

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Letters Patent Appeal No.1395 of 2015 (O&M)
Date of Decision: September 30, 2016
State of Punjab and othersAppellants
versus

Manish Kathuria and othersRespondents

[2] Letters Patent Appeal No.1396 of 2015 (O&M)
State of Punjab and othersAppellants
versus

Satinder MalhiRespondent

[3] Letters Patent Appeal No.1397 of 2015 (O&M)
State of Punjab and anotherAppellants
versus

Ramanpreet Kaur and othersRespondents

[4] Letters Patent Appeal No.1398 of 2015 (O&M)

State of Punjab and anotherAppellants
versus

Gulzar Masih Gill and othersRespondents

[5] Letters Patent Appeal No.1400 of 2015 (O&M)

State of Punjab and anotherAppellants
versus

Sukhwinder Singh and anotherRespondents

[6] Letters Patent Appeal No.1889 of 2014 (O&M)

Gurjeet Singh and othersAppellants
versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.Vinod S.Bhardwaj, Additional AG, Punjab,
for the appellant-State.
Mr.Puneet Kansal, Advocate,
for the appellants in LPA No.1889 of 2014.
Mr.Gaurav Rana, Advocate,
for respondent Nos.1 to 7 in LPA No.1395 of 2015 and
for respondent Nos.4 to 17 in LPA No.1889 of 2014.
Mr.R.K.Chopra, Senior Advocate with
Mr.Pawan Kumar, Advocate,
for respondent Nos.1 to 4 in LPA No.1400 of 2015.
Ms.Alka Chatrath, Advocate,
for respondent Nos.1 to 5 in LPA No.1398 of 2015.
Mr.Vivek Salathia, Advocate,
for respondent No.1 in LPANo.1397 of 2015.
Mr.Vikramjit Arora, Advocate,
for respondent No.1 in LPA No.1396 of 2015.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J.

This order shall dispose of the above captioned Letters Patent Appeals, directed against the order dated 10.09.2014 whereby learned Single Judge allowed the writ petitions and has directed the State of Punjab to appoint the respondent-writ-petitioners on the posts of Excise and Taxation Inspectors with notional service benefits. Vide the same order, three writ petitions qua those candidates whose names did not figure in the 1999 merit list and who questioned the selection itself, have been dismissed.

[2] State of Punjab has thus preferred five intra-court appeals challenging the orders of learned Single Judge in the writ-petitions which stand allowed.

[3] LPA No.1889 of 2014 is at the instance of the candidates whose Civil Writ Petition No.17655 of 2013 challenging the selection has been dismissed by learned Single Judge.

[4] A detailed reference to the facts is necessitated for correct

appreciation of the controversy.

FACTS OF LPA No. 1395 OF 2015 AND CONNECTED APPEALS

[5] On 2nd May, 1999, Subordinate Services Selection Board (for short, 'the Board'), advertised 53 posts of Excise and Taxation Inspectors. The written examination was held on 26.12.1999 and its result was declared on 04.12.2001.

[6] Successful candidates were called for interview but before the result could be declared, Civil Writ Petition No.19267 of 2011 (Vijay Kumar Syal versus State of Punjab and others) was filed challenging the written examination in which this Court on 14.01.2002 directed as an interim measure that "*meanwhile, the selection process will not be finalized....*".

[7] While the above-stated writ petition was still pending, State of Punjab imposed complete ban on fresh recruitments and such a decision taken on 24.04.2002 was conveyed to all concerned by the Chief Secretary to Government of Punjab vide memo dated 03.05.2002, the relevant part whereof reads as follows:-

"..... Any requisition placed with the Punjab Public Service Commission, Subordinate Services Selection Board or Departmental Selection Committee shall be immediately withdrawn and where any process for recruitment has been initiated i.e. written test conducted or interviews held, further process should be stopped forthwith. Recommendations for recruitment made by PPSC and SSSB may also filed in all cases where they have not yet been acted upon.

It is also brought to your notice that the Cabinet Sub-Committee on Fiscal Management is an Empowered Sub-committee of the Council of Ministers and, therefore, its decisions are the decisions of the Council of Ministers for all intents and purpose....."

(emphasis applied)

[8] In view of the blanket ban imposed by State Government on fresh recruitments, CWP No.19267 of 2001 was disposed of as infructuous on the basis of statement made by State Counsel to the effect that the advertised posts are not being filled-up.

[9] Some of the candidates (seven in number) who had qualified the written examination and were called for interview, approached this Court in Civil Writ Petition No.2042 of 2002 seeking a direction for declaration of the result and if found entitled to, appoint them on the advertised posts. A Division Bench of this Court vide order dated 09.12.2004 dismissed their writ petition in the light of the affidavit that the State Government had imposed complete ban on fresh recruitments except the adjustment of employees who were declared surplus. This Court further viewed that mere selection on a post does not confer any indefeasible right to the selected candidates to claim appointment.

[10] The above mentioned unsuccessful candidates carried their challenge to the Hon'ble Supreme Court by way of Special Leave Petition (Civil) No.10944 of 2005. During pendency of their SLP, it appears that 34 more candidates who too qualified the written examination and had appeared for interview, filed IAs for their impleadment as co-petitioners and their applications were allowed. In this manner there become 41 petitioners before the Hon'ble Supreme Court.

[11] Their case came up for final hearing on March 05, 2009 when the Leave to Appeal was granted and Civil Appeal No.1535 of 2009 was allowed (order P-5) by the Hon'ble Supreme Court in the following terms:-

“..... We find from the record that the issues requiring resolution including questions of law stand settled by this Court in Civil Appeal No. 3521 of 2006 titled as State of

Punjab and others Versus Harcharan Singh and others, decided by this Court on February, 2007. In the said decision, this Court after elaborate consideration in the matter held as under:-

"We are, however, of the opinion that since the respondents have been selected by a duly constituted Subordinate Services Selection Board and they could not be appointed because of the ban imposed by the Government, in the fitness of things and in the interest of justice and fair play if the respondents could be accommodated to the posts of Lascars for which they have been duly selected as and when the ban of the Government is relaxed or when the posts are revived. We make it clear that in such event the case of the respondents shall be considered first before calling for the fresh candidates by way of advertisement or otherwise."

The said judgment is equally applicable to the present facts on hand.

However, in the present case, admittedly, the posts in question have been revived by the State Government vide its order dated 10th February 2006. Thus, there are no legal impediments for consideration of appellant's case for their appointment as Excise & Taxation Inspectors.

In view of the admitted position, the appellants who have successfully qualified in the written examination and viva voce are entitled for consideration of their cases for being appointed as Excise & Taxation Inspectors by the State of Punjab.

We, accordingly, direct that the respondent State of Punjab shall consider their cases for being appointed as Excise and Taxation Inspectors first before calling for the fresh candidates by way of advertisement or otherwise within six weeks from today.

The appeal is accordingly allowed in the aforesaid terms.

Consequently, the order of the High Court shall stand set aside.

We make it clear that the relief granted by this Court is only confined to the appellants who are parties before us.

There shall be no order as to costs....."

[Emphasis by us]

[12] As may be seen from the above reproduced order, Government of Punjab lifted its ban on fresh recruitments on 10th February 2006. In fact, a fresh advertisement was issued thereafter on 03.08.2008 inviting applications for 164 posts of Excise and Taxation Inspectors (including 53 posts advertised on 02.05.1999.

[13] Importantly, the fresh advertisement was preceded with an amendment in the eligibility conditions and a new qualification of 'working experience' in the Use of Personal Computer and Information Technology in the Office Productivity Application or Desk Top Publishing Applications from a Government recognized Institute, was inserted in the Statutory Service Rules.

[14] Pursuant to the fresh advertisement, written test was held and its result was declared on 14.08.2009. The Hon'ble Supreme Court took notice of such subsequent event while allowing Civil Appeal No.1535 of 2009 while directing the State of Punjab to consider the claim of appellants for appointment as Excise and Taxation Inspectors "first before calling for the fresh candidates by way of advertisement or otherwise...".

[15] No sooner the above reproduced final order was passed by it, another batch of similarly placed candidates filed IA Nos.11 & 12 of 2009

to grant them the same relief but the Hon'ble Supreme Court dismissed their applications as withdrawn on 02.04.2009 with the following order:-

"...Learned counsel appearing on behalf of the applicants prays for leave to withdraw these applications with liberty to approach the appropriate Court for seeking appropriate relief on behalf of the present applicants. Permission as prayed for, is granted. The applications are, accordingly, dismissed as withdrawn..."

[16] Not only this, 14 such candidates thereafter filed SLP (Civil) No.4884 of 2009 also, challenging the order dated 09.12.2004 of this Court dismissing their writ petition, but that SLP was dismissed on 01.05.2009 on the ground of inordinate delay.

[17] In deference to the directions issued by the Apex Court on 05.03.2009, the appellant-State offered appointment to 41 candidates in July, 2009. The result of subsequent selection process initiated vide advertisement dated 13.08.2008 was thereafter declared in August, 2009.

[18] Two candidates (Gulzar Masih Gill and Vijay Kumar Khera) who were petitioners in SLP (Civil) No.4884 of 2009 (which was dismissed on the ground of delay on 01.05.2009), then approached this Court by way of Civil Writ Petition No.13180 of 2009. A learned Single Judge on 27.10.2009 directed the State of Punjab to decide their claim as they were stated to be higher in merit than some of the candidates who were appointed pursuant to the judgment of Hon'ble Supreme Court. The Competent Authority, however, rejected their claim vide self-speaking order dated 14.12.2009. Meanwhile, 19 more writ petitions were filed, mostly in the year 2009 to 2011 by those candidates who were statelty higher in merit than those who got appointment under the directions of Hon'ble Supreme Court.

counsel to seek instructions as to whether a Committee of Senior Officers could be constituted to consider the individual claims of writ-petitioners by way of speaking order(s). In deference thereto, the State Government constituted a Committee of Officers and undertook before this Court that the Committee shall pass speaking order(s) in each case and such a decision shall be taken expeditiously but not later than six weeks. The writ petitions were thus dismissed as withdrawn on 19.12.2001.

[19] State of Punjab then constituted a Committee comprising the then Financial Commissioner (Revenue), Excise and Taxation Commissioner and Secretary (Personnel Department), to decide the fate of candidates who were admittedly higher in merit than those to whom appointments were offered under the Supreme Court directions.

[20] The Committee examined the facts in extenso; sought legal opinion from the office of Advocate General, Punjab and also heard the aggrieved candidates in person before concluding that amongst the writ-petitioners there were – (i) candidates neither in the waiting list nor in the merit list; (ii) some of the candidates were in the merit list and also petitioners in the High Court; (iii) there were candidates in the waiting list and also petitioners in the High Court; (iv) there were some candidates who are in the merit list but they never approached the High Court, and (v) some of the candidates were in the waiting list but they never approached the High Court.

[21] The Committee unanimously rejected the claim of candidates who fell in the category No.(i). As regard to category No.(ii) comprising five candidates (all reserved category), the Committee recommended that since persons below them in merit list have already been appointed, they be

also considered for such appointment. In respect of category No.(iii) comprising 16 candidates (13 General Category, 2 Backward Classes and 1 Schedule Caste), the Committee recommended that since persons juniors to them in the waiting list have already been appointed, they be also considered for such appointment. So far as the candidates who fell in categories (iv) & (v), the Committee rejected their claim as they had never approached the Court and were not amongst the writ-petitioners whose claim was directed to be considered.

[22] The recommendations made by the Officers' Committee were further considered by the Minister-in-charge and the then Chief Minister, Punjab who recommended that no case to make appointment of shortlisted candidates was made out. Hence, the recommendations made by the Officers' Committee were disapproved and the claim of writ-petitioners was rejected by way of a self-speaking order dated 16.04.2013 (P-13), the operative part whereof reads as follows:-

"..... In light of this, the matter was put up by the Worthy Financial Commissioner Taxation to the Ld. Chief Secretary and Worthy Deputy Chief Minister (Minister in Charge) and Worthy Chief Minister, recommending that no case has been made out for appointment of any of the candidates. It was further recommended that the case of all the candidates be rejected. The recommendation was endorsed by Worthy Chief Secretary and accepted by Hon'ble Deputy Chief Minister (as Minister In Charge Department) as well as Hon'ble Chief Minister.

In the light of above and facts mentioned in aforesaid paragraphs 6 and 7 the claim of the petitioners seeking appointment as Excise and Taxation Inspector, is hereby rejected. Copy of this order be communicated to

all the petitioners for information....."

[23] The unsuccessful candidates challenged the order dated 16.04.2013 of rejecting their claim for appointment. There were in total eight writ petitions out of which, five have been allowed by learned Single Judge, giving rise to these intra-court appeals. It may be mentioned at this stage that while allowing the writ-petitions or directing appointment of writ-petitioners in five cases, Contempt of Court notices to the then Chief Secretary, Punjab; the then Excise and Taxation Commissioner, Punjab and a former Excise and Taxation Commissioner, Punjab, have also been issued, as according to the learned Single Judge, these Officers had filed "wrong and misleading affidavits in this Court....."

[24] It may be useful to notice at this stage that while issuing notice of motion in these appeals, operation of the order of learned Single Judge was stayed and thus the directions to appoint the respondent-writ-petitioners were never implemented.

FACTS OF LPA No.1889 of 2014

[25] This intra-court appeal is at the instance of writ-petitioners of CWP No.17655 of 2013 in which they challenged the selection itself on various grounds like: (i) no result was declared after the interviews and the alleged merit list was prepared only on the basis of written examination; (ii) It was the Board which presented selection criteria and not the Appointing Authority, which was contrary to law; (iii) the selection criteria was changed after the selection process had begun which was impermissible in law, and (iv) the selection was totally unfair and arbitrary and was improper, for two members of the Board only had signed the selection proceedings and the record does not bear the signatures of other members

etc. etc...

[26] Learned Single Judge has dismissed their writ-petition observing that none of them figured anywhere in the merit list published in the year 1999; they were never selected at any stage of proceedings and that their petition was hit by delay and laches as they did not approach any Court or Forum till the year 2013.

[27] The appellants have made an attempt to explain the delay and laches. It is averred that findings of learned Single Judge are contrary to record, as some of them, had earlier filed CWP No.14551 of 2009 challenging the action of the respondents in manipulating the result of interview. Two of them were co-petitioners in CWP Nos.13767 of 2009 and 19919 of 2008. During the pendency of those writ-petitions, the order dated 27.10.2009 was passed by this Court in CWP No.13180 of 2009 directing the State authorities to consider the claim of candidates higher in merit. The order dated 13.12.2009 passed pursuant to those directions, was again challenged by some of the appellants by amending CWP No.14551 of 2009. The appellants have been thus ventilating their grievances in this Court since the year 2008-09 and they cannot be accused of delay and laches.

[28] Similarly, learned Single Judge is said to have failed to notice the fact that as per averments made in para No.3 of writ-petition, the appellants are amongst the successful candidates as their roll numbers find mention amongst the list of successful candidates. In support of the plea that they were pursuing their claim before this Court since the year 2008-09, the appellants have made reference to the report of Officers' Committee wherein particulars of court-cases filed by them are duly mentioned. It is thus averred that their writ-petition has been dismissed for the reasons

which are contrary to record.

REASONS ASSIGNED BY LD. SINGLE JUDGE FOR ACCEPTING THE CLAIM OF WRIT PETITIONERS:-

[29] It is useful at this stage to cull down the reasons on the basis of which learned Single Judge has accepted the claim of respondents for their appointment. Very briefly those reasons are:-

- (i) It was projected before this Court that the Officers' Committee constituted for considering individual cases of writ-petitioners shall pass speaking orders in each case;
- (ii) The report (P-9) does indicate that the Committee short-listed the categories of claimants and dealt with them individually;
- (iii) But the recommendations of the Committee did not translate into any appointment despite the opinion given by Additional Advocate General, Punjab;
- (iv) State of Punjab “**undertook** in unequivocal terms by way of affidavit(s) to decide the matter in accordance with the report of the Committee within one month...”;
- (v) All these facts reveal that “at no point of time did the State of Punjab ever attempted to deviate from its stand that they were not honouring the recommendations of the Committee, **rather they bound themselves to this process and implementation thereof;**
- (vi) “**Instead of honouring the undertakings given to the Court repeatedly,** the respondents themselves chose to pass the order (P-13) taking a completely divergent

stand from the one they had taken before this Court.....”

- (vii) On evaluation of the afore-mentioned facts, there can only be one irresistible conclusion that “the respondents have defeated the process of law, frustrated the orders of the Court and misled the Court into passing orders...”
- (viii) When the matter was being agitated in the writ petition, it was open to the respondents to stick to their line of action instead or later on 'hoodwinking' the Court;
- (ix) First the respondents 'bound themselves' to a process of evaluating by analysing the cases of all claimants through the process of a Committee of which all the members were high ranking officers and subsequently when the Committee's recommendations were not honoured and Contempt Petitions filed, “the respondents then again 'bound themselves' to implement the recommendations of the Committee and sought time in this regard”;
- (x) The formation of the Committee, its process and decision to which the respondents bound themselves was their own creation and not the Court's. Having done so, they would be estopped by their-own conduct to disown either the process or its conclusions;
- (xi) It seems that the respondents were obviously not serious in actually considering the cases of the petitioners in all fairness... There also seems to be malice in the action of the respondents;

- (xii) Where was the occasion to the respondent-State to bind itself to the process of analysis before a Committee and that too when the writ petition was pending before this Court and further making repeated projections that recommendations would be implemented;
- (xiii) Since the respondents have bound themselves to the recommendations of the Committee, such recommendations are binding in nature.
- (xiv) Even if no posts are available, the selected candidates are entitled to be appointed.

[30] It is manifest from the cumulative reading of the reasons that according to learned Single Judge the Officers' Committee was constituted with a clear agenda that the candidates to be recommended by it would be entitled to appointment. That there was an assurance followed by an 'undertaking' before this Court for implementation of recommendations of the Committee and once the Committee had made recommendations, the Govt. was duty bound to implement such recommendations. And that it was too late for the State Government to take a somersault and reject the recommendations made by the Committee. Such a decision lacked *bonafide*, hence mandamus was required to be issued to give appointment to the candidates short-listed by the Committee.

CONTENTIONS ON BEHALF OF THE APPELLANT-STATE

[31] Additional Advocate General, Punjab contended that the learned Single Judge has totally misconstrued and misunderstood the scope of task given to Officers' Committee or the stand taken by the Department before this Court by way of affidavits filed in different proceedings. He

made us to scan the pleadings, especially the contents of affidavits filed from time to time and took pains to explain that:-

- (i) There was never given an 'undertaking' by any Officer before a judicial forum that the recommendations of the officers' Committee will be *ipso-facto* implemented;
- (ii) The Committee was actually constituted on the asking of this Court as there were overlapping factual claims raised by different set of candidates who all were clamoring for appointment;
- (iii) The final decision was to be taken by the Competent Authority in accordance with the Rules of Business of the State;
- (iv) The Committee, in the very nature of the things, was only a recommendatory body and its opinion could not bind the Competent Authority who was superior in rank and status and was not subservient to the Officers' Committee;
- (v) There is no contradiction or inconsistency in any of the affidavits or replies filed from time to time and the only promise made to this Court was that the claim of writ-petitioners would be examined individually by way of reasoned orders. That assurance given to the Court has been faithfully complied with vide order (P-13)
- (vi) The purpose to constitute the Committee was merely to initiate the 'process' of decision making. It was not the 'decision' in itself.

[32] Adverting to the merits of the respondents' claim, learned Additional Advocate General urged that no mandamus could be issued for their appointment as the respondents had abandoned and given up and/or have acquiesced their claim for the reasons that :-

- (i) Their writ petitions seeking appointments pursuant to the same very selection were dismissed by this Court on 09.12.2004. They did not challenge that order which has attained finality, hence the second writ petition for the grant of same very relief is barred by principles of *resjudicata*;
- (ii) Hon'ble Supreme Court accepted the claim of those appellants only who had challenged the High Court order dated 09.12.2004 and were in appeal(s) as on 05.03.2009. The order passed by the Hon'ble Supreme Court unequivocally recites that the benefit of its order shall be admissible to the appellants only;
- (iii) Immediate after the Supreme Court order dated 05.03.2009, some of the respondents themselves moved IA Nos.11 & 12 of 2009 specifically pleading that they were higher in merit than some of the candidates who were ordered to be appointed on 05.03.2009 but both these applications were dismissed as withdrawn in less than a month's time on 02.04.2009. If the Hon'ble Supreme Court were so inclined to accept their belated claim only on the basis of higher merit, it would have entertained such applications;

- (iv) However, the doubts, if any, were removed by the Apex Court when Special Leave Petition filed against the order dated 09.12.2004 was dismissed on the ground of delay. When the Hon'ble Supreme Court has rejected the claim for appointment based upon higher merit, due to 'delay' and 'laches', learned Single Judge could not have, for any reason whatsoever, entertained such belated claims;
- (v) None of the respondents challenged the subsequent advertisement of August, 2008, hence they are estopped by their act and conduct from seeking appointment against those very posts which stood filled up through that subsequent selection process;
- (vi) There is no legally right vested accrued to the respondents to seek appointment merely on the basis of their selection. They cannot be heard to complain the violation of Articles 14 & 16 of the Constitution as no candidate lower in merit was appointed by the appellant-State its own. Only those candidates have been appointed in whose favour there was a positive direction from the Supreme Court;
- (vii) Even if the respondents are assumed to have acquired right to seek appointment as per their merit, they have lost it due to their fence-sitting as they took no timely step to challenge the order of dismissal of their writ-petition. They are to be blamed for themselves, for allowing the grass to grow under their feet. They cannot

seek parity with those who were vigilant and continued to fight before one or the other forum at a time when the respondents had admittedly gone into slumber;

- (viii) A selected candidate has no indefeasible right to seek appointment, for it can always be denied for just and fair reasons;
- (ix) The posts against which the respondents competed were re-advertised in the year 2008 and stood filled-up in August, 2009, i.e., before the respondents came to this Court;
- (x) The decision as to whether or not the candidates like the respondents be appointed, was to be taken at the highest level, by the Minister-in-charge and the Chief Minister, who alone are competent to take such decision under the Rules of Business;
- (xi) Learned Single Judge has not even looked into the merits of the order (P-13) whereby the claim of the respondents for appointment was rejected;
- (xii) It is totally misleading and a false plea that the claim of respondents was rejected for the reason that brother of Anurag Verma, who remained posted as Excise and Taxation Commissioner, was not recommended by the Officers' Committee for appointment. The fact of the matter is that Anurag Verma did not participate in the decision making process and had rescued from the proceedings. Further, if Anurag Verma was so influential

that he could get the claim of others rejected then he would have surely succeeded to get his brother appointed.

CONTENTIONS ON BEHALF OF THE RESPONDENT-WRIT PETITIONERS.

[33] Learned counsels for the respondents argued on the other hand that the order under appeal is just fair, equitable and is well founded. They urged that the respondents are entitled to be appointed as Excise and Taxation Inspectors for more than one reason including: (i) the candidates lower in merit are admittedly offered appointments in July, 2009 pursuant to the order passed by Hon'ble Supreme Court; (ii) once the State Government decided to offer appointment to the candidates lower in merit, the private-respondents too got an indefeasible and enforceable right to seek their appointment, otherwise the impugned action would defeat the Articles 14 and 16 of the Constitution; (iii) there is no delay on the part of the respondents, for they had approached this Court in the year 2002 and it was not necessary for every candidate to rush to the Hon'ble Supreme Court after dismissal of writ petitions by this Court; (iv) a fresh cause of action accrued in terms of the respondents when the Hon'ble Supreme Court directed the appointments in 2009. (v) the respondents too availed one after the other remedy as firstly they filed I.As in the Hon'ble Supreme Court and then SLP. After the SLP was dismissed on the ground of delay that the fresh writ petitions were filed in this Court. It is not thus a case where the respondents surrendered or slept over their rights and (vi) the Officers' Committee did acknowledge their right to seek appointment, hence it was too late for the higher authorities to reject their claim without assigning any

ISSUES FOR DETERMINATION:-

[34] Having heard the rival submissions at a considerable length, it appears that the following questions fall for our consideration:-

- (i) Whether the State Government was justified in restricting the appointments qua 41 candidates only as per the order of the Hon'ble Supreme Court?
- (ii) Whether appointment of a candidate lower in merit in deference to the directions issued by the Court of Law amounts to willful act of violation of Articles 14 & 16 of the Constitution at the hands of appointing authority?
- (iii) Whether in the facts and circumstances of this case, the appointment of candidates lower in merit, gave rise to a fresh cause of action in favour of the respondents?
- (iv) Whether principles of 'estoppel' or 'legitimate expectations' could be pressed into service by learned Single Judge for accepting the claim of private-respondents?
- (v) Whether the 2nd round of writ proceedings initiated by the respondents are barred by principles of constructive *resjudicata*?
- (vi) Whether the respondents have foreclosed their right to seek appointment, if any, due to inordinate delay and laches?

(vii) What is the effect of subsequent advertisement of August 2008 and consequential appointments made pursuant thereto, on the rights, if any, of the respondent/writ petitioners?

[35] We may also test the reasonings assigned by learned Single Judge, while answering the questions formulated herein-above.

[36] Q.(i) **Whether the State Government was justified in restricting the appointments qua 41 candidates only as per the order of the Hon'ble Supreme Court?**

The answer to this question does not call for a longer debate in view of the unambiguous contents and import of the Supreme Court order dated March 5, 2009 as reproduced in para No.11 of this order. The said order unequivocally holds that “the appellants who have successfully qualified in written examination and viva-voce, are entitled for consideration of their cases for being appointed as Excise and Taxation Inspectors by the State of Punjab”. After declaring them entitled to appointment, the Hon'ble Supreme Court further directed the State of Punjab to “consider their case of being appointed as Excise and Taxation Inspectors first before calling the fresh candidates by way of advertisement or otherwise...”

[37] Further, the Supreme Court consciously restricted the appointments qua appellants only, therefore the fate of all other candidates stood sealed with the command that “we make it clear that the relief granted by this Court is only confined to the appellants who are parties before us...”

This part of the order should leave no room to doubt that the Apex Court was fully aware of the candidates higher in merit than the appellants, yet the

Court issued pre-emptory directions and restricted the relief qua the

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appellants only. The action of the State Government in confining the appointments only qua the 41 appellants before the Supreme Court thus cannot be faulted with and is in tune with the court directions.

[38] The order dated 05.03.2009 passed by the Supreme Court is not a *judgment-in-rem* with an intent to benefit all similarly placed candidates even if such parity-seekers had not approached the Court. Albeit, the conditional order whereby "the relief granted"..... was "only confined to the appellants"..... who were parties before the Supreme Court, surely proves that the Court purposefully delivered a *judgment-in-personam* only.

[39] Q.(ii) **Whether appointment of a candidate lower in merit in deference to the directions issued by the Court of Law amounts to willful act of violation of Articles 14 & 16 of the Constitution at the hands of appointing authority?**

Equality before law is an invaluable fundamental right emanating from Article 14 of the Constitution. Article 16 further promote such right so as to provide equality of opportunity in the matters relating to employment or appointment to any office under the State. When State or its authorities deny appointment to a candidate higher in merit or offer the same on pick and choose basis, without any valid reason or classification, such an imprudent State action shall be surely fallible being hit by Article 14 read with Article 16(1) of the Constitution. One of the basic ingredients to bring a State action within the sweep of "equality clause", is that such action ought to be the outcome of voluntary and willful exercise of state-power. To say it differently, whoever alleges the violation of guarantee of Equality must prove that he has been denied equal opportunity, due to an act of State's powers. In the case in hand, the decision to appoint some candidates from the "waiting list" over and above the candidates higher in

no discretion to defy the binding *dictum*. The respondents thus cannot be heard to say that they have been discriminated against by the appellant-State in the matter of appointment as Excise and Taxation Inspectors.

[40] Q. (iii) Whether in the facts and circumstances of this case, the appointment of candidates lower in merit gave rise to a fresh cause of action in favour of the respondents?

(v) Whether the 2nd round of writ proceedings initiated by the respondents are barred by principles of constructive *resjudicata*?

(vi) Whether the respondents have foreclosed their right to seek appointment, if any, due to inordinate delay and laches?

These questions are inter linked, hence are assumed together. It may be seen that the writ petitions filed by private-respondents (as also appellants before the Supreme Court) were dismissed by this Court on 09.12.2004. The respondents did not challenge that decision and allowed it to attain finality. Contrarily, the appellants before the Supreme Court filed Special Leave Petition or joined such proceedings. They continued to ventilate their grievances before the Superior Forum. They were not fence-sitters. They finally succeeded with an express rider that the relief granted by the Court was confined to them and none else.

[41] Soon after the Apex Court passed the order dated March 05, 2009, some of the private-respondents filed IAs and it could not be denied during the course of hearing that the preeminent plea taken by them was their higher position in merit than the candidates whose claim was accepted. Such IAs were dismissed as withdrawn and subsequent SLP filed by them against the order dated 09.12.2004 was also dismissed on the ground of delay and laches. In the light of these facts, it is difficult to hold that any fresh cause of action accrued in favour of the respondents as their right to seek appointment, if any, stood rejected by this Court in the year 2004 and

they accepted that verdict. The Hon'ble Supreme Court while declining to entertain their IAs or SLP, did not give any leverage to them to revert back to the High Court and claim the same relief for which they did not succeed before the Supreme Court. The cumulative effect of these events would be that the order passed by this Court rejecting the claim of respondents constitutes *resjudicata* qua all such future poceedings. Further, they abandoned their claim and slept over their right to challenge the order of this court in appeal. Still further, if the respondents had any right to approach a Forum, such a recourse ought to have been followed within a reasonable time.

[42] It would be apt at this stage to cite the decision of Hon'ble Supreme Court in Vijay Kumar Kaul and others versus Union of India and others, (2012) 7 SCC 610, where somewhat similar situation arose as the in-service candidates who were higher in merit did not approach the judicial forum for their appointment but candidates lower in the select list, felt aggrieved due to non-appointment and successfully established their claim before the Central Administrative Tribunal as well as the High Court. When such candidates were offered appointment pursuant to the Court directions, the other candidates firstly made representations which were turned down and then they approached the Tribunal. The Hon'ble Supreme Court rejected their claim for restoration of seniority due to the delay and laches and held that:

“...26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties

gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. xx xx xx xx

28. In the case at hand, as the factual matrix reveals, the appellants knew about the approach by Parveen Kumar and others before the Tribunal and the directions given by the Tribunal but they chose to wait and to reap the benefit only after the verdict. This kind of waiting is totally unwarranted.....”

(emphasis applied)

[43] The Hon’ble Supreme Court further held that:-

“....35. In the case at hand it is evident that the appellants had slept over their rights as they perceived waiting for the judgment of the Punjab and Haryana High Court would arrest time and thereafter further consumed time submitting representations and eventually approached the Tribunal after quite a span of time. In the meantime, the beneficiaries of the Punjab and Haryana High Court, as we have been apprised, have been promoted to the higher posts. To put the clock back at this stage and disturb the seniority position would be extremely inequitable and hence, the Tribunal and the High Court have correctly declined to exercise their jurisdiction.

(emphasis applied)

[44] In State of Uttar Pradesh and others versus Arvind Kumar Srivastava and others (2015) 1 SCC 347, Hon'ble Supreme Court has reiterated the general rule that when a particular set of employees is given relief by Court, all other identically situated persons need to be treated alike by extending such benefit. Nevertheless, this principle is always subject to well recognized exceptions in the form of 'laches' and 'delays' as well as

'acquiescence'. The Apex Court thus held that:-

“..... However, this principle is subject to well-recognized 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.....”

(emphasis applied)

[45] In Bharat Sanchar Nigam Limited versus Ghanshyam Dass (2) and others, (2011) 4 SCC 374, also the question of extending the relief granted by Court to similarly placed persons came up for consideration and it was ruled that the relief granted by the Court is required to be extended in all similar cases in the circumstances illustrated by the Court, including **“where the court expressly directs that the relief granted should be extended to those who have not approached the Court....”** It was further held that:-

“.... On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.....”

[46] It may be seen that in the case in hand, the Supreme Court expressly restricted the relief granted qua the appellants before it and none

qualify the circumstances laid down by the Supreme Court in the above-cited case for the extension of relief in all similar cases.

[47] Q.(vii) **What is the effect of subsequent advertisement of August 2008 and consequential appointments made pursuant thereto, on the rights, if any, of the respondent/writ petitioners?**

The respondents have been found sleeping over their rights at every stage in as much as they took almost two years to approach this Court even after their SLP was dismissed on account of delay and laches in the year 2009. In these circumstances when the respondents themselves have abandoned their right or when the State is not guilty of violating Articles 14 & 16(1) of the Constitution and the grievance against appointment of candidates lower in merit essentially amounts to questioning the order of Hon'ble Supreme Court, we are of the view that no fresh cause of action accrued in favour of private-respondents, more so when the direction sought to appoint them would really means to force the State to appoint two candidates against one post.

[48] Assuming that the appointment of candidates lower in merit gave rise to 'second cause of action' to the respondents, yet they have lost such right for more than one intervening circumstances including the fact that meanwhile 164 posts, including 53 posts in question, were advertised on 03.08.2008 and pursuant to the fresh selection, all such posts have been filled-up in August, 2009. Any direction to appoint the respondents necessarily means upsetting the appointment of such third parties who are not impleaded as party-respondent. No order jeopardizing their appointments or affecting their seniority could be passed behind their back.

The order under appeal cannot sustain on this score alone.

could be pressed into service by learned Single Judge for directing accepting the claim of private-respondents?

Learned Single Judge has proceeded on the premise that on setting up the Officers' Committee, the State Government bound down itself to accept its recommendations. Both the reasons assigned in this regard, in our humble opinion, are contrary to the facts on record and legally untenable. It may be noticed at the outset that the suggestion to constitute the Officers' Committee to examine the claim of respondents-writ-petitioners emanated from the Court's side and not the State Government. A specific order to this effect was passed on 29.11.2011 in a bunch of writ petitions and time was granted to the State counsel to have instructions whether they would constitute such Committee to consider the individual claims. It was in deference there to that the Committee was set-up.

[50] Similarly, none of the affidavit including of Chief Secretary, Punjab, carries a promise to accept the recommendations of Officers' Committee. The relevant affidavit filed in this regard by the then Chief Secretary is dated 29.11.2012 in COCP No.1310 of 2012 in which he referred to the constitution of Officers' Committee and also the report submitted by it. He further assured that as per the information given to him, opinion of the Advocate General, Punjab, was being taken as there was a long history of litigation. He, thereafter, sought three months' time "to take necessary further action as per the advice of the Advocate General, Punjab and the recommendations of the Committee.." Para No.4 of his first affidavit in so many words says as follows:-

".....4. That the matter also needs to be examined by the Government at various levels as recommendations for appointment exceed vacancies available with the department against category wise posts advertised in

1999. This case needs to be examined by the Finance Department, Personnel Department and also referred to the Council of Ministers for decision. Hence the Hon'ble Court may consider granting time of three months to do the needful.....”

(emphasis applied)

[51] The above re-produced contents of the affidavit unambiguously clarify there was no 'commitment' or 'undertaking' given to implement the report of Officers' Committee. Contrarily, the Court was informed that the matter would be examined by Government at different levels and it was also required to be put up before the Council of Ministers.

[52] The then Excise and Taxation Commissioner also in his affidavit dated 19.02.2013 filed in COCP No.3658 of 2012 referred to the constitution of Committee and the report submitted by it. Thereafter, he has observed in para-4 that “the matter is under active consideration of the Government”.

[53] The Chief Secretary, Punjab filed yet another affidavit dated 26.04.2013 informing that report of the Committee was examined by the Government on various levels and thereafter a speaking order dated 16.04.2013 (R-2) was passed. He regretted for the delay in decision as the file had to be routed through various offices including the Chief Minister, Punjab.

[54] There is no affidavit by the Excise and Taxation Commissioner saying that the recommendations to be made by Officers' Committee would be binding or will be given effect.

[55] The Officers' Committee was constituted for the aid and advice of the State Government to reach a just conclusion. None of the Officers in

the Committee was competent to offer appointments as no such power was

vested in them under the Rules of Business or Departmental Service Rules. Such a policy decision was required to be taken at the level of Council of Ministers only, hence the file was submitted to the Minister-in-Charge and then to the Chief Minister, Punjab. It was at the highest level that the decision not to appoint the respondents was taken as per the Rules. The said Competent Authority was entitled to disagree with the report of the Officers' Committee and take its own decision.

[56] The power of 'Judicial Review' certainly entitles this Court to travel through the said decision making process and test the administrative reasonings on judicial scale. But such power does not clothe the Court with any power to act as an appellate authority and substitute its own opinion in place of that of the administrative authority.

[57] The expression "undertaking" is a well defined legal connotation. As per the Black's Law Dictionary, it means "promise, pledge or acknowledgment". The 'undertaking' essentially demands a formal promise or a guarantee. A person undertakes when he makes himself responsible for the act. No such promise or binding pledge is discernible in any of the affidavits filed in different proceedings of the present *lis*.

[58] In the absence of any 'undertaking' or 'promise' by the Competent Authority for acceptance of the report of the Officers' Committee, irrespective of its conclusions, no question to invoke the doctrine of 'estoppel' can possibly arise. If the law prohibits making of appointment or there is no legal obligation to offer appointment to the respondents, it cannot be said that the appellants are still estopped by their own act and conduct from refusing to do so.

[59] As regard to the principle of 'legitimate expectations', the

private-respondents could at best, approach the Hon'ble Supreme Court for the revival of their 'cause' or for extension of the same benefit as was granted to a few candidates lower in merit. Their attempt in this regard was negated by the Supreme Court. They might have a right but they lost the remedy. There was no promise by the State to consider the respondents for appointment at any stage. As against it, the State Government after lifting ban from fresh recruitments in the year 2006, issued a fresh advertisement in the year 2008 which included the posts against which private-respondents were considered. That singular act of the State sufficiently defeats the plea of 'legitimate expectation' as it amounted to public announcement of the fact that the authorities were not inclined to consider the respondents for appointment on the basis of select list of 2002. Not only this, the Govt. made appointments in August 2009 of the newly selected candidates, leaving no room for the respondents still to say that they were legitimately expecting their appointment out of 2002 selection list. As noticed earlier, the respondents neither chose to challenge the 2008 advertisement nor they impleaded the candidates appointed pursuant thereto in these proceedings.

[60] For the reasons afore-stated, we find that the order passed by learned Single Judge cannot sustain either on facts or on legal principles. So far as LPA No.1889 of 2014 is concerned, its fate hinges entirely on our conclusions in the State's appeals for the said appeal can survive only if right of 2007 selectees to seek appointment is revived. Once it is held that the respondents are not entitled to appointment on the basis of select-list of 2002, the instant appeal challenging their selection has in a way become infructuous. There is, however, some merit in the contention of counsel for the appellants that the learned Single Judge while dismissing their writ-

LPA No.1395 of 2015 & connected matters. [32]

petitions on the ground of delay and laches was not properly assisted and relevant pleadings and facts were not appropriately disclosed before him. While we do not hold that the writ petition was filed within a reasonable time but it is a matter of record that some of the relevant facts were not brought to the notice of the learned Single Judge due to which the writ petition stood rejected on the ground of delay and laches.

[61] In the light of above discussion, LPANos.1395, 1396, 1397, 1398 and 1400 of 2015 are allowed; the order passed by learned Single Judge dated 10.09.2014 is set-aside and the petitions filed by the contesting-respondents are hereby dismissed with no order as to costs. LPA No.1889 of 2014 is dismissed as infructuous.

[62] Ordered accordingly.

**[SURYA KANT]
JUDGE**

September 30, 2016
mohinder

**[SUDIP AHLUWALIA]
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.2984 of 2015 in
LPA No.1395 of 2015

- - -

State of Punjab and others versus Manish Kathuria and others

Present : Mr.Vinod S.Bhardwaj, Additional AG, Punjab,
for the applicant-appellants.

* * *

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and 343 days' delay in filing the
appeal is condoned.

CM stands disposed of.

(SURYA KANT)
JUDGE

September 30, 2016
mohinder

(SUDIP AHLUWALIA)
JUDGE