedings in contempt of the judgments and orders of the highest. Court of the land and this

Court which civil authorities are duty bound to implement and act in aid of under Article 144 of the Constitution of India. ”

Emphasis supplied

From the above it is clear that the law has always mandated the government to consider the claim of the candidates belonging to reserved categories in the open category also; provided they fall within the zone of appointment in the general category based on their higher merit.

The Hon'ble Supreme Court in a recent judgment reported as **Jatinder Kumar Singh Vs. State of U.P.& Ors.** decided on **08.01.2010** reported as **2010(1) SLR 526** has categorically held that reserved category candidates based on their merit are to be adjusted first in the general category even if they have availed relaxation of age etc. In the said judgment said principle of law has been reiterated as enunciated as far as back in the early 1990s by the Hon'ble Supreme Court. In fact Division Bench of this Court in Jaskaran Singh Vs. State of Punjab 1995(1) RSJ 510 had by following the decision of the Hon'ble Supreme Court, categorically held that the candidates belonging to reserved categories are entitled to the seats (being an admission matter) from the general category if they have secured higher merit as entitling them to seat in the general category. The Hon'ble Court went to the extent by holding that any instructions imposing such restriction would be violative of Article 14 and go against the interest of reserved categories. In the present case, there is no decision or instructions shown which impose a bar on the government not to consider the reserved category candidates in the general category in case of direct recruitment if he or she is higher in merit than the general category candidate. This is an admitted fact that the official respondents no.1 to 3

had been following the said principle in cases of promotions without any exception. Thus it would be absolutely absurd to harbor such a thought that this principle of law would be applicable only in case of promotions and not in case of direct recruitment. In fact this Court in Harinder Pal Singh's case (*supra*) as reproduced hereinabove has been constrained to observe that there has been a failure to act honestly and faithfully on part of the officials of State to implement the reservation policy in the aforesaid manner inspite of the subject matter having been settled and reiterated time and again by the Hon'ble Supreme Court and this Court.

30. It is not in dispute that petitioner was selected and appointed on the basis of 1998 Examination as PCS (EB). Although, for whatever reason the same was cancelled by the State Government, but ultimately the selection has been upheld by the Hon'ble Supreme Court in the year 2014 in Joginder Pal Singh's case and they have not only been ordered to be reinstated in service but certain benefits of past service rendered from 1999 to May 2002 have also been granted.

31. From the above discussion, it is apparently clear that on the basis of account of 2003 Re-Conduct Exam, the petitioner was again selected and appointed as Tehsildar in the year 2004 as there were only four posts of PCS (EB) meant for BC category and petitioner was at No. 5 in the merit list of BC category. Although as a matter of right, he was entitled for PCS(EB) due to the reasons that the persons who were higher in merit in BC category than the general category candidates were wrongly placed against the posts meant for BC category and they consumed the post of reserved category but as a matter of fact they ought to have been appointed against

the General post of PCS (EB).

It is again agreed and not in dispute between both the parties that after 2003 re-conduct, PCS(Executive Branch & Allied Services) examination was held in 2009 and in between there was no selection for direct recruitment and in that also the petitioner remained successful; but the official respondent no.1 to 3 for the reasons best known to them have caused a great prejudice to the petitioner while not allocating him PCS (EB) on the basis of merit list of 2003 Re-Conduct Exam.

As already discussed in para 26 above, the judgment in Hari Ram's case was absolutely wrongly applied by official respondents no.1 to 3 in a casual manner despite the fact that the same has already been set aside and reversed by Division Bench of Allahabad High Court. Still further the State Government in the Welfare Department, being Competent Authority has already decided and requested the PPSC i.e. Respondent no.3 to re-allocate the petitioner as PCS(EB) and shift the reserved category vide letter dated 08.09.2005 (Annexure P-7). Even otherwise law is well settled by the Hon'ble Supreme Court and this Court that if reserved Category candidate secures more marks than the general category candidate then he will be considered against the General vacancy and not to be reckoned against reserved category. Reference in this regard is made to C.A. No. 74 of 2010 (Arising out of SLP(C) No. 1952 of 2008 titled **Jitendra Kumar Singh and another Versus State of U.P. and others**, reported as 2010(1) SLR 526, **Bhupinder Kaur and others Versus Vanita and others** reported as 2011(3)SCT 130; **Paramveer Singh and others Versus Punjab Public Service Commissioner and others** reported as 2012(1) SCT 542; **Harinder Pal Singh Versus State of Punjab** reported as 2015(1) SCT 167.

perpetuated the illegality by taking recourse to official dexterity in breach of Article 14 of the Constitution of India.

32. In view of the position explained above, the two candidates from BC Category namely Upkar Singh and Gurpreet Singh Thind were required to be considered in general category being more meritorious than the General Category Candidates being at S.No. 6 and 11 of the combined merits and having secured more marks than the general category and ought to have been shifted to General Category. Thus even if the one candidate from BC category, namely, Upkar Singh, Roll No. 10270 who secured 471.46 marks is shifted to general category then also the applicant comes at S.No. 4 in BC Category below Paramjit Singh as PCS(EB). Paramjit Singh has been assigned seniority No. 256 and the petitioner is required to be given seniority after him. As discussed above one candidate namely Dinesh Singh, Roll No. 10321 who was at S.No. 5 in the general category had resigned and left the service. Therefore, the petitioner could be easily adjusted as the State Government has already adjusted the candidates in subsequent examinations as is evident from order dated 26.05.1997 (Annexure P-18) and order dated 13.06.2001 (Annexure P-19). Even otherwise the petitioner is already working as PCS (EB) on the basis of 2009 examination (P-16) and he has been assigned seniority on the basis of Hon'ble Supreme Court judgment in **Joginder Pal Singh's** case.

33. In view of the legal issue and above discussion, the following aspects emerge in the present case:-

- (i) *Whether as per law petitioner is entitled for the relief?*
- (ii) *Whether the claim of the petitioner is barred by delay and laches?.*
- (iii) *Even if both are decided in favour of the petitioner,*

whether any prejudice would be caused to any other person?

In the instant case, undoubtedly in PCS Re-Conduct 2003 Exam, petitioner stood at Sr. No. 5 of the merit list of BC and he was appointed as Tehsildar. The last General Category candidate namely Rahul Chabba obtained 453.60. Upkar Singh and Gurpreet Singh Thind both from BC category obtained more marks than the last General Category candidate i.e. Rahul Chabba-respondent no.5. In view of the instructions dated 10/12.07.1995 (Annexure P-3) issued by the Govt. of Punjab, Department of welfare of SCs and BCs (Reservation Cell), the reserved category candidates can compete for the non reserved posts. The Government of Punjab further clarified vide circular dated 11.09.2015 (P-23) that only one merit list should be prepared for employees/officers while recruitment and those candidates who belong to Scheduled Castes/Backward Class categories come in merit list then those candidates will be counted in General Category only. Furthermore while setting aside the judgment dated 05.10.2005 rendered by Ld. Single Bench of Allahabad High Court in **Hari Ram Yadav' case (supra)** the Division Bench of the High Court of Judicature at Allahabad in Special Appeal No. 1308 of 2005 decided on 29.10.2007 by relying upon judgment of Allahabad High Court in the case of **Sanjeev Kumar Singh Vs State of UP and Others, 2007(2) ALJ 86** held that a reserved category candidate in addition to reserved seats can always compete for unreserved seats. The unreserved seats are available to all the candidates who participate in the selection irrespective of category for which they belong; but a reserved seat is available only to the category of the candidate to which such reserved seat is meant for. Thus the

petitioner is entitled to the relief prayed.

As far as delay and laches is concerned, petitioner is before this Court since 2005 when he filed CWP No. 11061 of 2005, which was disposed on 22.07.2005. He then filed CWP No. 19423 of 2007, which was disposed on 21.12.2007. Then after passing orders dated 03.03.2008 (**P-11**) and 18.03.2008(**P-12**), petitioner filed the present Writ Petition. Thus claim of the petitioner cannot be said to be barred by delay and laches.

As regards prejudice to any other person is concerned, on the basis of 2009 Examination, petitioner is already working as PCS (EB). No prejudice is likely to be caused to any other member of the service and moreover neither anyone on behalf of respondent no.5 nor on behalf of respondent no.6 have appeared at the time of hearing and opposed the prayer of the petitioner. Of course seniority list of the member of the service will be slightly changed but for that atleast the petitioner cannot be blamed; rather it is the official respondents no.1 to 3 who are answerable for wrong interpretation of the lawful claim of the petitioner and giving rise for filing of the present writ petition despite the clear cut decision of the competent authority vide communication dated 8.09.2005 (**P-7**). The respondents have placed no reliance on any statutory rule prohibiting the reallocation of selected candidate from one service to the other, which even otherwise would have been liable to stand to judicial scrutiny under Article 14 & 16 of the Constitution. Therefore, petitioner could be easily adjusted/reallocated as the State Government has already adjusted/reallocated the candidates in earlier examinations as is evident from order dated 26.05.1997 (Annexure **P-18**) and order dated 13.06.2001 (Annexure **P-19**). Even otherwise the petitioner is already working as PCS

(EB) on the basis of 2009 examination (**P-16**) and has been assigned seniority on the basis of Hon'ble Supreme Court judgment in Joginder Pal Singh's case at Sr.No. 318.

34. Consequently, the Writ Petition is allowed, impugned order dated 03.03.2008 (Annexure **P-11**) and order dated 18.03.200-8 (Annexure **P-12**) are hereby quashed and set aside. The respondents no.1 to 3 are directed to reallocate the petitioner to PCS(Executive Branch) on the basis of 2003 Re-Conduct Exam and assign him proper placement as member of service in the cadre of PCS (EB) on the basis of 2003 Re-Conduct Exam. Since the petitioner is found entitled to be re-allocated to the PCS (EB) on the basis of 2003 Re-Conduct Exam, consequently he is to be placed at his appropriate position according to merit list (**P-15**) which clearly depicts that petitioner obtained total 420.91 marks whereas one Rish Pal Singh got 421.91 marks out of total 750. Thus, the petitioner deserves his placement immediately below said Rishi Pal Singh in order of merit. It is necessary to mention here that Rishi Pal Singh was also a selectee of 1998 Exam as well as 2003 Re-Conduct Exam and he has been granted the benefit of his earlier service rendered from 1999 to May 2002 on the basis of Hon'ble Supreme Court judgment in **Joginder Pal Singh's case** and his date of appointment has been counted w.e.f 20.10.2001. Therefore, the petitioner is also entitled for the similar treatment and benefit of past service like Rishi Pal Singh as well as other similarly situated members of the service in view of Hon'ble Supreme Court judgment in **Joginder Pal Singh case**. As the petitioner had also rendered service between 1999 to May 2002 on the basis of 1998 Exam and consequently his seniority will also be rectified and reckoned

In view of the harassment suffered and grave injustice caused to the petitioner, a sum of Rs.50,000/- (Rupees fifty thousand only) shall be paid as costs to the petitioner. Both, the substantive relief as aforesaid and the costs shall be released to the petitioner within two months from the receipt of certified copy of this order.

(JASWANT SINGH)
JUDGE

December 23rd , 2016
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>