

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CWP No.7646 of 2010 & connected matters

Date of Decision : 30.05.2016

Rajwansh Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Chopra, Advocate, (in CWP No.20413 of 2012)
Ms. Alka Chatrath, Advocate, (in CWP No.11394 of 2011)
Mr. BS Patwalia, Advocate,
Mr.Arjun Partap Atma Ram, Advocate
Mr. Ashwani Verma, Advocate, (in CWP No.20413 of 2012)
Mr. Sukhdev Kamboj, Advocate, (in CWPs No.9921,
12185 of 2013, 23804 of 2014).
Mr. H.S. Saini, Advocate,
Mr. JS Rana, Advocate, (in CWP No.22438 of 2012).
Mr. Anshul Jain, Advocate,
(in CWP No.11329 & 11013 of 2011)
Mr. MK Dogra, Advocate,
(in CWPs No.21253 of 2012, 18621, 15125, 15138 of 2013 &
27224 of 2015).
Mr.S.K.S.Budhladawala, Advocate,
Mr.Amandeep Sharma, Advocate,
for Mr.P.S.Khurana, Advocate.
Mr.Gurinder Singh, Advocate,
Ms.Shailja Sharma, Advocate, for
Mr.G.S.Sandhu and Ms.Sonia G. Singh, Advocates
Mr.Jashandeep Singh Sandhu, Advocate,
Mr.Harbhajan Singh, Advocate.
Mr. Parvesh K. Saini, Advocate,
(in CWPs No.23837, 23945, 23844 of 2012, 22555, 7693 of
2013, 18587, 15157, 27575, 26444, 26541 of 2015)
Ms. Jashan Deep Sandhu, Advocate,
(in CWP No.17599 of 2015).

Mr. Ram Bilas Gupta, Advocate.

Mr. Vishal Sodhi, Advocate, (in CWP No.17367 of 2015).

Mr. APS Bhinder, Advocate, (in CWP No.9248 of 2012).

Mr. BS Ichhewal, Advocate, (in CWP No.26712 of 2015)
for the petitioner(s)

Mr. Madhav Pokhrel, Advocate for respondents No.16,
35 and 71 in CWP No.25256 of 2014

Mr. Harsimran Singh Sethi, Addl., AG., Punjab for the
respondent-State of Punjab

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of the petitions* tabulated at the foot of the order, as common questions of law and fact are involved in all these petitions which can conveniently be disposed of by a common order. Reference to individual facts is not found necessary in view of the nature of the order proposed to be passed to reconcile conflicting claims of four categories of petitioners and non-official respondents in the former's quest for appointments to public service as Physical Training Instructors [for short 'PTIs'] from an employment advertisement notified in the year 2006. The result of the selection was published on November 19, 2006. The merit list suffered three revisions as a result of litigation.

2. The first category is fighting for retention in service protected presently by stay orders passed by the Court in their favour following show cause notices of termination issued to them as a result of the judgment delivered by the Full Bench of this Court on February 5, 2010 in Manjit Singh vs. State of Punjab and others, 2010 (4) RSJ 86 (for short '*Manjit Singh*') to which reference will come later in this order. The second category

appointed on redrawn merit as a result of court orders which have led to displacement of the first category. The third category which involves about 119 candidates who are waiting for appointment against unfilled vacancies as a result of the Full Bench. The fourth category trying to destroy the entire selection process by challenging it even though they were not applicants but have approached court for nullification of the direct recruitment drive to fill vacancies of PTIs in the education department of the Government basing their case on grounds of infringement of the equality and equal opportunity guarantees in Articles 14 and 16 of the Constitution of India.

3. The selection process for filling posts of PTIs under the public advertisement dated 21st October, 2006 notifying 849 vacancies has not been challenged in any of 88 petitions, except by the last category, that is, the fourth who had not competed for the posts but have approached court after all the material events have transpired to nullify the entire selection by re-advertising the posts by throw open all the vacancies to open competition so as to enable them to avail right of consideration and all those who may have become eligible meanwhile in consonance with Articles 14 and 16 of our Constitution.

4. At the outset, I hold that the selection of candidates selected in the first category of appointments and who are serving for the last eight years cannot be disturbed in any of these petitions for no fault of theirs for detailed reasons elaborated at the appropriate place in the order. They possessed the essential basic qualification prescribed in the advertisement i.e. C.P.Ed or its equivalent which made no reference to higher qualifications such as D.P.Ed or B.PEd. They were not graduate degree holders. The advertised qualifications being the same as prescribed in

Appendix B of the rules governing service called the Punjab Educational Service, Class III, (School Cadre) Rules, 1955. It may be noticed that in the prevailing rules of service which have repealed the 1955 rules are called the Punjab State Education Class III, School Cadre, Rules 1978 wherein the qualification prescribed for a post re-designated as Physical Training Master or Mistress (DPI) while the designation of 'Physical Training Instructors' no longer exists by nomenclature in prevailing statutory rules of service.

5. The candidates who approached this Court with the plea that they were higher qualified graduate candidates, called the second category for convenience in judgment writing, and therefore, they were eligible for consideration on account of possessing higher qualifications like B.P.Ed degree, though they did not hold the minimum essential Certificate in Physical Fitness (C.P.Ed) advertised qualification of minimum 2 years duration or its equivalent [as was prescribed for the post] but in the same line of study. On this plea they were successful before the Full Bench of this Court in *Manjit Singh* case. The State did not prefer an appeal against the judgment before the Supreme Court and decided to implement the judgment and it attained finality. As a result of implementation, a fresh merit list was prepared by the respondent department as per the principles enunciated. The Full Bench held that candidates possessing higher qualifications in the same line of study cannot be excluded from consideration, hence the candidates in the first category with only the minimum basic qualification were not alone eligible for consideration. As a result of this exercise, some candidates who had secured appointments in the first round (first category) who possessed the C.P.Ed qualification were downgraded in merit and consequently fell outside the zone of consideration, while others (second category) found

their names in the fresh merit list for the first time to secure appointments. Many of them were appointed. As a result the candidates in the first category who could not secure higher rank than those selected in the second category were put to notice of termination of services. They filed petitions before this Court [part of the bunch of 88 cases] and obtained stay orders. Since the candidates who came in the first category cannot be disturbed, in view of principle based on no fault theory as further explained towards the end of the order, the second category also cannot be disturbed of their rights declared in their favour for the first time by the Full Bench since these are the candidates who came in the second round as a result of the Full Bench judgment which required re-draw of merit. The candidates in the first category are stoutly protected by principles of *res judicata* and it appears certain that they cannot be dislodged, which appointments accumulated to the region of approximately 400 vacancies/posts of which 119 candidates who form the third category of candidates have not been appointed and have petitioned this Court for directions in their favour directing the State to offer them appointments since they admittedly rank higher in merit than the first category, but for the interim stay orders they would have secured appointments by now.

6. It may be noticed that the original vacancies advertised were 849 in number. As a result of litigation, the appointments have stretched to beyond 1250 candidates [including under protection of stay orders] as per statement made by Mr. Harsimran Singh Sethi at the hearing which is to say the least grossly beyond the advertised vacancies. The question is whether these 119 and odd candidates deserve appointment protected by the ratio of the Full Bench judgment being higher qualified than the ones in the first

category and superior in merit, in order to prevent unfair discrimination in case the first category is permanently protected by Court orders.

7. There is a third category of candidates who approached this Court for the first time after the second merit list was prepared in 2011 after the decision of Full Bench was delivered. They have approached this Court on the ground that persons who had initially fallen out of the merit list have been protected by interim stay orders passed by this Court which orders continue to operate till today as they are higher in merit based on higher qualifications than the first inductions to service (the first category).

8. The freak and complicated position emerging in the mosaic of facts in the multi directional litigation is rather challenging. It appeared to me that an extraordinary situation has been created which has now to be judicially managed by and I am afraid to say so by a judicial compromise but by following simple and rudimentary constitutional and service law principles. The situation presented by the *fiat accompli* which has unwittingly led to appointments in excess of advertised vacancies against the tenets laid down for the first time by the Supreme Court in landmark case Hoshiar Singh v. State of Haryana & Others, AIR 1993 SC 2606 that it was impermissible to make appointments in excess of advertised vacancies in breach of constitutional code of Article 16 and the excess vacancies would be put in the pool of future recruitment. Undoing the knots wholesale might lead to dispensing with the services of candidates in the first category who are serving for the last many years most of which period is safeguarded by interim stay orders. If they are vacated it would lead to administrative chaos and disruption of educational services across primary schools in

is part of the curriculum. That would bring unmitigated suffering so irreconcilable in character as to be not worth the candle. They can still steadfastly say that they were selected on pure merit according to the criteria laid down which began the recruitment drive. They cannot be punished for committing no wrong except that they applied for the post. Their hearth and home cannot be bolted; their kitchens should not be padlocked by the stroke of a callous pen. Therefore, in equitable resolution of the multifaceted issues leading to the cross disputes amongst the stakeholders, one thing appears rather certain to this Court that the extraordinary situation which has arisen would have to be gracefully met by resort to extraordinary measures in order to balance out justly and fairly the conflicting interests of the warring parties and with this object in view, the interim order dated 27th January, 2016 was initially passed by me to elicit in the first instance the views of the State Government for their functionaries to find workable solutions which would be fair to all, but the total picture as emerging at the hearing presently were not articulated beyond what was written when this Court had asked Mr.Sethi defending this bunch of cases to go back to the Government in search of a via media to suitably bring an end to the disputes amicably by devising lawful ways and means to resolve the problem besetting the fate of a large number of candidates in these 88 cases to cause the least injury to the disputing parties and to accommodate as many as possible within the law, given that vacancies in the cadre of PTIs are admittedly still available, at least to about 119 or so, if not beyond the figure.

9. It may be mentioned that the Full Bench decision of this Court in *Manjit Singh* case needs also to be read, as at present, in the light of the

of Rajasthan and others, (Civil Appeal Nos.3057-3058 of 2015 decided on 19th March, 2015) cited by Mr. Sethi to urge that the base of the Full Bench ruling and its ratio stands substantially whittled down. Nevertheless, this was a case where a similar situation arose in the State of Rajasthan in a case involving none other than PTIs on an identical issue brought before the Rajasthan High Court where it was called upon to consider the question whether higher qualified aspirants could claim a right of consideration without possessing the minimum essential and basic qualification advertised and prescribed in the service rules but higher qualifications in the same line of discipline cannot be ignored even if not expressly provided in the advertisement. Though the Supreme Court did not directly answer the question, but yet held, and this is important, that the terms and conditions of the advertisement were inviolable and could not be changed, and therefore, the appeals were allowed. The Supreme Court held that if the terms of the advertisement are not directly challenged by the higher qualified persons claiming consideration have no right to claim appointment as PTIs while observing as follows:

“9. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether B.P.Ed. and D.P.Ed. qualifications

are equivalent or superior to C.P.Ed. qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the rules which were suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that respondents acted against law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr.III who held other qualifications but not the qualification of C.P.Ed. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr.III which was essential as per the terms of advertisement.

10. The candidates who were aware of the advertisement and did not have the qualification of C.P.Ed. also had two options, either to apply only for PTI Gr.II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification along with qualification of C.P.Ed. for the post of PTI Gr.III. Having not challenged the advertisement and having applied for the other post, they could not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. In the matter of eligibility qualification, the equivalent qualification must be recognized as such in the recruitment rules or Government order existing on or before the initiation of recruitment process. In the present case, this process was initiated through advertisement inviting application

which did not indicate that equivalent or higher qualification holders were eligible to apply nor the equivalent qualifications were reflected in the recruitment rules or Government Orders of the relevant time.

11. For the aforesaid reasons, in our view the Division Bench erred in interfering with the judgment of the learned Single Judge who had correctly allowed the writ petitions filed against the result declared by the Commission on the basis of State Government's letter dated 06.01.2010. The impugned judgment under appeal is, therefore, set aside and the judgment and order of the learned Single Judge is restored. That should be complied forthwith. The appeals are accordingly allowed but without any order as to costs."

10. This legal position does not complicate the issue in the context of ratio in *Manjit Singh* case as advanced by Mr. Sethi to which I would come later but suffice it to say at least that it is common ground that in none of the 88 petitions have the terms and conditions of the advertisement or the rules been put under challenge in Court. In my opinion, there is no need to go that far. The rules in Punjab and in Rajasthan bear no similarity. Rajasthan is not beset with rules of PTIs which involve repeal of old rules being replaced by new rules where the post of PTIs does not exist either in Appendix A or Appendix B of the 1978 rules nor is regulated by them and therefore reliance on *Parkash Chand Meena* case is misplaced except to the extent that rules were not challenged. But then which rules were to be challenged the repealed 1955 rules or the 1978 rules. Thus the reliance on *Parkash Chand Meena* case is neither the prescription nor the answer to the issue in hand and nothing can be derived from the dictum to resolve this case. This Court has to treat *Manjit Singh* case as binding authority. At the

end of the day I cannot help wondering why were the posts of PTI advertised in 2007 in the first place in the presence of the 1978 rules where the post had ceased to exist. There is no explanation for this. But it goes without saying that this aspect is of no moment to the present decision making process and obviously no opinion is expressed thereon as much water has flown down the bridge.

11. At the outset, Mr.Sethi informed the Court that a preliminary meeting has been held by the officers of the Government in the light of the interim order dated 27th January, 2016 and he would require further time for the Government to formulate an opinion of how best to resolve the disputes visiting least injury to all concerned.

12. Heard learned counsel for the parties at great length and after careful consideration of their respective pleas I have reached the conclusions next following after noticing the contentions advanced on behalf of the State.

13. Mr. Harsimran Singh Sethi, Ld. Additional Advocate General, Punjab, appearing for the official respondents has vehemently argued that only 849 candidates can be appointed keeping in view the number of vacancies which were advertised in the year 2006. Show cause notice for termination had been given to the candidates who were appointed in pursuance to the initial merit list and now as they are lower in merit in the second merit list, which has been prepared on the basis of the judgment of the Full Bench in *Manjit Singh's* case, they are not entitled to continue in service, in preference to the candidates who are higher in merit to them in the second merit list. As per the law, the candidates more than the advertised vacancies cannot be appointed and therefore, as the petitioners of

the first category of the writ petitions, are not within the 849 vacancies advertised, as the merit of the writ petitioners of the first batch of the writ petition have gone down, and they cannot be allowed to continue and have to make way for the candidates, who are higher in merit to them in the second merit list, which was prepared on the basis of the order passed by the Full Bench.

14. Further, Mr. Sethi states that the State is not in a position to accommodate all the candidates, who were appointed in pursuance to the first merit list as well as the candidates who have come within the zone of consideration for appointment in the second merit list. Either the candidates belonging to the first merit list can be appointed or candidates from the second merit list can be appointed keeping in view 849 posts which were advertised. The candidates, who are approximately numbering 119 who are within the zone of appointment as per their merit keeping in view the 849 posts, who have approached this Court claiming appointment, can only be appointed after the candidates who are lower in merit in the second merit list and have got stay, would have to vacate the posts. At present, there are no posts out of the 849 posts advertised against which, they can be appointed. Rather, keeping in the various orders passed in various writ petitions, contempt petitions, the candidates from the revised merit list have been adjusted on the posts which are beyond 849, which were advertised in the year 2006 and hence the State is not in a position to make available more posts to adjust these 119 candidates.

15. Still further he states that the candidates of the third category cannot claim any right of appointment by pleading that the candidates lower in second merit list are still continuing in the year 2008 on the post i.e. the

candidates who were appointed initially and their merit had gone down in the revised merit list, who are continuing in service on the basis of the interim order passed by this Court. They are neither in the zone of appointment within the 849 posts as per the first merit list and as per the second merit list and therefore, their writ petitions are liable to be dismissed.

16. Mr. Sethi further contends that the candidates of the fourth category who have approached this Court to scrap the whole selection procedure and to make fresh selection, cannot agitate the same at this stage. The posts were advertised in the year 2006, selection made and persons were appointed in the year 2008 and thereafter, even the revised merit list as per the judgment of the Full Bench in *Manjit Singh's* case was delivered in the year 2010. The candidates cannot come and agitate that whole of the process should be scrapped and the selection should be made afresh. If they had any grievance, they should have approached this Court immediately when the selection was made in the year 2006. Now it is too late in the day to entertain their plea for setting aside the entire selection and make fresh selection against 849 posts advertised in the year 2006 and hence their writ petitions are liable to be dismissed on this ground alone.

17. The problem may be vexed involving important policy matter, but that does not mean that it has no judicial solution on the materials available on record for Court to take a decision without waiting for the Government to decide on what to do, prevaricate and soft peddle these cases which have been pending for the last 5 to 6 years in motion hearing without resolution. The Court cannot also throw up its hands and let further time slip by to the detriment of one and all. As I already said, when extraordinary

situations arise they require extraordinary measures to resolve issues and thus request for further adjournments sought by the State are refused on account of sufficient material available on record for decision-making on the pleadings. The Court cannot keep waiting to hear from the official respondents of favourable or unfavourable tidings and thus it must take up its constitutional task to consider, deal with and decide the case on merits and meet the challenges presented in the petitions brought to judicial review by resort to simple principles of law and human affairs and pronounce judgment on the fate of the petitions and, therefore, to my mind, these cases can best be determined by applying the principle *ex aequo et bono* to see what is fair and just in the facts and circumstances. In Jagdev Sharma v. State of Punjab, 2015 (2) PLR 570, I had observed:

“The relief provided by article 226 of the Constitution is a discretionary one. A writ may neither issue nor an order made merely because it is lawful to do so. The writ court sits in equity where the rules of prudence preside and occupy the field of vision when known legal principles may not come to the rescue or be of any intrinsic help to cull out the relief or to deny it. Equity in its brightest and the most sublime form is a jealous mistress which may not want to share its bed and be betrayed by pedestrian rules, shackled by plebeian legal principles which may be found insufficient whilst venturing to do unconventional justice in a case. It is often said that a case to be decided *ex aequo et bono*, overrides the strict rule of law and requires instead a decision based on what is fair and just, given the circumstances. Life and its vicissitudes are larger than the law.”

18. In the considered opinion of this Court formed after detailed hearing of the respective counsel on several dates and finally today and having passed the interim orders for eliciting the view of the department, this case can be I think appropriately be disposed of equitably in the following manner:-

(i) All the candidates (first category) who were selected and appointed in the selection process initiated in 2006 against the advertised vacancies of PTIs cannot be disturbed whose appointments shall hold good since the advertisement was not challenged by any of the parties and by keeping in view of the ratio in *Parkash Chand Meena* case they cannot be packed off home merely because they did not possess higher qualifications in the same line since they possess the essential qualification prescribed by rules for the post of PTIs and were recruited in accordance with law and the published terms and conditions which laid down the rules of the game before it began. They cannot be penalized for no fault of theirs. They came on the basis of criteria duly published and possessed the essential qualification with no preferences advertised. Besides, they are working since 2008 prior to *Manjit Singh's* pronouncement and thereafter under stay orders from 2010 onwards. It would be wholly unfair to throw them out on the road.

(ii) Those candidates who have been appointed or are yet to be appointed, are also protected by the judgment of the Full Bench in *Manjit Singh* case, which case stands duly implemented by the State Government as it decided not to

appeal against the judgment. The judgment is final qua the parties and cannot be prised open by any known legal principle nor for any reason even in *Parkash Chand Meena* case (*supra*). This category of candidates is also protected.

(iii) What remain are 119 candidates who would come in via the Full Bench decision, but have not been appointed for lack of vacancies beyond the original vacancies advertised. These are candidates in waiting. But the fact is that they have higher merit than the first category and therefore, on the principle of merit by virtue of higher qualifications, they deserve to be offered appointment as PTIs when appointments have stretched in hundreds beyond advertised vacancies. They would have to be accommodated by offering them appointments to prevent unreasonable discrimination and breach of postulates Article 14 of our Constitution even if they result in exceeding the advertised vacancies to give full effect to *Manjit Singh* and the rights of the first category held in a balance. One lot stays, the other come in. This is the result of judicial orders which have attained finality. The argument raised by Mr. Sethi that these candidates cannot be offered appointment is simply rejected since the first category have to be protected but these candidates are higher in merit than the first category. Acceptance of the contention will result in unfair discrimination and is beyond tolerance limits set in Article 14. The situation is akin to what happened in Virender S. Hooda & Others v. State of Haryana & Anr., (1999) 3 SCC 696 Sandeep

Singh v. State of Haryana & Another, (2002) 10 SCC 549 and Virender S. Hooda & Others v. State of Haryana & Anr., (2004) 12 SCC 588 cases and the Division Bench judgments of this Court giving rise to the judgments of the Supreme Court which is a case study on the how by court orders appointments were made by reason of candidates lower in merit securing appointment giving rise to claims of candidates higher in merit who were left out leading to a cascade of appointments in excess of advertised vacancies when the more meritorious obtained orders in their favour based on merit and principles on non-discrimination.

(iv) There is a third category of candidates who, as said earlier, did not challenge the advertisement or the selection process, but approached this Court belatedly unlike others did in *Manjit Singh supra* and connected petitions. They came to this Court only after the second category came to be appointed. They woke up and joined the bandwagon as 'wannabes'. They are also not within the original range of 849 vacancies advertised. Their case is that since candidates in the first category continued in service because of the interim stay orders passed by this Court and those persons are in lower in the second merit list, therefore, they should also be appointed. The argument appears rather attractive at the first glance. However, on closer examination of their standpoint as urged by their learned counsel, the contention cannot carry weight to bring them relief by reason of waiver of rights and acquiescence by failing to

approach this Court in time. They sat on the fence for over five years twiddling their toes. Ordinarily, merit should have priority, but it is not true in all cases that persons similarly situated would receive the same benefit of court orders as given to others when they did not approach the court in time. They cannot be seen as persons aggrieved and if they are they surrendered their rights to limitations in Article 113 of the Limitation Act, 1963 which principle the writ court must bear in mind before admitting a case for regular hearing. The present cases are in motion hearing. Therefore, in their case, I would negative their claims by applying the law laid down by the Supreme Court in State of U.P. & Ors v. Arvind Kumar Srivastava & Ors, (2015) 1 SCC 347 and the principles culled out therein and summarized in paragraph 22 of the report. Their case falls in principle stated in para. 22.2, when read they have no right to claim appointment. The principle is based on 'similarly situated' theory when judgment relied on to obtain similar relief is not in *rem*:-

“However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in

time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

(v) There is a 4th category of candidates who are more qualified holding higher qualifications than those advertised as part of criteria and eligibility conditions, but they never applied for the posts initially or at anytime thereafter and have approached this Court for the first time with a prayer for directions to scrap the entire selection and to quash the appointments and the recruitment process started afresh. The petitions where such prayers are made, have to be rejected. It is too late to reverse the selection made subject to successive court orders and judicial pronouncements. In any case, there was nothing inherently wrong in what the government did in making selections under the advertisement on its original terms and conditions and it was only when this Court faulted the action on 5th February, 2010 in *Manjit Singh* and directed the State to re-draw the merit list on newly declared principles that the process was re-initiated. These petitions have been filed in the year 2011 onwards, and therefore, they suffer from inordinate and unexplained delay and laches in questioning the selection made

in the year 2006 and for this reason as well, their claim has to be rejected including on bar of limitation in case they had brought a suit form the same cause of action it would have failed, see State of Madhya Pradesh v Bhailal Bhai, AIR 1964 SC 1006 (CB). In view of the law contained in *Hoshier Singh* case (supra) it is not open for the writ court to pass an order which leads to appointments beyond advertised vacancies unless there are compelling circumstances. In the present case, the appointments are already far in excess as a result of the litigation. Therefore, no further direction can be issued to stretch the vacancies any further in exercise of writ jurisdiction under Article 226 of the Constitution or to quash the entire selection as vitiated by error. The ground for them is covered and secured by binding precedent in *Manjit Singh*. Before parting with this passage while we are on *Hoshier Singh* case it would not be out of context to mention a departure from the strict rule that vacancies are not to be filled in excess of advertisement. In Prem Singh v. Haryana State Electricity Board, (1996) 4 SCC 319 when the Court made the rule in *Hoshier Singh* case a little flexible and broad enough to accommodate the exigencies of administration, if they require such a course to be adopted. This ruling comes to the rescue of the second category involving 119 candidates-in-waiting in addition to the first argument (supra) qua them. In *Prem Singh* the Supreme Court guided by larger public interest held:-

"The State could deviate from the advertisement

and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment."

[underscored for emphasis]

19. As a result of the above discussion, the writ petitions filed by the first group are allowed. The impugned show cause notices of termination issued to the first category are quashed. The stay orders in their favour are made absolute. The writ petitions filed by the second group are also allowed and the State Government would offer appointments to the 119 and odd candidates against existing vacancies/posts given that appointments have admittedly already been made up to about 1250 vacancies/posts as against the 849 as confirmed by Mr. Sethi. The writ petitions filed by the third category candidates are dismissed. The writ petitions filed by the 4th category of non-aspirants/non-applicants asking for scrapping of the entire selection are also dismissed being without any merit whatsoever. Moreover, they are not persons aggrieved and have no locus standi to question the selection process-2006.

20. Nevertheless, the petitioners who believe that their cases

deserve to be considered for one reason or the other, which reasons may not be present in the mind of the Court at present not having been pointed out, may make representations to the Government and those will be decided, if filed, in accordance with law and in terms of this judgment. The order be complied with within 8 weeks including completion of formalities, background checks, medical fitness etc. counted from the date of receipt of a certified copy of this order for those who succeed.

21. This Court takes notice when Mr Sethi informs that an SLP/s filed before the Supreme Court is/are pending in a case involving disputes regarding division of Male/Female reservation @ 50:50 introduced by a corrigendum issued qua the same selection process. Therefore, this order qua that issue will remain subject to the outcome of the orders that are passed in the SLP/s.

22. This case presents striking features of a peculiar and exceptional kind. Therefore, this order will not be treated as a precedent to be cited in other cases since it has been decided on its own facts and circumstances. There will be no order as to costs in any of the petitions.

23. All pending applications in this batch of cases will be treated as disposed of with the main cases and no specific orders are required to be passed therein.

**(RAJIV NARAIN RAINA)
JUDGE**

30.05.2016
MFK

*1.	CWP-7646-2010	RAJWANSH KAUR <u>V/S</u> STATE OF PUNJAB AND ORS.
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2.	CWP-10593-2012	MANN SINGH <u>V/S</u> STATE OF PUNJAB AND ORS
3.	CWP-19989-2012	DEEPAK SHARMA AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
4.	CWP-20413-2012	KIRANDIP SINGH AND OTHS <u>V/S</u> STATE OF PUNJAB AND ORS
5.	CWP-21253-2012	SURINDER PAL SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
6.	CWP-22438-2012	NIRANJAN SINGH AND OTHERS <u>V/S</u> STATE OF PUNJAB AND ORS
7.	CWP-23837-2012	CHARNJIT SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
8.	CWP-23844-2012	MANJINDER SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
9	CWP-23945-2012	MANJIT SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
10.	CWP-23949-2012	HARI DASS AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
11.	CWP-25272-2012	RAJVEER KAUR AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
12.	CWP-11636-2013	KRISHAN MOHAN AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
13.	CWP-12185-2013	HARJEET SINGH <u>V/S</u> STATE OF PUNJAB AND ORS
14.	CWP-12341-2013	RAKESH KUMAR AND OTHERS <u>V/S</u> STATE OF PUNJAB AND OTHERS
15.	CWP-15125-2013	KULDEEP SINGH AND ORS. <u>V/S</u> STATE OF PUNJAB AND ORS.
16.	CWP-16969-2013	NAVDEEP SINGH <u>V/S</u> STATE OF PUNJAB & ORS
17.	CWP-18621-2013	GURDEEP SINGH <u>V/S</u> STATE OF PUNJAB AND OTHERS
18.	CWP-20201-2013	GURPREET SINGH <u>V/S</u> STATE OF PUNJAB & ORS
19.	CWP-20906-2013	SURJIT SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
20.	CWP-21605-2013	DEEPINDER SINGH <u>V/S</u> STATE OF PUNJAB & ORS
21.	CWP-22555-2013	ANIL SHARMA AND OTHERS <u>V/S</u> STATE OF PUNJAB AND OTHERS
22.	CWP-27729-2013	AMANDEEP SINGH <u>V/S</u> STATE OF PUNJAB AND ORS.

23.	CWP-5841-2013	ANSHUL KUMAR GUPTA <u>V/S</u> STATE OF PUNJAB & ORS
24.	CWP-7693-2013	GURMINDERJIT SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
25.	CWP-8129-2013	AMANDEEP SINGH <u>V/S</u> STATE OF PUNJAB AND OTHERS
26.	CWP-9921-2013	KARAMJEET SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
27.	CWP-847-2013	MANJINDER SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
28.	CWP-10966-2014	VIKAS MITHON V/S STATE OF PUNJAB & ORS
29.	CWP-15122-2014	DALJIT SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
30.	CWP-15138-2014	SURINDERPAL SHARMA & ORS <u>V/S</u> STATE OF PUNJAB & ORS
31.	CWP-15142-2014	GURMINDERJIT SINGH & ANR <u>V/S</u> STATE OF PUNJAB & ORS
32.	CWP-15177-2014	VISHAL & ORS <u>V/S</u> STATE OF PUNJAB & ORS
33.	CWP-23804-2014	HARMANDEEP SINGH <u>V/S</u> STATE OF PUNJAB AND OTHERS
34.	CWP-24779-2014	HARPREET KAUR <u>V/S</u> STATE OF PUNJAB AND ORS.
35.	CWP-6605-2014	SUKHPAL SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
36.	CWP-6662-2014	JAGSIR SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
37.	CWP-5746-2015	HARVINDER SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
38.	CWP-13923-2014	SARBJIT SINGH AND ANR <u>V/S</u> STATE OF PUNJAB AND ORS
39.	CWP-11329-2011	JAGMOHAN SINGH & ORS. <u>V/S</u> STATE OF PUNJAB & ORS.
40.	CWP-11013-2011	JASWINDER SINGH & ORS. <u>V/S</u> STATE OF PUNJAB & ORS.
41.	CWP-11394-2011	AMANDEEP KAUR AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
42.	CWP-11334-2011	HARPREET PAL SINGH <u>V/S</u> STATE OF PUNJAB
43.	CWP-11466-2011	MANJIT KUMAR AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS

44.	CWP-12683-2011	CHARANJIT KAUR & ORS <u>V/S</u> STATE OF PUNJAB & ORS
45.	CWP-7136-2012	RAJINDER KUMAR AND OTHERS <u>V/S</u> STATE OF PUNJAB AND OTHERS
46.	CWP-9248-2012	NAVNEET KAUR AND ANOTHER <u>V/S</u> STATE OF PUNJAB AND OTHERS
47.	CWP-9249-2012	CHAMAN LAL AND ANOTHER <u>V/S</u> STATE OF PUNJAB AND OTHERS
48.	CWP-11034-2011	MANINDER SINGH AND ORS <u>VS.</u> STATE OF PUNJAB & ORS
49.	CWP-5726-2014	SUKHDEV SINGH <u>V/S</u> STATE OF PUNJAB & ORS.
50.	CWP-5770-2014	GAGANDEEP & ORS <u>V/S</u> STATE OF PUNJAB & ORS
51.	CWP-8327-2012	DINESH SHARMA <u>V/S</u> STATE OF PUNJAB AND OTHERS
52.	CWP-18587-2015	GURBAJ SINGH AND ORS <u>V/S</u> STATE OF PUNJAB & ORS
53.	CWP-15157-2015	KULDEEP SINGH AND ORS <u>V/S</u> STATE OF PUNJAB & ORS
54.	CWP-17367-2015	SUKHDEV SINGH AND ORS. <u>V/S</u> STATE OF PUNJAB AND ORS.
55.	CWP-7084-2015	TALWINDER SINGH <u>V/S</u> STATE OF PUNJAB & ORS
56.	CWP-9861-2015	HARPREET SINGH & ANR <u>V/S</u> STATE OF PUNJAB AND ORS
57.	CWP-17599-2015	AMRITPAL KAUR & ORS <u>V/S</u> STATE OF PUNJAB & ORS
58.	CWP-25606-2015	HARJINDER SINGH & ORS. <u>V/S</u> STATE OF PUNJAB & ORS.
59.	CWP-26712-2015	PARAMJIT SINGH AND ORS. <u>V/S</u> STATE OF PUNJAB AND ORS.
60.	CWP-27575-2015	GURMEET SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
61.	CWP-24736-2014	ABHISHEK KUMAR & ORS <u>V/S</u> STATE OF PUNJAB & ORS
62.	CWP-17962-2014	JATINDER PAL SINGH <u>V/S</u> STATE OF PUNJAB & ORS
63.	CWP-1733-2016	AMANPREET SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
64.	CWP-26444-2015	JOGINDER SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS

65.	CWP-26489-2015	RESHAM SINGH & ORS. <u>V/S</u> STATE OF PUNJAB & ORS.
66.	CWP-26541-2015	GURPREET SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
67.	CWP-27224-2015	EKJOT SINGH AND ORS <u>V/S</u> STATE OF PUNJAB AND ORS
68.	CWP-1586-2016	JAGJIT SINGH AND ORS. <u>V/S</u> STATE OF PUNJAB AND ORS.
69.	CWP-784-2016	LOKESH CHANDER <u>V/S</u> STATE OF PUNJAB AND ORS
70.	CWP-27486-2015	JASPAL SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
71.	CWP-10994-2012	SUKHWINDER SINGH AND ANR. <u>V/S</u> STATE OF PUNJAB AND ANR.
72.	CWP-19013-2012	VICKY SHARMA & ORS <u>V/S</u> STATE OF PUNJAB & ORS
73.	CWP-15310-2014	GURVINDER SINGH <u>V/S</u> STATE OF PUNJAB & ORS
74.	CWP-15330-2014	JASBIR KAUR <u>V/S</u> STATE OF PUNJAB & ORS
75.	CWP-25256-2014	HARDEEP SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
76.	CWP-15293-2014	LIVLEEN SINGH <u>V/S</u> STATE OF PUNJAB & ORS
77.	CWP-3318-2016	AVINASH KUMAR & ORS <u>V/S</u> STATE OF PUNJAB & ORS
78.	CWP-3425-2016	BALWINDER SINGH AND OTHERS <u>V/S</u> STATE OF PUNJAB AND OTHERS
79.	CWP-3898-2016	BALJINDER SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
80.	CWP-4133-2016	ROOP SINGH <u>V/S</u> STATE OF PUNJAB & ORS
81.	CWP-4345-2016	RACHHPAL SINGH & ORS <u>V/S</u> STATE OF PUNJAB & ORS
82.	CWP-4584-2016	DAVINDER SINGH <u>V/S</u> STATE OF PUNJAB AND ORS
83.	CWP-4612-2016	BHAGWANT KAUR & ORS <u>V/S</u> STATE OF PUNJAB & ORS
84.	CWP-5216-2016	AMANDEEP SINGH <u>V/S</u> STATE OF PUNJAB & ORS
85.	CWP-5251-2016	SUKHDEV SINGH AND ORS. <u>V/S</u> STATE OF PUNJAB AND ORS.

86.	CWP-6395-2016	RAMAN KUMAR & ORS <u>V/S</u> STATE OF PUNJAB & ORS
87.	CWP-6450-2016	DAMANJEET SINGH & ORS <u>V/S</u> STATE OF PUNJAB AND ORS
88.	CWP-7882-2016	SHOKAT ALI & ANR <u>V/S</u> STATE OF PUNJAB & ORS

(RAJIV NARAIN RAINA)
JUDGE

30.05.2016
MFK