

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

CWP No. 19596 of 2014

Reserved on: 26.05.2016

Date of decision: 11.07.2016

Makhan Ram and others

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Girish Agnihotri, Sr. Advocate,
with Mr. Saurabh Arora, Advocate,
Mr. JPS Sidhu, Advocate,
Mr. P.S. Dhaliwal, Advocate,
Mr. Sunny Singla, Advocate,
Mr. Harish Goyal, Advocate,
Ms. Deepika, Advocate,
for Mr. Ranjivan Singh, Advocate,
Mr. Abhishek Arora, Advocate,
Mr. T.P. Singh, Advocate,
Mr. A.P. Kaushal, Advocate,
for Mr. Navjot Singh, Advocate,
Mr. Vikramjeet Singh, Advocate,
for Mr. Aman Pal, Advocate,
Mr. Saurabh Arora, Advocate,
Mr. M.S. Sidhu, Advocate,
for the petitioners.

Mr. L.S. Virk, Addl. A.G., Punjab,
Mr. APS Mann, Addl. A.G., Punjab,
Mr. Anshul Gupta, AAG, Punjab,
Mr. Nilesh Bhardwaj, DAG, Punjab.

Mr. Gobind Korla, Advocate,
for Mr. Sandeep Vermani, Advocate,
for the applicant-Peona Power Project.

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of a bunch of 66 cases,
details of which are mentioned in Annexure 'A' attached with the judgment,
since common questions of facts and law are involved in all the writ

petitions. The facts are being taken from ***CWP No. 19596 of 2014, Makhan Ram and others vs. State of Punjab and others.***

2. The petitioners challenge the order dated 23.07.2014 (Annexure P-2) whereby, respondent no. 2-Deputy Commissioner, Mansa rejected the case of the petitioner no. 44 for grant of job on account of the fact that the quantum of land acquired from him was less than 1 marla. Therefore, as per the guidelines of the Government dated 28.02.2014/03.03.2014 (Annexure P-5), if the land was less than 4 kanals, it was held that the person was not entitled to get the job. In the cases of all other petitioners also, similar orders have been passed and the entitlement to the job has been denied on the account of the lesser land holding than 4 kanals. Resultantly, challenge has also been raised to the decision dated 28.02.2014 taken by the High Level Committee in pursuance of which, the guidelines dated 03.03.2014 were issued on the ground that if big land owners were entitled for appointment, then the petitioners should also be granted the same benefit of getting jobs under Group C and D posts as per their qualifications and as per the earlier policy dated 08.11.2011 (Annexure P-1).

3. The factual background of the case is that on account of the setting up of the Peona Thermal Power Plant, land to the tune of 882 acres was acquired in five different villages of District Mansa i.e. village Gobindpura, Jalvera, Sirsiwala, Bareta and Dayalpura vide awards dated 25.03.2011 and 24.09.2011. Initially, a policy dated 08.11.2011 (Annexure P-1) was floated whereby, public employment was to be given to one member of the family whose land had been acquired for the purpose of the aforesaid thermal plant. In the said policy, government jobs were to be

given for group C and D posts and the eligibility for educational qualification was 10+2. The owner whose land had been acquired, one of his family members was to be given a job and if there was a minor child, then the job was to be given on the completion of the study of the child as per the application of the family. The posts were taken out of the purview of the Punjab Public Service Commission and the Subordinate Service Selection Board. The applications were to be given to the Deputy Commissioner, Mansa.

4. As per the respondents, more than 1000 cases were processed and forwarded to the Government and it came to the notice of the Deputy Commissioner that persons with ulterior motives had got title of small chunks of land or even in fractions of acquired land through exchange with land just before the notification to avail benefit of employment. An inquiry was got conducted through the District Revenue Officer, Mansa and as per the findings of the inquiry officer, the Deputy Commissioner had written to the Government to initiate action against the Revenue Officers involved in these transactions. Around 400 transactions had happened in the period of less than 6 months of the first notification under Section 4 of the Land Acquisition Act, 1894 (in short '1894 Act') i.e. 04.10.2010 for the purposes of getting the undue benefits. In many cases, land size was of few square yards only. Resultantly, a high level meeting was then held on 28.02.2014 under the chairmanship of the Chief Minister, Punjab to ensure that only real land owners whose source of livelihood had been actually affected would get jobs and not non-deserving persons. Accordingly, a decision was taken that all pending cases would be considered and the land owners having land of two acres or more would be eligible for a job. Accordingly,

persons having more than 2 acres were held to be eligible for jobs. Under Clause 4 of the fresh guidelines which were issued on 03.03.2014, in cases of exceptional hardship where the land holding was between 4 kanals to 2 acres, a Committee was to be formed to assess the genuine hardship and the ground to give the job to the member of the family and make recommendations accordingly.

5. Senior counsel for the petitioners accordingly argued that they have been wrongly excluded being small land owners and the action is arbitrary and discriminatory. It creates a class within a class which has no intelligible differentia and no nexus to the object sought to be achieved and thus, challenged the changed policy dated 28.02.2014/03.03.2014 (Annexure P-5). It is further the case of the petitioners that certificates were issued to them by the concerned Tehsildar that their land had been acquired and they had received the due compensation and they had accordingly applied for the job. Reference was made to one such certificate dated 22.01.2012 (Annexure P-6). It was accordingly pleaded that a Committee had been set up to scrutinize all the applications and similarly situated persons whose land had been acquired like that of the petitioners were given appointments in various departments against Group C and D posts. The appointment orders dated 05.02.2013 (Annexure P-7) issued by the Punjab State Power Corporation Ltd. and by the District Education Officer dated 01.03.2013 (Annexure P-8) were appended in support. It is accordingly the case of the petitioners that their names had also been recommended and reliance has been placed upon chart (Annexure P-9) whereby, the case had been sent to the Government vide recommendations in the year 2012 itself.

Reliance was placed upon a public notice issued on 25.07.2013 (Annexure

P-10) that respondent no. 3 had scrutinized the applications and prepared a list of persons whose claim was rejected and objections were invited from the said persons. In case of no objection being received, the persons mentioned in the list were to be rejected. Resultantly, the plea set up was that persons who had land even less than 4 kanals had been given jobs whereas the petitioners were being discriminated against. Reference was also made to various orders passed by this Court wherein, directions were issued to decide the issue of consideration of the petitioners and other similarly situated persons. Specific reliance was placed upon order passed in CWP No. 5459 of 2014, Sukhpreet Kaur and others vs. State of Punjab and others on 24.03.2014 (Annexure P-12) to submit that the decision taken in the meeting held on 28.02.2014 had not been brought to the notice of this Court and, therefore, the petitioners could not challenge it at that point of time. Accordingly, it was contended that the case be considered as per the first policy dated 08.11.2011 and the policy could not be changed to the detriment of the petitioners since their cases had already been recommended in the year 2012. Violation of Article 14 of the Constitution of India was pleaded that others had got the benefit of employment in spite of the fact that they had less land than 4 kanals. Reference was made to the appointments made by the Police Department (Annexures P-13 and P-14) where appointments had been given to various persons all having land less than 4 kanals. It was also argued that no hearing was given when the policy was changed and the decision, if any, would apply prospectively.

6. Counsel for the State, on the other hand, submitted that there were valid reasons to modify the policy since small pieces of land had been purchased for the purpose of getting the government jobs and some of the

land was only in fractions. It is accordingly submitted that vide the changed policy, the definition of term 'family' had been categorized and the eligibility had been set out regarding all other parameters. Persons who are claiming acquisition on the part of the village common lands and those who had exchanged the land either fully or partially with some other land were also not entitled for the job under the guidelines. It is submitted that the said policy could apply to pending applications and it was in public interest that the said action had been taken on account of the misuse of the policy. The ground for making persons eligible who were having land holdings of more than 2 acres was justified as the purpose was to provide employment to persons whose livelihood had been affected. It was accordingly submitted that land between 4 kanals to 2 acres also entitled the persons for consideration provided their cases came within the cases of exceptional hardship which had been specified by the policy. Accordingly, the impugned order and the modified policy was justified and liable to be upheld. It was further submitted that Article 14 of the Constitution of India was not a negative equality clause and, therefore, even in case some appointments had been made to persons having less than 4 kanals it would not give a right to the others. The right of employment was a mere concession held out by the State and the petitioners had already been paid the compensation for the land as per the provisions of the law and, therefore, the writ petition was liable to be dismissed. It is accordingly submitted that after the amendment of the policy, the recommendations which had been made for the jobs had become infructuous and hence forth all pending cases would be dealt with as per the decision taken in the meeting dated 28.02.2014.

7. The two issues, thus, that arise for consideration before this Court are:-

(i) That whether the State could change and modify the policy dated 08.11.2011 to the detriment of the petitioners and whether they were bound by the earlier policy to provide a job to one family member of persons whose land was acquired.

(ii) Secondly, in case the State does have the power to change its policy, whether it would have the power to change it retrospectively in as much as that the petitioners' cases had been processed but not taken to the logical end and in the meantime, due to change of policy, they have not been granted the benefit of employment whereas other similarly situated persons, as noticed above, have been granted appointment, even though they had land less than 4 kanals?

8. A perusal of the minutes of the meeting dated 28.02.2014 would go on to show that on the recommendation of respondent no. 2, it was noticed that certain checks and filters were to be put in shape to the existing guidelines dated 08.11.2011 whereby, the benefit of employment was to be given to persons whose land had been acquired. The purpose was that only real land owners, whose livelihood had been affected as a result of acquisition, be benefitted. The broader interpretation of the term 'family' and the condition of attaining educational qualifications of at least 10+2 and the maximum age limit was subject matter of consideration. It was only to ensure that only the real land owners whose livelihood had been affected get jobs and not the unscrupulous elements who could circumvent the guidelines and take advantage of the policy. Resultantly, it was decided that minimum qualification for the jobs was to be fixed at 10+2 and the offer

was to be only for Group C and Group D posts. There would be no relaxation in educational qualifications, whatsoever. The claim of a person who wanted to acquire the required educational qualifications was to be kept pending as per the government instructions keeping in view the limitation of the age. Similarly, term 'family' having not been defined, reliance had been placed upon Rule 2.17 of the Punjab Civil Service Rules as to the definition of the family and the dependency factor. The married daughters were accordingly held not considered dependent upon their parents. If the land owner and the immediate dependents were not eligible owing to age/educational qualifications, than the grand son/unmarried grand daughter would be considered for the job who would be nominated by the original land owner. Similarly, for the upper age limit, a cut off date of 31.03.2013 was fixed for the minimum and maximum age limit for Group C and D posts as per the Punjab Civil Service Rules. Relaxation was further provided of 5 years for special categories like Ex-serviceman/SCs. Regarding land holdings, it was noticed that more than 500 applicants were those whose one marla or even a fraction of one marla had been acquired out of the 1200 applications. A large number of such transactions had occurred in few months just before the date of notification and the purchase was considered not genuine but was with a purpose to become a land owner in the land acquisition proceedings for deriving benefits illegally. The said persons were neither original land owners in the village nor their livelihood was affected due to the acquisition of land. A large number of applicants numbering 400 were those whose entire land had not been acquired and only their partial land had been acquired and, therefore, for the said category, whether their livelihood had been affected or not was to be seen.

It was accordingly decided that only persons whose land was 2 acres or more would be eligible for the jobs. However, under Clause 4 pertaining to cases of exceptional hardship where land holding was between 4 kanals to 2 acres, a Committee was constituted which would scrutinize the cases and assess whether there would exist genuine hardship grounds to give jobs to the member of the family. Then, recommendations had to be made keeping in view the guidelines as to whether the family had any other source of reasonable livelihood; whether the family had any other land holding in part of the State; whether the land owner was a bona fide resident of the village for the last 5 years; whether family was in receipt of any amount of pension by the Central or the State Government or any other agencies; whether the entire land holding had been acquired and whether the land owner had become owner of the land with ulterior motive of deriving benefits of land acquisition. It was also decided that if the land was less than 4 kanals he would not be entitled for claim of job and if the claim was based on the acquisition of the part of the village common land or where the land owner had exchanged his acquired land either fully or partially with some other land belonging to the project, the benefit of employment was not to be given. The relevant portion of the policy reads thus:-

“4. Land tenure: (sic holding)

Deputy Commissioner, Mansa informed that more than 1200 applications have been received for giving jobs whose land has been acquired for Peona Power Project, Gobindpura. Out of which more than 500 applicants are those whose one marla or even a fraction of one marla has been acquired. A large number of such transactions have occurred in few months just before the date of notification under section

4 of the Land Acquisition Act for acquiring land for Peona Power Project, Gobindpura. It appears that they have purchased fraction of land just to become land owner in the land acquisition to derive benefits because these land owners are neither original owners of the village nor have their livelihoods been affected families due to acquisition of land for this project. He further informed that in some cases the land transactions are of few sq. yards. Approx more than 400 applicants are those whose entire land has not been acquired and their partial land which is even less than two acres has been acquired. It was observed that applicants of following two categories can not be said to be families whose livelihoods have been affected because of the land acquisition for this project:-

(a) The applicants whose quantum of acquired land is very less.

(b) The applicants whose partial land has been acquired.

After detailed discussion on the cases falling under these two categories it was decided that the benefit of providing jobs should reach to the actual affected persons whose livelihood has been affected due to this acquisition. Therefore, it was decided that only those land owners/families would be eligible for jobs whose acquired land is two acres or more.

5. Cases of Exceptional hardship:

It was however, observed in the meeting that there may be some cases of exceptional hardship where the family has been completely/substantially affected by the acquisition of land where the land acquired is between 4 kanals to 2 acres. For these cases a committee consisting of following members is constituted:-

1. *Representative of Secretary Power.*
2. *Representative of Deputy Commissioner, Mansa.*
3. *Land Acquisition Collector.*

This Committee would scrutinize the cases of exceptional hardship where the owner held land to the tune of 4 kanals to 2 acres to assess whether there exists genuine hardship & grounds to give jobs to member of the family and then make recommendations to the Government keeping in view the following guidelines:-

- a) *Whether the family has no other source of reasonable livelihood.*
- b) *Whether the family has any other land holding in any part of the State.*
- c) *Whether the land owner is a bonafide resident of the village for the last five years.*
- d) *Whether the family is in receipt of any kind of pension given by the Central/State govt. or any other agency other than the pension given by the Social Security Department.*
- e) *Whether his entire holding has been acquired.*
- f) *Whether the land owner has become owner of the land with ulterior motive of deriving benefits of land acquisition.*

It was also decided that henceforth all such cases would be processed in the light of these guidelines/clarifications.

6. *It was also decided that the following land owners/families shall not be eligible to claim for any job under these guidelines:-*

- a) *If the land acquired is less than 4 kanals.*
- b) *In case the claim is based on acquisition of*

part of the village common land, Jumla land etc.

c) If the land owner has exchanged his acquired land either fully or partially with some other land belonging to the project.

The meeting ended with the vote of thanks to the chair.”

9. As noticed above, in the present set of cases, this Court is only dealing with the land which is less than 4 kanals. The above modification/alteration of policy would go on to show that it was made in public interest and it was the decision of the Government which can always change its policies. The right of the State to change its policies under changing circumstances cannot be disputed. Financial constraints and misuse of policy and whether the earlier policy was rational is a factor which the Government had to keep in mind while modifying the earlier concession it was holding out. The Court's interference with such administrative decisions which is in the form of concession is very limited. As noticed above, the State, on the basis of the report of the revenue officials, noticed that there was a large scale misuse. It was in such circumstances the earlier policy, which was very sketchy in nature, was suitably modified by specifying the definition of term 'family' providing the educational qualification, fixing a cut off date for the upper and lower age limit of the person to whom employment was to be offered; giving a right to the applicant to improve his educational qualification and cutting out the claim based on ownership in the village common land alongwith any exchanges made with the land belonging to the project. The same is a policy decision of the State which could be revived or modified from time to time and also withdrawn in public interest. It is also a matter of fact that the

acquisition was under the Land Acquisition Act, 1894 and as such there was no such legal vested right to seek employment and it was only a concession which the State was holding out. The petitioners cannot also seek any benefit on the ground that the State was bound under the principle of promissory estoppel. The land was a subject matter of compulsory acquisition, for which, the State had paid due compensation and solatium and the petitioners, as noticed in some cases, are just owners of a paltry area measuring in yards. They seek public employment on the strength of such small holdings which necessarily comes at the cost of others who are not land owners. The right to apply or to be granted the benefit of the job would not be available to such other persons. Thus, the principle of promissory estoppel as such cannot be applied in such facts and circumstances as the petitioners have not materially altered their position in any manner which is a necessary factor for the said principles to come into play. The State was only, thus, rectifying its earlier decision and clarifying the benefits which had to be granted by way of a government job to persons whose land had been acquired. Thus, it could not be as such said that it had to be made a slave of its earlier policy for all times to come and the individual interest must yield to the societal interest.

10. Reference can be made to the judgment of the Apex Court in ***State of Punjab vs. Ram Lubhaya Bagga, 1998 (4) SCC 117*** wherein, the dispute was regarding the entitlement towards medical expenses of the Punjab Government employees and pensioners which was admissible to them at the same scale in non-governmental hospitals. The policy having been changed and the earlier benefit for treatment of the ailment at Escorts Hospital had been declined on account of the withdrawal by following the

new policy which was a subject matter of consideration. The Apex Court accordingly held that changing circumstances and financial constraints were relevant considerations to weigh with the Government and the Court would not enter into the arena of public policy. The relevant observations read thus:-

“20. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints.”

11. Similarly, the right of hearing to be given while taking a policy decision was rejected by holding out that the principles of natural justice would not come into place when a government policy or decision is to be taken. The Apex Court was examining the policy of disinvestment being made in the company which was challenged by the employees' union. It was accordingly held that the disinvestment policy involves complex economic factors. It would not give the right to the workers of a prior notice of hearing before deciding to a disinvest. The observations of the Apex Court in **BALCO Employees' Union (Regd.) vs. Union of India, 2002 (2) SCC 333** reads thus:-

“51. The aforesaid observations, in our opinion, enunciates the legal position correctly. The policies of the Government ought not to remain static. With the change in economic climate, the wisdom and the manner for the Government to run commercial ventures may require reconsideration. What may have been in the public interest at a point of time may no longer be so. The Government has taken a policy decision that it is in public interest to disinvest in BALCO. An elaborate process has been undergone and majority shares sold. It cannot be said that public funds have been frittered away. In this process, the change in the character of the company cannot be validly impugned. While it was a policy decision to start BALCO as a company owned by the Government, it is as a change of policy that disinvestment has now taken place. If the initial decision could not be validly challenged on the same parity of reasoning, the decision to disinvest also cannot be impugned without showing that it is against any law or mala fide.”

The Court's jurisdiction to interfere in public policies and to

strike down the same was held to be limited in the absence of any illegalities and the scope for interference in such public policies has been made very limited. It was accordingly held that it is for the State to make pragmatic decisions which may be necessary and called for under prevalent peculiar circumstances in ***Villianur Iyarkkai Padukappa Maiyam vs. Union of India and others, 2009 (7) SCC 561*** by a three-Judge Bench. The relevant portion reads thus:-

“In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Normally, there is always a presumption that the Governmental action is reasonable and in public

interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action. In a case like this where the State is allocating resources such as water, power, raw materials, etc. for the purpose of encouraging development of the port, this Court does not think that the State is bound to advertise and tell the people that it wants development of the Port in a particular manner and invite those interested to come up with proposals for the purpose. The State may choose to do so if it thinks fit and in a given situation it may turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to develop the port, the State would not be committing breach of any constitutional obligation if it negotiates with such a party and agrees to provide resources and other facilities for the purpose of development of the port. The State is not obliged to tell the respondent No. 11 "please wait I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should get the port developed through you". It would be most unrealistic to insist on such a procedure, particularly, in an area like Pondicherry, which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up industries. The State

must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to develop the port and if the State enters into a contract with such an entrepreneur for providing resources and other facilities for developing the port, the contract cannot be assailed as invalid because the State has acted bona fide, reasonably and in public interest. The terms and conditions of the contract entered into with the respondent No. 11 as well as the surrounding circumstances show that the State has acted bona fide and not out of improper or corrupt motive or in order to promote the private interest of the respondent No. 11 at the cost of the State. Therefore, it is difficult to interfere and strike down the State action as arbitrary, unreasonable or contrary to public interest. It is true that one of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. But as noted earlier, this is not a case of sale of property by the State. Though public auction or inviting of tenders is the ordinary rule in case where the State Government proposes to dispose of a property, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule, the reasons indicated in this case for the departure are shown to be rational and are not suggestive of discrimination. The Government is entitled to make pragmatic decisions and policy decisions which may be necessary or called for under the prevalent peculiar circumstances.”

13. Accordingly, keeping in view the above discussion, it is held that the policy of providing employment by way of concession could always be changed keeping in view the public policy and the larger interest. The

decision of the Government to restrict it and exclude the small land holders is well justified and is based on a reasonable and intelligent criteria.

14. The second issue which arises for consideration is that the petitioners have no such legal vested right as such and do not, by any statutory legal right, seek employment to a government job on the account of acquisition of land. The Full Bench of the Allahabad High Court in ***Ravindra Kumar vs. District Magistrate and others, 2005 (2) RCR (Civil) 427*** held that the claim for job in addition to the compensation cannot be given in public sector undertakings as it would be putting greater burden on the tax payers. It was further held that the 1894 Act is a self contained Code and even solatium had been received and in the absence of any statutory provision or any promise, the land owners could not claim appointment as a matter of right. The factum of small land holdings also weighed with the Court that for even one square yard of the land, one of the family members would be given employment which would be unreasonable and arbitrary. The relevant observations read thus:-

“20. It is a general rule that appointments in the public services should be made by inviting applications through open advertisement and strictly on merit so that every citizen should get equal opportunity in the matter of appointment. This rule should be adhered to in the matter of any public employment or appointment. Neither the State Government nor its instrumentality nor any public authority can deviate from this common rule of appointment and if any other procedure or mode is adopted, it would be violative of Articles 14 and 16 of the Constitution of India which ensures and guarantees equal opportunity to all citizens in the matter of appointment to any office or of any other employment

under the State. However, some exceptions to the general rule for public employment or appointment is also recognized which is commonly known as appointment on compassionate ground which is evolved purely on humanitarian ground and in the interest of justice. This rule was made to meet certain contingencies and to give appointment to a dependant of an employee dying-in-harness to prevent his family from destitution.

21. [The Land Acquisition Act](#) is a self-contained Code and provides the procedure to be followed for acquisition as well as for assessment of the valuation and payment of fair and just compensation as per market value of the person whose land is acquired. In addition to that market value of the land interest @ 12% is also given from the date of publication of the Notification vide [Section 23\(1-A\)](#). Besides that, a sum of 30% on such market value is also paid as solatium for distress and for inconvenience or difficulties caused to the person on account of compulsory acquisition of the land vide [Section 23\(2\)](#) of the Act. Therefore, a person whose land is acquired not only gets adequate compensation as per market value of the land but also gets interest on the amount of compensation (a) 12% from the date of notification under [Section 4](#) of the Act as well as an amount of solatium, which is 30% of the amount of compensation. Neither the Land Acquisition Act nor the regulations provides that in the event of acquisition of the land one of the family members of the landholder shall be given employment in addition to the amount of compensation. Therefore, in the absence of any statutory provision or any promise, the petitioner respondent cannot claim appointment as a matter of right nor can the respondent make such appointment.

22. There is no provision under the *Land Acquisition Act* under which the Circular dated 28.12.1974 could be issued. Whatever compensation has to be given for acquisition of the land is provided under the *Land Acquisition Act* itself which is a self-contained Code. Any G.O. providing for any further benefit not mentioned in the *Land Acquisition Act* would be inconsistent with the intention of Parliament as contained in the *Land Acquisition Act*. Hence any such G.O. would be violative of the *Land Acquisition Act* and would hence be invalid. Such a G.O. will also violate *Article 16* of the Constitution as already mentioned above.

23. That apart, in our opinion, the aforesaid G.O. is wholly unworkable. The record shows that the petitioner had only 12 biswas and ten biswansi land in his share which was acquired. Thus only about half a bigha of the petitioner's land was acquired in the present case. If the Circular dated 28.12.1974 is given a literal interpretation it would mean that if even one square yard land of a person is acquired one of his family members would have to be given employment. This would be wholly unreasonable and arbitrary.

24. The number of jobs available in this country is very limited and jobs cannot be given in this manner violating *Article 16* of the Constitution.”

15. The Apex Court in ***Punjab State Electricity Board and others vs. Malkiat Singh, 2005 (9) SCC 22*** also set aside the judgment of the Division Bench of this Court which had held that there was a vested right as such for employment. It is held that the appointment on priority basis was in the form of a concession and if there was a change of policy in the absence of any mala fides, the earlier policy could not be enforced. It was

noticed that there is only a right of consideration and no vested right of appointment. The concession was only to give a helping hand as far as possible and there could not be a claim as a matter of right. The relevant portion reads thus:-

“4. Having considered the respective submissions made by the learned counsel for the parties, we are of the view that the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in Shankarsan Dash vs. Union of India which reads:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate

reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana or Jatendra Kumar v. State of Punjab.

5. *The same position is reiterated and followed by this Court in All India SC & ST Employees' Assn. v. A. Arthur Jeen and State of Oriss Vs. Bhikari Charan Khuntia.*

6. *It is not disputed that neither homeopathic dispensary at Lehra Mohabbat power station nor a post of Homeopathic Physician was available on 18.7.1994. The decision to set up a homeopathic dispensary at Lehra Mohabbat and to create a post of Homeopathic Physician in the dispensary was taken only on 1.7.1998 long after the policy decision dated 18.7.1994 and subsequent to the change in the policy dated 15.5.1998 and 2.6.1998. This being the position, the question of the respondent seeking for appointment to the said post pursuant to policy decision of 18.7.1994 itself did not arise. At any rate, there could be no vested right in him to claim the appointment to the said post. The High Court also committed an error in taking a view that the policy decision of 2.6.1998 could not have retrospective application to the disadvantage of the respondent. There is no question of applying the policy retrospectively. On 17.9.1998 when the names of suitable candidates were sought from the employment*

exchange pursuant to the decision of the Board dated 1.7.1998, it could not be said that the right of the respondent was taken away when he did not have any such vested right to get an appointment to Class-II post of Homeopathic Physician. It may also be added that the respondent was not eligible to claim appointment on priority basis having regard to the changed policy from 2.6.1998 inasmuch as the land acquired from him was less than 2 acres and he was also over-aged as on 17.9.1998. The revised policy made the position clear that there could be no relaxation in regard to qualification and the age limit. Further the scheme was devised on 18.7.1994 and subsequently it was revised only as a concession to give a helping hand as far as possible to rehabilitate the displaced families whose lands were acquired. The respondent has got compensation for his land which was acquired. The scheme giving appointment on priority basis was only in the nature of concession to eligible candidates which the respondent could not claim as a matter of right having taken compensation amount for his land which was acquired, more so when he did not fulfill the necessary requirements under the revised scheme. The High Court in the impugned order has observed that:

"Obviously, if the effort of the respondent is to deny to the petitioner the job that he seeks in the present case on the ground that he is overage, action of the respondents cannot but be termed as discriminatory." This observation is not based on proper foundation or facts. It is not a case where any mala fide is alleged against the appellant or its officers. There is nothing to show that anybody was bent upon denying the appointment to the respondent."

16.

In similar circumstances, on the issue of compassionate

appointments regarding the new scheme which had come in, the Apex Court in ***State Bank of India and another vs. Raj Kumar, 2010 (11) SCC 661***, also dealt with the issue as to whether the person had a right to claim under the old scheme and whether there was any legal vested right to an appointment where an ex-gratia lump-sum amount policy had come in force. It is accordingly held that merely because an application had been filed and processed would not create a right in the favour of the applicant. The employment was by way of a concession to enable a family to get over the sudden financial crises and could be withdrawn depending upon various contingencies. Resultantly, the directions of the High Court were set aside wherein, it was held that appointment was to be granted.

17. The said view was followed in ***MGB Gramin Bank vs. Chakrawarti Singh, 2014 (13) SCC 583***. It was held that a vested right can arise from a contract, statute or operation of law and the case could be considered under the new scheme and the directions given for compassionate appointment were accordingly set aside. The relevant portion reads thus:-

“9. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

10. In A. Umarani v Registrar, Co-operative Societies & Ors., AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the

provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

11. *The word ‘vested’ is defined in Black’s Law Dictionary (6th Edition) at page 1563, as*

“vested’.-- Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

12. *In Webster’s Comprehensive Dictionary (International Edition) at page 1397, “vested” is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar and J.S. Yadav v State of U.P.)*

13. *Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldeep Singh v Govt, (NCT of Delhi).]*

14. *A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein,*

which reads as under:

“14. Date of effect of the scheme and disposal of pending applications.-- The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme.”

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.”

18. Counsel for the petitioner has placed reliance upon judgment of the Apex Court in ***Canara Bank and another vs. M. Mahesh Kumar, 2015 (7) SCC 412*** to submit that pending applications for compassionate appointment had to be decided as per the old policy and not the new scheme of ex gratia payment.

19. The said argument is without any basis. A perusal of the judgment would go on to show that it has been noticed by the Apex Court that the ex gratia payment was again superseded by the 2014 scheme which revived the scheme for compassionate appointment. Accordingly, keeping in view that factor, directions were issued that the application of the person should be considered for compassionate appointment and the bank was not justified by processing the case for ex gratia payment. The relevant portion reads thus:-

“18. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant-bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.”

20. Accordingly, it can be safely held that the concession which was granted can be withdrawn and there is no such legal vested right which is available to the petitioners to enforce their claim on account of the fact that other persons had been given appointment who had land less than 4 kanals on the ground that their applications were under process. The State was also well justified in placing reliance upon the judgments of the Apex Court to contend that Article 14 of the Constitution of India could not be enforced by way of negative equality by compounding one thing and permitting and enforcing something illegal. The discretionary power of the High Court under Article 226 of the Constitution of India could not be

exercised for such purpose as laid down in ***Gursharan Singh vs. New Delhi Municipal Committee, 1996 (2) SCC 459*** and ***Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain and others, 1997 (1) SCC 35***. The relevant portion in *Daulat Mal Jain's case (supra)* reads thus:-

“24.....The apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar fight and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to. deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

25. In *Yadu Nandan Garg's case (supra)*, it was contended that one of the person whose land was acquired, had the benefit of exemption from the acquisition; writ petition was filed seeking similar benefit. When it was contended that it was violative of Article 14, this court in paragraph 5 had held that "a wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination."

26. In *Coromandel Fertilizers Ltd. v. Union of India*

and Ors., [1984] Supp SCC 457, it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

27. In Chandigarh Administration & Another v, Jagjit Singh & Another, [1995] 1 SCC 745, allotment of the sites was subject matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the same. When Article 14 was pressed into service, this Court in paragraph 8 at page 750 had held, that the basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken, was unsustainable in law and indefensible in principle. The mere fact that the respondent-authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of petitioner. If the order in favour of the other person is

found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.”

21. Resultantly, in the opinion of the Court, no interference can be made in the policy dated 03.03.2014, which has been modified and the decisions of the Deputy Commissioner rejecting the cases on that ground. Accordingly, the writ petitions stand dismissed.

22. It is, however, pertinent to mention that some of the petitioners in the present bunch of cases are having land more than 4 kanals and reference can be made to petitioners no. 51 and 52 in CWP No. 22603 of 2014; petitioner no. 6 in CWP No. 4338 of 2015; petitioners no. 7 and 8 in CWP No. 5321 of 2015. Since the impugned orders have not been attached in the said cases, the said petitioners and similarly situated persons having land more than 4 kanals will have a right to challenge the rejection on other

grounds by filing appropriate proceedings and challenging the orders in accordance with law, if so required. Liberty is granted accordingly in those cases.

11.07.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

ANNEXURE 'A'

Sr. No.	CWP/Case Number	Parties Name
1	CWP No.19596 of 2014	Makhan Ram & Ors. Vs. State of Pb. & Ors.
2	CWP No.4907 of 2014	Manpreet Singh Vs. State of Pb. & Ors.
3	CWP No.6021 of 2014	Binder Singh Vs. State of Pb. & Ors.
4	CWP No.5897 of 2015	Dalveer Singh Vs. State of Pb. & Ors.
5	CWP No.18471 of 2015	Ramjit Singh Vs. State of Pb. & Ors.
6	CWP No.25901 of 2014	Binder Singh Vs. State of Pb. & Ors.
7	CWP No.16143 of 2013	Ravinder Singh Vs. State of Pb. & Ors.
8	CWP No.12094 of 2015	Gurjeet Rai Vs. State of Pb. & Ors.
9	CWP No.688 of 2015	Jasvir Singh Vs. State of Pb. & Ors.
10	CWP No.1958 of 2016	Nishan Singh Vs. State of Pb. & Ors.
11	CWP No.1665 of 2016	Balwinder Singh Vs. State of Pb. & Ors.
12	CWP No.8663 of 2016	Dharm Singh Vs. State of Pb. & Ors.
13	CWP No.2096 of 2015	Amarjit Kaur Vs. State of Pb. & Ors.
14	CWP No.695 of 2015	Varun Kumar Vs. State of Pb. & Ors.
15	CWP No.5347 of 2015	Sukhwinder Kaur Vs. State of Pb. & Ors.
16	CWP No.22680 of 2014	Angrej Singh Vs. State of Pb. & Ors.
17	CWP No.25872 of 2014	Bhagwan Dass & Anr. Vs. State of Pb. & Ors.
18	CWP No.25820 of 2014	Sandeep Sharma Vs. State of Pb. & Ors.
19	CWP No.23836 of 2014	Sehajdeep Singh Vs. State of Pb. & Ors.
20	CWP No.23825 of 2014	Ramesh Chand & Anr. Vs. State of Pb. & Ors.
21	CWP No.22592 of 2014	Varinder Singh & Anr. Vs. State of Pb. & Ors.
22	CWP No.8984 of 2016	Sukhdeep Singh Vs. State of Pb. & Ors.
23	CWP No.9018 of 2016	Veerpal Kaur Vs. State of Pb. & Ors.
24	CWP No.19458 of 2015	Jhanda Singh Vs. State of Pb. & Ors.
25	CWP No.25823 of 2014	Paramjeet Kaur & Anr. Vs. State of Pb. & Ors.
26	CWP No.20370 of 2014	Harjit Singh Vs. State of Pb. & Ors.
27	CWP No.9946 of 2015	Gurpreet Singh & Ors. Vs. State of Pb. & Ors.
28	CWP No.20792 of 2015	Tarsem Singh and Ors. Vs. State of Pb. & Ors.
29	CWP No.15660 of 2014	Sita Rani & Ors. Vs. State of Pb. & Ors.
30	CWP No.22489 of 2014	Kuldeep Singh Vs. State of Pb. & Ors.
31	CWP No.22603 of 2014	Kulwinder Kaur & Ors. Vs. State of Pb. & Ors.
32	CWP No.25889 of 2014	Darshan Kumar & Anr. Vs. State of Pb. & Ors.
33	CWP No.25890 of 2014	Jasvir Singh & Anr. Vs. State of Pb. & Ors.
34	CWP No.20084 of 2014	Jaspreet Singh Vs. State of Pb. & Ors.
35	CWP No.24546 of 2015	Gursewak Singh Vs. State of Pb. & Ors.
36	CWP No.24187 of 2014	Naib Singh & Ors. Vs. State of Pb. & Ors.
37	CWP No.22402 of 2014	Balwinder Singh & Anr. Vs. State of Pb. & Ors.
38	CWP No.2957 of 2015	Lovedeep Singh Vs. State of Pb. & Ors.
39	CWP No.3002 of 2015	Balbir Singh Vs. State of Pb. & Ors.
40	CWP No.2114 of 2015	Jang Singh Vs. State of Pb. & Ors.
41	CWP No.23815 of 2014	Balwinder Singh Vs. State of Pb. & Ors.
42	CWP No.23802 of 2014	Talwinder Singh Vs. State of Pb. & Ors.
43	CWP No.23794 of 2014	Gursewak Singh & Anr. Vs. State of Pb. & Ors.
44	CWP No.22706 of 2014	Gurjeet Singh & Ors. Vs. State of Pb. & Ors.
45	CWP No.22671 of 2014	Nirmal Singh & Anr. Vs. State of Pb. & Ors.
46	CWP No.22574 of 2014	Gaurav Vs. State of Pb. & Ors.

47	CWP No.20768 of 2015	Dalwinder Singh & Ors. Vs. State of Pb. & Ors.
48	CWP No.9136 of 2015	Satgur Singh Vs. State of Pb. & Ors.
49	CWP No.9138 of 2015	Sukhvir Singh Vs. State of Pb. & Ors.
50	CWP No.10789 of 2015	Jaspreet Singh Vs. State of Pb. & Ors.
51	CWP No.5330 of 2015	Kuldeep Singh Vs. State of Pb. & Ors.
52	CWP No.4338 of 2015	Anu & Ors. Vs. State of Pb. & Ors.
53	CWP No.11649 of 2015	Kuldeep Singh & Ors. Vs. State of Pb. & Ors.
54	CWP No.23801 of 2014	Beant Singh & Ors. Vs. State of Pb. & Ors.
55	CWP No.6702 of 2015	Gona Singh Vs. State of Pb. & Ors.
56	CWP No.22774 of 2014	Yadwinder Singh & Ors. Vs. State of Pb. & Ors.
57	CWP No.2125 of 2015	Rimpi Kaur Vs. State of Pb. & Ors.
58	CWP No.252 of 2015	Sukhjinder Kaur & Anr. Vs. State of Pb. & Ors.
59	CWP No.11626 of 2015	Gurdeep Kaur Vs. State of Pb. & Ors.
60	CWP No.260 of 2015	Amrik Singh Vs. State of Pb. & Ors.
61	CWP No.21154 of 2014	Ranvir Singh & Ors. Vs. State of Pb. & Ors.
62	CWP No.20366 of 2014	Gurwinder Singh Vs. State of Pb. & Ors.
63	CWP No.19122 of 2014	Inderjit Singh Vs. State of Pb. & Ors.
64	CWP No.2988 of 2015	Gurpreet Singh Vs. State of Pb. & Ors.
65	CWP No.661 of 2015	Harwinder Kaur Vs. State of Pb. & Ors.
66	CWP No.2104 of 2015	Paramjit Kaur Vs. State of Pb. & Ors.