

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.23737 of 2011

Reserved on: 01.08.2017

Date of decision:13.09.2017

Deepak Kumar

....Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Ram Bilas Gupta, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana, for respondents No.1 & 2.

Mr.R.K. Malik, Advocate, for respondent No.3.

Mr.Ravinder Malik (Ravi), Advocate, for respondent No.4 & 5.

Mr.Hitesh Pandit, Advocate, for respondents No.7 to 10.

G.S. SANDHAWALIA, J.

The petitioner seeks setting aside of the selection of respondents No.3 to 6, done by the official respondents, as per the selection/result dated 06.08.2010 (Annexure P-4), for the post of Shift Attendant against the 560 vacancies which were advertised vide advertisement No.13 dated 07.10.2007 (Annexure P-1). A further prayer of the petitioner is to direct the respondent No.2-Haryana Staff Selection Commission, to select him as per his high merit and high percentage.

2. The petitioner's pleaded case is that the respondent-Commission, vide the said advertisement, advertised various posts and under Category No.15, posts of Attendants and Shift Attendants were advertised wherein the essential qualifications were prescribed for which the petitioner was fully eligible. He had been issued roll number for the interview which was held in November, 2008 and on account of the

percentage of his marks achieved in his 10th and 12th in the ITI Diploma, he was highly confident about being selected.

3. On the publication of the result dated 06.08.2010 (Annexure P-4), he came to know that the last selected candidate had secured 49.59 marks and the last candidate in the waiting list had got 48.05 marks. The marks in the viva-voce were fixed at 25 whereas for the academic qualifications, marks were fixed at 50. He accordingly, applied for information under the Right to Information Act, 2005 (hereinafter called 'RTI, 2005) wherein he was informed that he had got 40.04 and 7 marks against roll No.02532. He had filed an appeal as the complete information had not been supplied and the Commission had directed on 03.08.2011 (Annexure P-9) that he would be entitled to inspect the relevant record as per the above-referred application, since he had asked for specific information regarding all selected candidates.

4. Accordingly, as per the inspection done, the petitioner relied upon the chart (Annexure P-10) that he had only been awarded 7 marks in the interview out of 25 and he had secured 40.04 marks on the strength of his academics. Since no criteria had been given as to how the 25 marks had to be bifurcated, resultantly, it was his grouse that persons who had got high marks in accordance with their academic performance, were given low marks in the interview so that they could not make the cut and he, accordingly, placed reliance upon the chart (Annexure P-10) on the strength of the inspection of the record, to submit that persons who were in the range of 20 and 30 in the academics were granted marks ranging

from 16 to 22 whereas persons who had got higher marks in the academics had been granted paltry marks in the interview, to keep them out of the zone of selection.

5. The official respondents defended the selection on the ground that the petitioner could not make the grade on the basis of the average performance in the interview and once he had appeared in the interview and participated, he could not turn-around and submit that the procedure was unfair. Marks had been awarded as per the performance of the candidates and the selection criteria had been fixed by the Commission which had devised a uniform and definite criteria and it could not be challenged as the selecting body had a right to fix the selection criteria.

6. Respondent No.3 took the plea that the marks awarded for the selection could not be questioned and the petitioner had not have performed well at the time of interview and merely because of higher technical qualifications, he did not have a right, as such, for selection. No allegation of *mala fides* have been alleged against the answering-respondent and therefore, the appointments were not liable to be interfered with.

7. Respondents No.4 & 5 took similar defence that having participated in the selection process, the petitioner could not challenge the same and the marks awarded could not be questioned at this stage. The answering respondents had the 3 years Diploma Degree and the selection body had to shortlist the candidates on the basis of some criteria

for selection.

8. In view of the order dated 29.03.2016 regarding the availability of the post of Shift Attendants, the official respondents had filed an additional affidavit dated 12.05.2016 wherein 60 vacancies were there, after keeping the posts reserved to SBC category, as per letter dated 10.05.2016, in principal. It was further averred that the petitioner could not be accommodated against the vacant posts because his name was neither in the list of selected candidates nor in the waiting list.

9. The record had been directed to be produced relating to the award of the interview marks on 16.01.2017. The Secretary of the respondent-Commission came present on 07.03.2017 and stated that the record had been destroyed in view of the resolution dated 27.07.1992 and 01.10.1994. The record qua respondent No.4 in the qualifications examination, reference of which has been made in column No.10, 11 and 12, as per Annexure P-10, was directed to be produced vide order dated 07.03.2017. On 28.04.2017, it was noticed by the Coordinate Bench that respondents No.3 & 4 had merely obtained 28.28 and 27.29 marks, respectively but had got 22 marks each in the interview and the criteria for awarding the 25 marks was under the following heads:

- (i) Knowledge of Subject,
- (ii) Communication Skill,
- (iii) General Knowledge
- (iv) General Awareness and
- (v) Intelligence.

10. It was, accordingly, held that it was apparent that there was arbitrariness in awarding the marks and the appointment of private-respondents No.3 & 4 were liable to be set aside. State Counsel, at that time, had stated that necessary efforts to accommodate the petitioners would be made. Thereafter, various appointing authorities-respondents No.7 to 10, being the Nigams and the Haryana Power Corporation were impleaded on account of the fact that the implementation of the order dated 28.04.2017 could be done.

11. On 01.06.2017, counsel for the respondents submitted that petitioner could not be accommodated for the reasons that over and above the petitioner there are number of more meritorious candidates and therefore, he had no right, as such, over and above them, for appointment.

12. The argument of the State and the private-respondents is that the petitioner had taken part in the process and the waiting list candidates had also been appointed who are not party and respondent No.3 was not the last candidate and there were other candidates who also got more than 20 marks in the interview and complete necessary parties have not been impleaded and on pick and choose method, the private-respondents have been impleaded. There were more than 42 candidates over and above the petitioner and therefore, the petitioner had no vested right for appointment.

13. State Counsel also vehemently submitted that the writ petition was only filed in the year 2011 and therefore, the records were destroyed as per the instructions and on account of the delay and in the

absence of record, the petitioner, as such, could not seek the benefit of appointment.

14. Counsel for the petitioner, on the other hand, has rightly submitted that the petitioner was agitating for his grievance right from August, 2010, once the result was declared to get the required information and the same being withheld, he had to contest to the level of the Commission under the RTI Act, 2005, to get the information and had approached this Court at the earliest once the order had been passed on 03.08.2011 (Annexure P-9), whereby he had inspected the record.

15. There is no quarrel with the proposition that all selected candidates should have been impleaded so that they would be given a change to oppose the writ petition and give way, in case the petitioner was to be appointed against them or in case the selection is to be set aside. However, in view of the fact that there are 60 vacant seats available, as per the affidavit and keeping in view the above interim orders passed, this Court is of the view that the petitioner is entitled for consideration to the said post, having been agitating for his grievances right from the year 2010. The arbitrariness in awarding the marks of interview is apparent as would be clear from the following chart which would demonstrate how inspite of the academic marks obtained by the petitioner, he has been arbitrarily cut out by the Interview Committee of the respondent-Commission:

Candidates	Merit Nos.	Academic marks (out of 50)	Interview marks (out of 25)	Total marks obtained	Roll No.
Respondent No.5	191	28.92	22	50.92	257
Respondent No.4	211	28.28	22	50.28	121
Respondent No.6	214	29.05	21	50.05	1369
Respondent No.3	220	27.59	22	49.59	1791
Petitioner	----	40.04	07	47.04	2532

16. As noticed, the selection record of the interview has not been produced on account of the fact that it has been destroyed and therefore, it is not possible for this Court, as such, to find out as to what prevailed and why the petitioner was only given 7 marks out of the 25 in the interview and why he fared so badly. Academically, on the strength of his basic qualifications and essential qualifications, he was well placed and far ahead of the private-respondents which would be clear from the table reproduced above. The interview criteria, as noticed above was out of 25 marks by assessing the knowledge of the subject, communication skills, general knowledge, general awareness and intelligence and the candidates academic merit could not have been altered by the respondent-Commission in any manner as there was no dispute, as such, qua the basic qualifications of Matriculation and +2 which would fetch 0.10 of the percentage of marks in whichever higher marks had been obtained. Similarly, for the 2 years ITI certificates, one course in electricians/electrical environment would fetch 0.04 of the percentage of

marks and was to be calculated out of the 40 marks similarly, for which, no discretion would lie with the Selection Committee. The only area they could have played was with the 25 marks awarded in interview to compile the merit-list.

17. The record produced shows interesting statistics since as many as 590 Shift Attendants were recommended along with the waiting candidates vide letter dated 13.08.2010 on the basis of the interview held in the month of November, 2008. The candidates selected in the waiting list were to be considered within a period of one year from the date of the issuance of the letter as per the recommendation sent to the Managing Director of the Haryana Vidyut Prasaran Nigam Ltd., Panchkula-respondent No.8. Similarly, names of 8 candidates were forwarded to the Managing Director, Dakshin Haryana Bijli Vitaran Nigam Ltd.-respondent No.9, belonging to the reserved categories/ECM/SC/OSB. Since this Court is only dealing with the claim of the petitioner against general candidates, the number of marks awarded by the respondent-Commission against such candidates who had secured more than 35 marks on the strength of their academic qualifications was scrutinized to find out the general pattern of awarding of the marks in the interview. The same shows a disturbing trend as to as much as it would be clear from the table below that majority of the candidates who had got 35 marks in the academics have been given less than 15 marks in the interview, to ensure that they do not make the final cut. The chart read as under:

S.No.	Roll No.	Name Father's Name	Total/50 As per prescribed qualifica- tions	Viva/ 25	Grand Total/75
1	00007	Jagpal Sher Singh	35.23	16	51.23
2	00008	Sandeep Singh Ramesh Singh	35.24	9	44.24
3	00020	Ishwar Singh Dewa Singh	35.22	11	46.22
4	00023	Pardeep Kumar Nathu Ram	37.27	7	44.27
5	00024	Vinod Kumar Balwan Singh	35.48	10	45.48
6	00045	Vikash Raghbir Singh	37.54	8	45.54
7	00051	Devender Singh Rajender Singh	36.16	8	44.16
8	00052	Pawan Kumar Sube Singh	36.76	8	44.76
9	00053	Parveen Kumar Veer Singh	37.41	9	46.41
10	00062	Mukesh Kumar Jaswant Singh	38.14	8	46.14
11	00065	Rajesh Kumar Lakhi Ram	35.01	9	44.01
12	00066	Jasvir Raj Kumar	39.15	7	46.15
13	00070	Dindayal Satnayan	37.44	8	45.44
14	00086	Yashpal Ramanlal	36.71	8	44.71
15	00092	Ajay Kumar Balwant Singh	37.43	7	44.43
16	00095	Balkar Singh Mian Singh	37.00	10	47.00
17	00101	Arun Kumar Kailash Chander	37.27	8	45.27

18	00102	Surender Singh Sube Singh	35.32	8	43.32
19	00110	Budh Ram Relu Ram	37.10	8	45.10
20	00111	Paramjeet Chatar Singh	35.00	8	43.00
21	00114	Vikram Jeet Singh Om Parkash	37.61	11	48.61
22	00118	Ajeet Sadhu Ram	35.98	8	43.98
23	00124	Surender Singh Amrit Lal	36.41	10	46.41
24	00132	Kulwant Singh Dalip Singh	35.81	10	45.81
25	00141	Dharmbir Surjit	37.36	17	54.36
26	00143	Pawan Sharma Vijay Prakash	36.05	8	44.05
27	00144	Monika Rani Anil Kumar	36.47	11	47.47
28	00145	Hitesh Kumar Yog Raj	36.59	8	44.59
29	00148	Rohtash Kumar Dharam Pal	38.28	8	46.28
30	00156	Ved Pal Inder Singh	38.07	9	47.07
31	00161	Mohinder Pal Om Parkash	36.09	8	44.09
32	00166	Kuldeep Singh Indraj Singh	38.40	8	46.40
33	00168	Jitender Pal Singh Nanak Chand	36.25	9	45.25
34	00173	Sunil Kumar Swaran Singh	36.48	8	44.48
35	00183	Sunil Hardeva Singh	38.22	8	46.22
36	00191	Sunil Kumar Krishan Singh	35.17	18	53.17

37	00194	Satyapal Nihal Singh	36.03	10	46.03
38	00196	Naresh Kumar Om Parkash	36.20	16	52.20
39	00199	Pardeep Kumar Dharampal	35.57	11	46.57
40	00200	Rajesh Kumar Dolet Ram	36.57	10	46.57
41	00201	Gaurav Sharma Sukhvardan Kumar	37.16	10	47.16
42	00213	Rajesh Kumar Chhaju Ram	35.92	18	53.92
43	00226	Harpal Singh Ajit Singh	37.34	9	46.34
44	00227	Randheer Khem Chand	38.90	7	45.90
45	00231	Vinod Kumar Dass Sharat Kumar	35.10	10	45.10
46	00233	Virender Kumar Banarsi Dass Tandon	37.22	9	46.22
47	00237	Kapil Vinod	39.30	14	53.30
48	00238	Jasbir Singh Karam Chand	37.66	7	44.66
49	00264	Anoop Sita Ram	37.04	10	47.04
50	00268	Labh Singh Puran Chand	35.95	8	43.95
51	00270	Virender Singh Ranbir Singh	37.73	9	46.73
52	00271	Sukhdev Singh Hawa Singh	36.46	8	44.46
53	00273	Parveen Kumar Ram Kumar	36.51	9	45.51
54	00277	Parmjit Inder Singh	37.04	17	54.04
55	00278	Lalit Kumar Ramji Lal	37.89	7	44.89

CWP-23737-2011

56	00282	Virender Singh Om Kanwar	35.20	11	46.20
57	0285	Mukesh Kumar Ramjatan Singh	38.94	7	45.94
58	00299	Ashwani Kumar Jasswant Singh	36.25	8	44.25
59	00308	Shyam Lal Sohan Lal	35.93	8	43.93
60	00310	Naveen Kumar Sadhu Ram	36.37	10	46.37
61	00312	Surender Sarup Chand	36.28	9	45.28
62	00315	Surinder Singh Ram Chander	36.37	10	46.37
63	00317	Parveen Kumar Shri Krishan	36.06	10	46.06
64	00326	Nasib Singh Ram Chander	38.09	9	47.09
65	00345	Birender Singh Chatter Singh	40.82	7	47.82
66	00359	Sant Ram Sri Chand Tyagi	38.09	9	47.09
67	00365	Jaspal Singh Malkeet Singh	40.24	7	47.24
68	00367	Pawan Kumar Ramesh Chander	35.84	19	54.84
69	00370	Raj Kumar Jai Pal	37.45	9	46.45
70	00374	Ravinder Kumar Sadhu Ram	40.63	18	58.63
71	00379	Vikas Malik Subhash Malik	35.13	7	42.13
72	00391	Rakesh Bal Krishan	35.71	16	51.71
73	00395	Pawan Kumar Kewal Krishan	36.99	20	56.99
74	00419	Tejveer Mange Ram	37.60	8	45.60

75	00421	Jitender Kumar Umed Singh	36.44	8	44.44
76	00423	Vipin Kumar Surinder Kumar	37.87	7	44.87
77	00425	Pankaj Kumar Bijender Kumar	38.68	8	46.68
78	00432	Ranvir Om Parkash	36.70	8	44.70
79	00435	Bhagwan Ram Kumar	35.72	22	57.22
80	00436	Sandeep Ram Kumar	36.35	9	45.35
81	00444	Munish Kumar Ram Singh	35.63	10	45.63
82	00447	Pawan Kumar Umed Singh	35.24	11	46.24
83	00451	Narinder Kumar Prahlad Chouhan	35.29	8	43.29
84	00452	Mahesh Chand Gautam Ramswaroop Singh	36.30	8	44.30
85	00456	Satish Kumar Mahavir	35.67	18	53.67
86	00457	Sonu Sharma Jai Narayan	38.05	9	47.05
87	00460	Mukesh Gupta Amar Nath	38.18	9	47.18
88	00462	Vikas Kumar Deepak Kumar	37.42	9	46.42
89	00464	Ashish Gupta Sushil Kumar	36.11	9	45.11
90	00467	Raj Pal Prithvi Singh	37.80	9	46.80
91	00469	Satpal Ram Singh	35.41	10	45.41
92	00475	Chander Shekhar Sham Sunder Sethi	37.07	18	55.07
93	00480	Sunil Richhpal Singh	37.85	8	45.85

94	00481	Radhe Shyam Lakshmi Narain	35.42	9	44.42
95	00485	Satish Kumar Gurbax Lal	36.22	17	53.22
96	00489	Shantshah Satbir Singh	35.41	20	55.41
97	00490	Manvender Singh Shilak Ram	37.65	8	45.65
98	00496	Baldev Raj Ladha Ram	36.01	10	46.01
99	00497	Ashok Kumar Bhale Ram	35.87	16	51.87
100	00500	Sonu Jaipal Singh	38.27	20	58.27
101	00505	Wazir Singh Ishwar Singh	34.49	10	44.49
102	00512	Suresh Kumar Dalip Singh	35.60	9	44.60
103	00514	Gopal Krishan Amir Chand	38.33	16	54.33
104	00515	Sukhender Mohinder Singh	37.41	18	55.41
105	00517	Prem Parkash Kailash Chand	35.20	8	43.20
106	00518	Vijay Pal Mohinder Singh	35.55	8	43.55
107	00523	Mahabir Singh Gopal	35.42	8	43.42
108	00525	Sunil Kumar Raj Kumar	38.59	8	46.59
109	00526	Anil Kumar Ranbir Singh	35.29	11	46.29
110	00539	Jatin Kumar Shanker Lal	35.66	9	44.66
111	00548	Shailja Kumari Mange Ram	36.71	12	48.71
112	00554	Parveen Kumar Prakash Chand	37.68	9	46.68
113	00555	Pardeep Kumar Pala Ram	36.16	10	46.16

114	00557	Hare Ram Vidhya Singh	35.80	11	46.80
115	00558	Somdutt Om Parkash	35.30	9	44.30
116	00572	Bhagwan Singh Ganga Ram	36.90	10	46.90
117	00580	Ashwani Kumar Ram Partap	35.90	18	53.90
118	00583	Dinesh Kumar Rattan Singh	39.05	7	46.05
119	00590	Parkash Sumer Singh	36.41	18	54.41
120	00592	Ajay Kumar Mahender Singh	37.28	7	44.28
121	00597	Pawan Kumar Bir Singh	37.50	7	44.50
122	00607	Pankaj Gulati Subhash Chand	36.94	9	45.94
123	00608	Pawan Kumar Mahavir Singh	35.37	10	45.37
124	00611	Rajeev Kumar Phogat Sarshvtrup	37.91	7	44.91
125	00613	Manoj Kuar Balbir Singh	36.92	9	45.92
126	00622	Vijay Pal Brahama Nand	35.22	11	46.22
127	00648	Rakesh Balwant Singh	36.87	9	45.87
128	00652	Prakashvir Chauhan Ratan Singh	36.64	9	45.64
129	00658	Sanjeev Kumar Partap Singh	39.30	8	47.30
130	00662	Birender Singh Ramphal	36.62	9	45.62
131	00688	Pawan Kumar Satbir Singh	35.60	18	53.60
132	00690	Dilbag Singh Parmal Singh	39.48	7	46.48

133	00691	Suresh Kumar Diwan Singh	35.63	9	44.63
134	00698	Harbir Singh Koore Ram	38.50	17	55.50
135	00699	Anurag Thukral Birbhan Thakral	37.25	9	46.25
136	00713	Kuldeep Daya Chand	38.41	8	46.41
137	00715	Amit Kumar Som Nath	38.80	7	45.80
138	00718	Megh Raj Kastoori Mal	36.63	8	44.63
139	00725	Dal Chand Manohari Lal	35.77	10	45.77
140	00728	Pankaj Bhalla Harish Chander	38.44	8	46.44
141	00734	Jitender Singh Sher Singh	35.83	19	54.83
142	00741	Ravinder Singh Hari Ram	37.57	8	45.57
143	00755	Nasib Singh Harpal Singh	35.39	9	44.39
144	00756	Sunil Prem Chand	35.27	10	45.27
145	00758	Deepak Kumar Ram Narain	36.82	8	44.82
146	00760	Mukesh Dutt Subash Chander Dutt	36.19	18	54.19
147	00761	Radhe Shyam Rohtash	35.93	9	44.93
148	00775	Parvesh Kumar Prem Chand	37.43	9	46.43
149	00776	Deepak Sharma Raj Kumar Sharma	36.90	7	43.90
150	00777	Bijender Singh Om Parkash	36.76	7	43.76
151	00778	Sandeep Randhir	35.36	12	47.36

152	00781	Kuldeep Khasa Zile Singh	35.42	11	46.42
153	00787	Amit Sharma Janak Raj	38.80	8	46.80
154	00803	Vijender Kumar Shree Dutt	35.24	10	45.24
155	00815	Gulshan Kumar Roshan Lal	37.97	8	45.97
156	00816	Yatinder Hooda Satbir Singh	39.66	7	46.66
157	00826	Ram Mehar Om Parkash	37.40	8	45.40
158	00828	Vinod Kumar Krishan Lal	35.63	8	43.63
159	00839	Rohit Jai Parkash	40.31	7	47.31
160	00845	Sachin Kumar Ashok Kumar	35.65	8	43.65
161	00852	Bhupender Singh Laje Ram	38.20	8	46.20
162	00859	Rajesh Kumar Purushottam	35.30	17	52.30
163	00867	Baljit Singh Kartar Singh	35.56	10	45.56
164	00874	Kuldeep Kumar Raj Kumar	38.60	8	46.60
165	00880	Rakesh Tika Ram	38.50	8	46.50
166	00883	Rakeh Deswal Raj Kumar	35.54	8	45.54
167	00887	Ravinder Khazan Singh	37.99	9	46.99
168	00892	Aman Ashok Kumar	37.06	8	45.06
169	00896	Deepak Punia Jai Narain	38.85	7	45.85
170	00902	Deepak Manchanda Harbans Lal	36.25	9	45.25
171	00909	Anup Singh Baldev Singh	36.15	10	46.15

CWP-23737-2011

172	00911	Manjeet Kumar Dalbir Singh	35.08	9	44.08
173	00912	Deep Singh Om Parkash	36.80	10	46.80
174	00913	Deepak Badola Luxmi Dutt Badola	39.27	7	46.27
175	00915	Ranbir Singh Sohan Ram	35.43	8	43.43
176	00917	Devender Bhatia Parbhu Dayal Bhatia	38.33	8	46.33
177	00920	Rajpal Mukhtyar Singh	36.57	9	45.57
178	00925	Varun Rajinder Parshad	36.76	10	46.76
179	00937	Pardeep Kumar Manohar Lal	35.43	10	45.43
180	00939	Dalip Kumar Meher Chand	35.20	10	45.20
181	00948	Vinod Kumar Jai Singh	35.80	9	44.80
182	00955	Deepak Bangar Dayaram	35.69	11	46.69
183	00959	Devi Parsad Chander Bhan	38.14	8	46.14
184	00960	Uma Shankar Gobind Ram	36.84	10	46.84
185	00964	Dharamvir Singh Ram Chander	36.53	17	53.53
186	00969	Mukesh Kumar Raj Kumar	36.44	8	44.44
187	00980	Narender Kumar Ved Pal	39.67	15	54.67
188	00983	Naresh Kumar Raj Kumar	36.94	9	45.94
189	00988	Madanjeet Randhir Singh	35.93	11	46.93
190	00990	Amit Surajmal	38.49	8	46.49

CWP-23737-2011

191	01003	Dilbag Dhanraj Singh	39.80	8	47.80
192	01007	Mamraj Jaipal	38.99	7	45.99
193	01014	Rajbeer Sharma Labh Chand Sharma	37.43	8	45.43
194	01020	Balvinder Singh Avtar Singh	35.01	10	45.01
195	01023	Geeta Devi Balbir Singh	36.75	10	46.75
196	01032	Sunil Kumar Pala Ram	37.29	10	47.29
197	01034	Ashmer Singh Ramkala	37.70	8	45.70
198	01035	Raghvender Sharma Dinesh Sharma	39.52	8	47.52
199	01039	Sandeep Kumar Jaibir Singh	35.38	11	46.38
200	01040	Amit Kumar Vijay Kumar	35.26	9	44.26
201	01042	Pushpender Kumar Vikram Singh	35.80	10	45.80
202	01043	Satya Narain Abhay Ram	36.35	10	46.35
203	01057	Vijay Kumar Jai Kishan	35.09	9	44.09
204	01058	Manoj Kumar Amar Nath Verma	35.63	9	44.63
205	01062	Satvir Singh Parbhu Singh	37.63	8	45.63
206	01075	Ajay Kumar Jagbir Singh	35.89	10	45.89
207	01078	Pawan Pooran Singh	35.90	9	44.90
208	01083	Sachita Nand Ojha Radhe Shyam Ojha	37.70	8	45.70

CWP-23737-2011

209	01092	Neetu Rani Mahavir Parshad	35.09	10	45.09
210	01093	Arun Kumar Nemi Chand	37.36	10	47.36
211	01103	Pawan Kumar Ram Singh	35.93	17	52.93
212	01109	Lakhi Ram Chiranji Lal	36.18	8	44.18
213	01121	Takdir Singh Jagat Singh	35.50	16	51.50
214	01123	Balwan Singh Jagdish Parsad	36.85	10	46.85
215	01130	Tilak Raj Bodh Raj	35.67	9	44.67
216	01131	Pawan Kumar Jai Bhagwan	36.31	18	54.31
217	01133	Parveen Kumar Bhim Singh	35.67	11	46.67
218	01135	Subhash Chand Bal Kishan	35.20	10	45.20
219	01136	Dharmendera Singh Vijay Singh	35.84	9	44.84
220	01139	Bhoop Ram Shri Narayan Singh	35.22	9	44.22
221	01148	Ravinder Kumar Pala Ram	38.38	17	55.38
222	01157	Balwan Singh Balbir Singh	37.40	8	45.40
223	01183	Ashok Kumar Jai Pal	38.73	7	45.73
224	01186	Rameshwar Aad Ram	35.97	10	45.97
225	01188	Sanjay Kumar Dalel Singh	35.15	9	44.15
226	01190	Rajinder Sharma Prag Raj	36.84	8	44.84
227	01192	Dinesh Kumar Bhana Ram	36.95	10	46.95

228	01196	Subhash Daya Singh	35.16	11	46.16
229	01203	Viney Kumar Krishan Lal	38.28	7	45.28
230	01216	Maan Singh Mam Chand	35.16	10	45.16
231	01217	Sunil Sharma Ramniwas Sharma	36.44	9	45.44
232	01220	Hitesh Kumar Gera Inder Bhan	35.01	11	46.01
233	01222	Naseeb Bhal Singh	37.22	10	47.22
234	01229	Parveen Kumar Om Prakash	38.95	8	46.95
235	01233	Rajiv Kumar Bhale Sharma	35.55	9	44.55
236	01236	Manoj Kumar Vir Bhan	35.99	17	52.99
237	01239	Pardeep Malik Pratap Singh Malik	37.51	9	46.51
238	01243	Jaibir Dharambir	35.74	8	43.74
239	01245	Rajeev Saini Baldev Singh	35.05	8	43.05
240	01246	Gurcharan Singh Gian Singh	35.16	10	45.16
241	01247	Harish Kumar Uttam Singh	37.65	8	45.65
242	01249	Sunil Kumar Mangal Dass	35.08	9	44.08
243	01254	Vishnu Kumar Ram Narayan	35.68	10	45.68
244	01258	Sandeep Satpal	37.49	8	45.49
245	01260	Ashwani Kumar Zile Singh	39.59	7	46.59
246	01264	Parmod Kumar Om Parkash	36.43	8	44.43

247	01269	Arvind Kumar Hoshier Singh	38.31	8	46.31
248	01275	Mukesh Kumar Om Parkash	37.18	10	47.18
249	01277	Pritam Kumar Babu Lal	35.38	17	52.38
250	01280	Naresh Kumar Ram Kumar	36.82	10	46.82
251	01285	Dilbag Amar Lal	35.14	16	51.14
252	01289	Narender Singh Ram Chander	35.47	11	46.47
253	01292	Satyendra Pal Singh Harnarayan Singh	36.63	9	45.63
254	01293	Ravinder Kumar Randhir Singh	35.71	10	45.71
255	01306	Manoj Kumar Rathee Nahnu Ram Rathee	38.25	17	55.25
256	01307	Ramandeep Nand Lal	36.41	18	54.41
257	01309	Dinesh Kumar Attar Singh	36.41	18	54.41
258	01310	Sushil Kumar Ramesh Kathuria	39.40	7	46.40
259	01314	Sanjay Kumar Deep Chand	35.08	17	52.08
260	01315	Jasbir Singh Puran Singh	35.47	8	43.47
261	01318	Vijay Singh Dharam Singh	39.10	8	47.10
262	01333	Virender Kharb Wazir Singh	39.12	7	46.12
263	01336	Bijender Singh Kapoor Singh	36.07	9	45.07
264	01341	Ved Parkash Om Parkash	38.69	7	45.69
265	01345	Ramesh Kumar Ranbir Singh	36.90	20	56.90

CWP-23737-2011

266	01347	Sandeep Satbir	39.46	7	46.46
267	01357	Pardeep Kumar Dharampal	39.64	7	46.64
268	01360	Krishan Kumar Radhe Shyam	35.34	10	45.34
269	01361	Amar Singh Nathi Ram	36.30	8	44.30
270	01366	Shallu Ram Dass	35.86	17	52.86
271	01371	Vikash Satpal Punia	36.00	9	45.00
272	01372	Pawan Kumar Dharmbir	38.72	17	55.72
273	01373	Dharamender Bhagi Ram	37.13	10	47.13
274	01380	Satnarayan Mahinder Singh	37.46	8	45.46
275	01382	Suresh Kumar Kishan Chand	38.14	8	46.14
276	01409	Pardeep Kumar Ishwar Singh	40.05	7	47.05
277	01414	Ravi Kant Bhagwat Parsad	35.65	8	43.65
278	01417	Mahinder Singh Jagmal Singh	36.42	11	47.42
279	01421	Rambilash Hari Kishan	35.58	9	44.58
280	01430	Anil Kumar Satbir	37.13	10	47.13
281	01433	Sunil Datt Ramsarup	36.47	8	44.47
282	01440	Vijender Main Pal	37.67	8	45.67
283	01441	Ravinder Ram Chander	37.08	8	45.08
284	01448	Sunil Kumar Ramesh Singh	36.15	8	44.15
285	01457	Satinder Shamsher Singh	36.45	10	46.45

286	01461	Surinder Kumar Fateh Singh	36.12	16	52.12
287	01464	Bhagwan Jai Singh	35.50	8	43.50
288	01467	Suraj Mal Badan Singh	37.56	8	45.56
289	01469	Sandeep Kumar Hawa Singh	37.07	8	45.07
290	01476	Jitender Pal Maya Singh	36.14	10	46.14
291	01483	Tara Singh Dan Singh	37.47	9	46.47
292	01504	Vijender Hari Ram	36.03	16	52.03
293	01505	Rajesh Kumar Prem Pal	39.78	8	47.78
294	01507	Ved Parkash Ram Kishan	36.13	10	46.13
295	01510	Naresh Kumar Karan Singh	37.26	8	45.26
296	01514	Sonu Suresh Chand	36.85	8	44.85
297	01517	Teeka Ram Sant Ram	38.40	8	46.40
298	01528	Pawan Kumar Nand Lal	37.65	8	45.65
299	01531	Sanjay Kumar Jagat Narayan	37.95	8	45.95
300	01541	Satbir Malik Ishwar Singh Malik	36.91	10	46.91
301	01548	Virender Singh Ram Phal	40.79	7	47.79
302	01549	Dharam Beer Darya Singh	36.67	10	46.67
303	01551	Parveen Kumar Karan Singh	35.31	9	44.31
304	01558	Vivek Tomer Virender Singh	35.10	9	44.10
305	01559	Kiran Bala Sher Singh	36.13	8	44.13

306	01565	Dalbair Singh Ram Chander	35.94	20	55.94
307	01574	Sabir Yusuf Khan	37.11	8	45.11
308	01576	Deepak Ravish Ruldu Ram	37.19	8	45.19
309	01579	Anil Rajender Prasad	37.43	8	45.43
310	01582	Narender Kumar Maman Ram	36.85	20	56.85
311	01593	Naveen Kumar Mahabir	36.10	11	47.10
312	01597	Jitender Kumar Jai Narayan	35.98	9	44.98
313	01621	Suresh Kumar Vijay Singh	37.87	19	56.87
314	01626	Hemant Singh Hoshiyar Singh	36.44	10	46.44
315	01628	Kulvant Singh Kehri Singh	37.62	8	45.62
316	01629	Ramesh Kumar Siya Ram	38.56	8	46.56
317	01633	Parveen Rawal Subhash Chand	35.83	10	45.83
318	01635	Satya Naryan Sita Ram	35.76	10	45.76
319	01645	Kuldeep Singh Samunder Singh	37.12	8	45.12
320	01655	Ravinder Singh Roshan Singh	36.90	17	53.90
321	01662	Jitender Kumar Chugh Desh Raj Chugh	38.95	8	46.95
322	01670	Ashwani Kumar Satpal	35.50	11	46.50
323	01672	Karam Bir Ishwar Singh	35.10	16	51.10
324	01684	Sanjay Ramsan	35.67	8	43.67

325	01690	Ram Niwas Balbir Singh	37.74	16	53.74
326	01694	Ashok Kumar Ranjeet Singh	38.17	8	46.17
327	01698	Harikesh Dana Ram	35.89	9	44.89
328	01701	Rajender Singh Bhim Singh	37.15	8	45.15
329	01704	Vinay Prasad Ramesh Chander	36.99	8	45.99
330	01705	Sunil Chahal Jagdish Chahal	38.26	8	46.26
331	01706	Sahil Sharma Raj Kumar Sharma	38.78	8	46.78
332	01712	Vijender Singh Prithvi Singh	37.09	9	46.09
333	01722	Sandeep Budhram	37.55	9	46.55
334	01725	Nirmal Singh Darshan Singh	38.44	8	46.44
335	01727	Parmod Kumar Amrit Lal	35.17	11	46.17
336	01729	Ashok Kumar Chander Bhan	35.56	11	46.56
337	01748	Neeraj Singh Yashpal Singh	35.99	16	51.99
338	01754	Sunil Ramphal	39.17	7	46.17
339	01765	Jogender Singh Sube Singh	35.60	16	51.60
340	01767	Vijay Kumar Kitab Singh	35.58	11	46.58
341	01773	Satish Sharma Dewak Ram	34.93	10	44.93
342	01774	Navin Kumar Ram Partap	31.24	14	45.24
343	01782	Ashwani Kumar Ved Parkash	36.65	8	44.65
344	01786	Samser Singh Kapoor Singh	38.50	8	46.50

345	01793	Satish Kumar Leela Krishan	37.32	8	45.32
346	01798	Vikram Singh Jai Singh	38.65	8	46.65

18. Thus, a combined reading of the above list of 346 candidates out of 1799 candidates, from the first register prepared, who appeared for the interview of the General Category who had secured more than 35 marks, would go on to show that they have been consciously awarded low marks. This substantiates in principal the argument which has been raised by counsel for the petitioner, that 295 candidates who had secured 35 marks have secured less than 15 marks and only 51 number of candidates were awarded more than 15 marks. The record from Roll No.1800 to 4178, in the second register of 2378 candidates, has also been perused and would go on to show that out of the same, similarly 364 candidates who had secured 35 marks and more, have been awarded less than 15 marks and only 43 candidates out of those were awarded more than 15 marks, but the same is not being reproduced for the purpose of brevity.

19. In view of the above facts a reasonable inference can be drawn that there was a favoritism, as such, which was resorted to by the Selection Committee and the power was misused by the selecting authority for serving an unauthorized purpose and there was malice in law and the petitioner is liable to be appointed. Reliance can be placed upon **P. Mohanan Pillai Vs. State of Kerala & others 2007 (3) SCR 876** wherein the posts of Watchman/Messenger/Attendant had fallen vacant

and the appellant had stood first in the written examination. It was noticed that a policy decision was taken to call 36 candidates which were 3 times the number of 12 posts which had been advertised. Thereafter, the minimum qualifications had been reduced to 46 marks and 11 more persons were permitted to appear in the interview. Resultantly, the zone of consideration had been enlarged from 1:3 to 1:4, which was questioned and why the cut-off marks were also lowered and it was held that the decision taken smacked of arbitrariness and the selection of respondents No.4 & 5 was set aside and direction was given to appoint the appellant by observing as under:

“15. In this case allocation of marks for interview was in fact misused. It not only contravened the ratio laid down by this Court in Ashok Kumar Yadav (supra) and subsequent cases, but in the facts and circumstances of the case, it is reasonable to draw an inference of favouritism. The power in this case has been used by the Appointing Authority for unauthorized purpose. When a power is exercised for an unauthorized purpose, the same would amount to malice in law [[See The Manager, Govt. Branch Press and Another v. D.B. Belliappa](#), AIR 1979 SC 429 : [(1979 (1) SLR 351 (SC)], [Punjab State Electricity Board v. Zora Singh and Others](#), (2005) 6 SCC 776 and [K.K. Bhalla v. State of M.P. and Others](#), (2006) 3 SCC 581].”

20. The argument raised by the respondents is that the petitioner challenges the selection procedure and cannot be permitted to do so. The petitioner is not challenging the criteria as such but only the arbitrariness of the Interview Committee, while awarding the marks which has been substantiated by examining the record. It is also pertinent to notice that

thereafter also, vide advertisement dated 28.02.2016, 2426 posts of Shift Attendants have been re-advertised vide advertisement No.23 of 2016 on behalf of the same appointing agencies who had been arrayed as official-respondents and therefore, the vacancies are available, as such. The argument raised that the petitioner had participated in the selection process and now is not allowed to challenge the said process, is without any basis and therefore, reliance placed upon *Ashok Kumar & another Vs. State of Bihar & others 2017 (4) SCC 357* would be of not much avail to the State. In the said case, the candidates were well aware that the interview was carrying 10 marks and they proceeded taking part in the said process and therefore, it was held that it was not open for them to challenge the said criteria. The petitioner herein is not challenging the criteria, as such, but the manner of awarding of marks, as noticed above and has been successful in demonstrating the prejudice which has been caused to him.

21. Resultantly, keeping in view the fact that the private-respondents are not at the bottom of the selection list merit-wise and there would be other candidates, as such, who have not been impleaded who would be below them and therefore their appointment, as such, is not liable to be disturbed. However, the fact remains that as many as 60 vacancies continue, as per the affidavit dated 12.05.2016 and therefore, the petitioner can be adjusted against the said vacancies, without disturbing the said candidates who were appointed more than 7 years back.

22. In similar circumstances, the Division Bench allowed the appeal bearing LPA-555-2015 titled *Kunal Sharma Vs. Union of India & others*, on 18.10.2016, on the ground that there was no record of the awarding of the marks in the head of interview and on account of the record missing the desirability of the selection was doubted. Accordingly, the selected candidates were not disturbed, which was on account of the fact that they had been working for the last 10 years and no other candidates had come forward to challenge the selection. Resultantly a direction was given to consider and offer the appointment to the appellant, in the following terms:

“17.) Taking into consideration all these attending circumstances including that:-

(i)The selected candidates are working from last about four years;

(ii)No other candidate has come forward to question the selection;

(iii)The original record comprising proceedings of the Selection Committee are conspicuously missing and have not been produced before the Court;

(iv)The manner in which selection-process has been carried out somehow lacks transparency though it may not be expedient to set aside the same at this juncture and;

(v)The appellant though is stated to be lower in merit but he is not a 'failed' or 'unsuccessful' candidate;

(vi)The appellant who has appeared in person, is apparently from a poor background;

we allow this appeal; set aside the order passed by learned Single Judge and direct the respondents to consider and offer appointment to the appellant on the available post of Safai Wala within a period of two months from the date

of receipt of certified copy of this order.

18.) It is further directed that no fresh selection be made without first appointing the appellant on a vacant post of Safai Wala.”

23. Accordingly, keeping in view the above, similar direction is issued to the respondent-Commission, to consider the case for the petitioner for appointment against the 60 available vacancies and issue the necessary recommendation to the recruiting agencies within a period of 2 months from today. It is further made clear that the directions have been issued, at this stage, only on account of the fact that the petitioner has been consistently pursuing his remedy right from the declaration of the result and on this account, the other candidates who are having higher merit than the petitioner, but have not chosen not to agitate against the same, would not be entitled for the same relief on the strength of having been better placed in the merit-list.

24. Writ petition stands allowed, in the above-said terms. The official files/records be returned to the State Counsel, under proper receipt.

13.09.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No