

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

Reserved on: 12.09.2018

Date of Pronouncement: 12.11.2018

CWP No.17861 of 2014

Bhajan lal & another ...Petitioners

Vs.

State of Haryana & others ...Respondents

CWP No.15249 of 2014

Ramesh Chander ...Petitioner

Vs.

State of Haryana & others ...Respondents

CWP No.19468 of 2014

Suresh Kumar ...Petitioner

Vs.

State of Haryana & others ...Respondents

CWP No.20332 of 2014

Chander Pal ...Petitioner

Vs.

State of Haryana & others ...Respondents

CWP No.22301 of 2014

Yashpal Sharrma

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: For the petitioners:

Mr. Rajiv Atma Ram, Senior Advocate, with
M/s Arjun Pratap Atma Ram and Inder Pal Goyat,
Advocates, in CWP Nos.17861 & 20332 of 2014;
Mr. Aman Arora, Advocate
in CWP No.19468 of 2014;
Mr. S.P.Arora and Mr. Himanshu Arora, Advocates
in CWP No.22301 of 2014;

For the State of Haryana;

Mr. D.S.Nalwa, Addl. AG, Haryana.

For the HPSC:

Mr. H.N.Mehtani, Advocate &
Mr. Kanwal Goyal, Advocate.

For the private respondents:

Mr. B.S.Rana, Senior Advocate, with
Ms. Pooja Bansal, Advocate, for respondent No.4
in CWP No.17861 of 2014;
Mr. P.S.Poonia, Advocate, for respondent No.5
in CWP Nos.17861, 20332 & 22301 of 2014;
Mr. R.K.Malik, Senior Advocate, with
Mr. Samrat Malik and Mr. S.K.Hooda, Advocates,
for respondent No.9 in CWP No.17861 of 2014;
Mr. Gurminder Singh, Senior Advocate, with
Mr. R.P.S.Bara, Advocate,
for respondent No.10 in CWP No.17861 of 2014;
Mr. Puneet Bali, Senior Advocate, with
Mr. Vibhav Jain, Advocate;
for respondent No.11 in CWP No.17861 of 2014;

RAJIV NARAIN RAINA, J.

1. This order will dispose of the five above captioned connected writ petitions filed under Article 226 of the Constitution of India (for short 'COI') as the cause they espouse and the factual and legal issues involved in them is common and, therefore, they can be conveniently decided by a single order to which the counsel have no objection.

2. Before starting any discussion on the merits of the case and the legal issues arising for adjudication, it may be noticed that the submissions in these set of petitions, wherein challenge is to the selection and appointment of the private respondents 9 to 11 in CWP No.17861 of 2014 to the 'Haryana Civil Services (Executive Branch) from Register A-II of members of Group-C services, are centered on the following questions framed by this Court in the interim order dated 15.02.2018 after hearing the senior and other counsel appearing for the parties and satisfied that these issues alone arise for determination:

- “(i) Whether the relaxation given to Rule 10(3) by the State Government exercising powers under Rule 30 of the Haryana Civil Service (Executive Branch) Rules, 2008 vide Annex P-11 of calling candidates more than twice the number of vacancies, is legal and valid?
- (ii) Whether the provisions of Rule 10(3) of the Haryana Civil Service (Executive Branch) Rules, 2008 in limiting names of candidates to be sent to the Commission twice the number of vacancies is directory or mandatory in nature and how is the word 'shall' to be interpreted?
- (iii) Whether relaxation was required at all, if the rule is to be read as directory in nature, then the question of relaxation would not arise?

- (iv) Whether the recommendations made by the Committee in forwarding the names of all the nominated candidates from Register A II numbering total 29 to the Commission for interview is vitiated by mala fides?
- (v) Whether the act of the Haryana Public Service Commission in framing criteria after receiving recommendations of the Government is vitiated in law and hit by the judgments of the Supreme Court in *K. Manjusree, Hemani Malhotra cases* etc.?
- (vi) The petitioners after having participated in the selection process are they estopped in law from challenging the same having remained unsuccessful?
- (vii) Whether there is a case of extreme haste shown in making the selection in which the Commission forwarded the recommendations and pursuant thereto appointments were offered smacks of arbitrariness and mala fide action?
- (viii) Assuming *arguendo* that the selection is bad and deserves to be set aside, what relief can be granted to the petitioners?"

3. For considering and deciding the aforesaid questions framed, as well as for the facility of reference, the paper-book in CWP No.17861 of 2014 is treated as the main case to draw the facts and documents from which are not disputed in any of the cases as only purely legal issues are involved for resolution as to the nature and character of the selection procedure of inductions of three candidates to the HCS (EB) from Register A-II and whether it is within the law or is the entire process vitiated by legal infirmities or play of extraneous considerations.

The background:

4. Notification dated 18.09.2013 was issued to all the Heads of Departments in Haryana (except the Chief Secretary to Government Haryana

and Additional Chief Secretary to Government, Haryana and Financial Commissioner, Revenue & Disaster Management and Consolidation Departments) and the Heads of Department/nominating authorities inviting their attention to recommend the name of one member of Group-C service working under their control for “Recruitment to the HCS (Executive Branch) against the three vacancies of the year 2012 from Register A-II of Members of Group-C services” to be sent to the Chief Secretary to Government, Haryana, Personnel Department, in terms of Rule 10 of the Haryana Civil Service (Executive Branch) Rules, 2008 (for short ‘the 2008 Rules’). As per the notification, the member of Group-C service whose name is to be recommended should fulfill the following conditions of eligibility as on 01.01.2014:

- “(a) (i) has completed eight years’ continuous Government service;
- (ii) has not attained the age of more than forty eight years;
- (iii) is not facing disciplinary proceedings against whom action is being contemplated; and
- (iv) is clear from vigilance angle;
- (v) is not a confirmed Gazetted Officer.
- (b) is a graduate of a recognized University.”

5. The Departments were required to follow the instructions of the Chief Secretary, Haryana issued on 10.05.2013 and name(s) of the eligible, suitable and meritorious candidates were to be forwarded accompanied by the following record/information:

- “(i) Service profile of the eligible officer in Proforma ‘I’ (five copies);
- (ii) The upto date ACRs in original of the officer concerned;

- (iii) Attested copies of summaries of ACRs from the year 2003-2004 to 2012-2013 in Form 'II' (five copies);
- (iv) Integrity certificate in Form 'III' (five copies);”

6. The recommendations were to reach Service-II Branch, Haryana Civil Secretariat, Chandigarh by 15.10.2013 positively. In case, no recommendation is received till the aforesaid date, it would be presumed that the Head of the Department/s had no recommendation to make.

7. Copies of the notification along with enclosures were also forwarded to the Chief Secretary to Government Haryana (in Establishment-I Branch) and the Additional Chief Secretary to Government, Haryana and Financial Commissioner, Revenue & Disaster Management and Consolidation Departments requesting them to recommend the name of any three and two eligible members of Group 'C' service respectively.

8. On 15.10.2013, a total of 31 names were recommended i.e. 28 names by different Departments and 03 names from the Chief Secretary to Government, Haryana.

9. It would be necessary in this connection to refer to Rule 10 of the 2008 Rules at the outset which provide the methodology of the nomination/selection process for Register A-II from ministerial services of Group-C employees working in the various departments of the State government. Rule 10 reads as follows:

“**10.** (1) Each of the authorities specified in the first column of the table below may, by a date to be specified by the Government, submit to the Government in Form I attached to these rules the recommendations regarding such number of persons as is specified in each case in the second column of the said table from amongst persons who are members of Group C services in his office or in the offices subordinate to him:-

TABLE

Recommending Authority	Number of recommendations
1	2
1 Chief Secretary to Government, Haryana	3
2 Financial Commissioner and Principal Secretary Revenue and Disaster Management, Haryana	2
3 All the remaining Heads of Departments	1 (each)

Provided that any nomination already submitted by any of the aforesaid authorities with the existing rules shall be deemed to be a recommendation validly made.

(2) Unless the Government otherwise directs regarding the age, the name of a person shall be submitted under the provisions of sub-rule (1) who:

- (a) (i) has completed eight years' continuous Government service;
- (ii) has not attained the age of forty-five years on or before the date by which the Government has asked for the recommendations;
- (iii) is not facing disciplinary proceedings/ against whom action is being contemplated; and
- (iv) is clear from vigilance angle;
- (b) is a graduate of a recognized university.

(3) The recommendations so received shall be submitted before a Committee with Chief Secretary as Chairman and such other two officers as members as may be nominated by the Government from time to time. This Committee shall examine all the recommendations received from various authorities and shall prepare a list equal to twice the number of vacancies of persons considered suitable for being entered in Register A-II. This list shall be sent to the Commission for recommending, in order of merit and equal to the number of vacancies the most suitable persons entered in the list, for being selected as candidates for entry in to Register-II, and

thereafter the names of the persons so selected shall be entered in the Register A-II.” (*Underscored for emphasis*)

10. As per Rule 10, reproduced above, the process of selection of candidates for Register A-II can be divided into three distinct stages. The 1st Stage of the recruitment process under Rule 10(1) is for authorities specified in the First Column of the Table to the rules i.e. the Chief Secretary to Government, Haryana, the Financial Commissioner and the Principal Secretary Revenue and Disaster Management, Haryana and the Heads of the Departments to make recommendations of persons from Group-C service to the Government. The 2nd Stage of the selection process lies within the jurisdiction of the statutory Committee constituted by the Government under Rule 10(3) to whom all the recommendations shall be submitted, to examine and prepare a list of candidates equal to twice the number of vacancies of persons considered suitable for entry in Register A-II and send the list to the Haryana Public Service Commission (the “Commission” for short); whereas the last 3rd Stage is the final selection by the Commission from amongst the names forwarded to it by the Committee to make its recommendations, in order of merit, of the most suitable persons equal to the number of vacancies. If the Rule is followed strictly, then Committee could send only six names to the Commission for undertaking the task of completing the 3rd round of the recruitment process on criteria devised by it and then forwarding its recommendations to Government for offering appointments to the selected candidates.

11. In exercise of powers under Rule 10(3) of the 2008 Rules, the Government of Haryana constituted the Committee on 17.12.2013 with the Chief Secretary to Government, Haryana as Chairman [as prescribed in the rule] and two Senior Officers, namely, Mr. Sarban Singh, IAS, Additional

Chief Secretary to Government, Haryana, Public Health Engineering Department and Mr. P. Raghavendra Rao, IAS, Principal Secretary to Government, Haryana, Urban Local Bodies Department nominated as members of the Committee.

12. The Committee met for the first time on 25.06.2014, which was a formal meeting with no business transacted except to fix the date of next meeting i.e. on 01.07.2014. The Committee met on the day fixed, wherein it examined the recommendations consisting of names of 31 candidates received from various departments for appointment to three posts of HCS (Executive Branch) from Register A-II of Group C service against the vacancies of year 2012. The relevant extract of the proceedings of the meeting held on 01.07.2014 and the business transacted thereat was as follows:

“2. The Committee observed that the departments were required to recommend the names of the eligible candidates for consideration for appointment to the posts of HCS (Executive Branch) as per the criteria prescribed by the Government vide letter No.46/1/2013-5SII, dated 10.05.2013. As per the criteria, the candidate shall be assessed by the department on the basis of scrutiny of their service records, relevant experience, academic achievements and other achievements. The department shall distribute the marks between the service records, experience, academic achievements and other professional achievements out of maximum 100 marks and the weightage for each of the four component to be given is as follow:-

(i)	Service records with particular reference to ACRs for the last 10 years	70% weightage or 70 marks
(ii)	Relevant experience	10% weightage or 10 marks
(iii)	Academic achievements	10% weightage or

		10 marks
(iv)	Other Professional achievements	10% weightage or 10 marks

Further, the candidates should have at least 6 ACRs of “Very Good” category and 2 ACRs of not less than “Good” category during the last eight years. The department would assign 8.75 marks for “Outstanding”, 7 marks for “Very Good” and 5 marks for “Good” grading for each ACR during the last eight years. The names of the meritorious candidates shall be forwarded by the department to the Chief Secretary to Government, Haryana.

3. Shri Surender Mohan, Head Draftsman recommended by the Engineer-in-Chief, Public Health Engineering Department, Haryana and Shri Dinesh, Statistical Assistant recommended by Director, Employment, Haryana, are not eligible because they have not earned at least 6 ACRs of “Very Good” category and 2 ACRs of not less than “Good” category during the last eight years and hence their names cannot be recommended.

4. The Committee further observed that a perusal of the evaluation sheets in respect of the candidates shows that different departments have evaluated the candidates by adopting different parameters for assigning marks of service records, experience, academic qualifications and other professional achievements. The departments were required to assign marks for 8 ACRs whereas Development and Panchayat, Commissioner, Ambala Division, Elementary Education, HPSC, Agriculture, Excise & Taxation, Commissioner, Rohtak Division have assigned marks for 10 ACRs. Secondary Education has assigned marks for 10 ACRs and further assigned 7 marks for “Outstanding” and 5.5 marks for “Very Good” grading. The departments were required to assign maximum 10 marks for academic achievements and minimum required qualification was graduation. Prosecution Department has assigned some marks even for Matric and Prabhakar, Town and Country Planning Department, PCCF, Commissioner, Rohtak division and

DGHS have assigned marks for even basic qualification. Advocate General has assigned marks for passing SAS Part-I examination. The departments have evolved different parameters for assigning marks for additional higher qualifications. Keeping these constraints in view, the Committee is not in a position to evolve any objective criteria to adjudge the comparative merits of the candidates and prepare a list equal to twice the number of vacancies of candidates, in order of merit, on the basis of evaluation done by the different departments as provided under rule 10(3) of the Haryana Civil Service (Executive Branch) Rules, 2008, which is reproduced below:-

xx xx xx

The Committee observes that the Government is empowered under rule 30 of the Haryana Civil Service (Executive Branch) Rules, 2008 (reproduced below) to relax any of the provisions of these rules with respect to any class or category:

“30. Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the Provisions of these rules with respect to any class or category of persons.”

In view of this, the Committee feels that keeping in mind the constraints pointed above, the Government may be requested to exercise these powers and forward the names of all the candidates barring Shri Surender Mohan, Head Draftsman and Shri Dinesh, Statistical Assistant to HPSC.”

13. A perusal of the observations of the Committee reveals that it discovered during the deliberations that the nominating authorities had adopted different parameters for assigning marks for service records, experience, academic qualifications and other professional achievements. The Committee felt that these were constraints upon it, on which account it was not in a position to evolve any objective criteria of its own to adjudge the comparative merits of the candidates and prepare a list equal to twice the

number of vacancies of candidates, in order of merit, on the basis of evaluation done by different departments albeit on different yardsticks. The Committee observed that the Government is empowered under Rule 30 of the 2008 Rules to relax any of the provisions of the rules with respect to any class or category of persons if it appears necessary or expedient to do so. Rule 30 was quoted in the proceedings as seen underlined above. In the end, the Committee suggested to Government to consider exercise its powers of relaxation and forward the names of all the candidates barring two, who were found ineligible because they had not earned at least 6 ACRs of “Very Good” category and 2 ACRs of not less than “Good” category during the last eight years as per the criterion adopted.

14. The recommendations/observations of the Committee were placed before the Chief Minister, Haryana on 09.07.2014 for orders/approval, whereupon the Chief Minister, Haryana, passed the following orders signed by the Principal Secretary to the Chief Minister, Haryana:

“CM has seen. He has desired that evaluation on the basis of ACRs and educational qualifications be done by the Committee first and thereafter, the case be submitted.”

15. As the matter was referred back to the Committee by the Chief Minister, the Committee again met and deliberated in its meeting held on 14.07.2014 and recommended as follows:

“The Committee met today and noted the orders of the Government dated 09.07.2014, which are as follows:-

“that evaluation on the basis of ACRs and educational qualifications be done by the Committee first and thereafter, the case be submitted.”

2. As per the criteria prescribed by the Government vide letter No.46/1/2013-5SII, dated 10.05.2013, the candidate shall be assessed by the department on the basis of scrutiny of their service records, relevant experience, academic achievements and other achievements. The department shall distribute the marks between the service records, experience, academic achievements and other professional achievements out of maximum 100 marks and the weightage for each of the four component to be given is as follow:-

(i)	Service records with particular reference to ACRs for the last 10 years	70% weightage or 70 marks
(ii)	Relevant experience	10% weightage or 10 marks
(iii)	Academic achievements	10% weightage or 10 marks
(iv)	Other Professional achievements	10% weightage or 10 marks

Further, the candidates should have at least 6 ACRs of “Very Good” category and 2 ACRs of not less than “Good” category during the last eight years. The department would assign 8.75 marks for “Outstanding”, 7 marks for “Very Good” and 5 marks for “Good” grading for each ACR during the last eight years. The names of the meritorious candidates shall be forwarded by the department to the Chief Secretary to Government, Haryana.

3. The Committee noted that the aforesaid criteria is for making the recommendation(s) by the departments. There is no prescribed criteria to evaluate the candidates by the Committee. However, the Committee decided to adopt the aforesaid criteria of ACRs. In respect of educational qualifications/academic achievements, the Committee decided to distribute 10 maximum marks between additional academic qualification in relevant subject over and above the basic minimum qualification as follows:-

- (i) Diploma/B.Ed. = 1 mark
- (ii) LLB = 2 marks
- (iii) MA/M.Sc./M.Tech/MBA = 3 marks

- | | | |
|------|--------|-------------|
| (iv) | M.Phil | = 3.5 marks |
| (v) | Ph.D | = 4 marks |

The above criteria is broadly based on the criteria adopted by Development and Panchayat Department while recommending the name(s) for Register-C with the minor modification to treat additional qualification of B.Ed to be equivalent to diploma and consider 3.5 marks for M.Phil qualification as M.Phil is a higher qualification than Post Graduation, but lower than Ph.D. The Development and Panchayat Department had not specifically given marks for B.Ed. and M.Phil as none of the candidates possessed either of these qualifications. But some of the candidates recommended by departments for Register A-II do possess these qualifications making it obligatory for the Committee to assign some weightage and hence marks to these additional qualification above the minimum prescribed qualification of Graduation. It was also decided that if a candidate has obtained the qualification of M.Phil and Ph.D both, he would be assigned 4 marks and if any candidate has obtained the qualification of double Post Graduation, he would be assigned only maximum of 3 marks.

4. The Committee, as desired by the Government, has done evaluation of eligible candidates on the basis of ACRs and educational qualifications by adopting the aforesaid criteria. The Committee also followed the principle that in the event of two candidates getting equal total marks on the basis of above criteria, the candidate older be placed above the younger ones. Accordingly, a list has been prepared by the Committee and the same is annexed.

5. The Committee reiterates its recommendations made in meeting held on 01.07.2014.” [emphasis supplied]

16. It may be seen from the record of the proceedings of the Committee in its meeting held on 14.07.2014 and minutes recorded that it prepared a list after evaluation of eligible candidates on the basis of ACRs and educational qualifications and annexed the same with their proceedings.

Since there was no prescribed criterion to evaluate the candidates by the nominating authorities, the Committee decided to adopt the criteria of ACRs, as was adopted by the Department/s for making recommendation(s), but with minor modifications. However, the Committee signed off the meeting note reiterating its recommendations made in the earlier meeting held on 01.07.2014 leaving the matter to the Government to resort to its authority and power of relaxation under Rule 30 of the 2008 rules to send the entire list of 29 candidates to the Commission as against the prescription in the Rules of 3x2=6 (names).

17. On 17.07.2014, the proceedings of the Committee were again placed before the Chief Minister and the following orders were issued:

“CM agrees with the recommendations of the Committee as per proceedings held on 14.07.2014. In exercise of the powers under rule-30, he has ordered that all the names mentioned in the Annexure of the proceedings dated 14.07.2014 along with its evaluation, be forwarded to HPSC for its consideration.”

18. Thereafter, on 22.07.2014, the Chief Secretary to Government, Haryana addressed a confidential letter to the Secretary, Haryana Public Service Commission, Panchkula stating that Government have relaxed the provision of preparing a list equal to twice the number of vacancies of persons considered suitable for being entered in Register A-II and thereby it was forwarding all the 29 names to it with a request to make recommendations and convey the same to the Government, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry in Register A-II.

Pursuant thereto, the Commission conducted the interviews of all the 29 candidates on 31.07.2014 and the result of three successful candidates was declared on the same day who are respondents 9 to 11.

Posting orders were issued to them on 04.08.2014. They joined service to discharge their duties.

19. To go back a little in time, it may be noticed that on 17.06.2014, a news item appeared in 'Punjab Kesari', a daily Hindi newspaper, wherein it was widely reported and believed that respondents 9 to 11 were influential persons and politically well-connected and would be selected in the coming days. The news report was based on an allegation of an opposition leader mentioning publically beforehand 6 names for 3 posts as likely to be appointed candidates, including the name of petitioner No.2 – Mukesh Kumari, who was not ultimately selected, but the other two names mentioned in the report found successful berths in the premier state service and one other candidate.

20. Apart from the legal issues raised in the petition, it is alleged that respondent-9, who was working as a Stenographer in Haryana Prosecution Department, is a resident of Village Sanghi, District Rohtak, which is stated to be the native village of respondent-4, the then Chief Minister; respondent No.10 was working as Personal Assistant to respondent- 5, Mohinder Singh Chopra, Principal Officer on Special Duty to Chief Minister, Haryana and due to this proximity was advantaged, while respondent-11, who was working as Taxation Inspector, is very close to respondent-5.

21. It may also be noticed that one of the three selected candidates - respondent No.9 is the petitioner in the 6th writ petition i.e. CWP No.5474 of 2015 earlier tagged with this bunch of cases in which he has challenged the order of discharge during probation on the allegation of submitting a fake educational certificate in the present selection process, but which case is to

be decided separately depending on the fate of these 5 cases. Accordingly, the present lot consists of five cases.

22. The pleas on which the petitioners have approached this Court for setting aside the selection process and the consequential appointments of respondents 9 to 11 may be summarized as pleaded at the foot of the List of Dates and Events:

- (i) The Committee failed to perform its statutory duty.
- (ii) The reasons given by the Committee are non est and void ab initio, arbitrary and motivated, mala fide and biased.
- (iii) The Committee could have made a back reference to nominating authority.
- (iv) Respondent No.6 being Chairman of the Committee, recommends and himself relaxes the Rule (as Chief Secretary).
- (v) It was beyond Rule 10 for the Committee to recommend relaxation.
- (vi) HPSC was not consulted under Article 320(3) before relaxation of Rule.
- (vii) HPSC could not consider candidates beyond 6 and selection anyone who did not figure among first six.
- (viii) Selection was made with undue haste.
- (ix) Selection suffers from vice of favouritism.
- (x) The Committee was clearly biased in favour of respondents No.9 to 11.

(xi) HPSC cannot evolve its own criteria. It is bound to follow the criteria of selection fixed by Government vide Annexure P-2 dated 10.05.2013.

23. Apart from the above pleas, the petitioners also submit that the Chief Secretary to Government of Haryana (respondent-6) as the Chairman of Committee recommended relaxation of Rule and himself in his capacity as Chief Secretary relaxed the Rule and issued the impugned order dated 22.07.2014 under Rule 30 on behalf of the Government of Haryana. It is urged that this undermines his bona fides in the process which led to relaxing the rule resulting in expanding the zone to all the eligible candidates. The rule was relaxed, they say, by way of quid pro quo by respondents 6 & 7 to gain post-retirement jobs. Thus, the selection process suffers from bias and favouritism shown to respondents 9 to 11. The Chief Secretary to Government of Haryana had no jurisdiction to take notice of or consider any candidate beyond 06 for selection to the three posts in question.

24. That apart, the selection was made in a tearing hurry shown by the Chief Secretary to Government of Haryana at the instance of respondents 4 & 5 on account of political expediency to bring in the chosen few.

25. Contend that once the appointing authority prescribed the criteria vide instructions dated 10.05.2013, the selecting body i.e. the Commission was not authorized to evolve its own criteria of selection. The Commission cannot even deviate from the criteria of selection fixed by the Government vide instructions dated 10.05.2013 and it is bound to take into account the marks awarded by the Committee in the list prepared by it. The Commission can only award marks in viva-voce. Furthermore, the marks in interview were assigned in a manner aimed to throw out all the persons

higher in merit and to select respondents 9 to 11, who were lower in merit i.e. at Sr.Nos.12, 13 & 22 in the list of 29 prepared by the Committee under Rule 10(3) of the rules and beyond the six on the list prepared by the Committee in which petitioner Bhajan Lal was at first position. The selected candidates have been awarded 36, 37 & 38 marks, whereas the candidates who were higher in merit among the 29 as per their academic qualifications, experience, ACRs and personal achievements have been purposely downgraded and awarded marks ranging from 26 to 30 in the interview to give an impression that the marks have been awarded fairly. It is questioned that it is not understandable as to how Patwaris and Stenographers can get more marks than a Post Graduate Teacher (petitioner-2) in the interview.

26. On the other hand, the official respondents have contested the case by filing written statement of the Deputy Secretary to Government Haryana, Personnel Department on behalf of respondents 1, 2, 6 to 8. It is pleaded per contra that the petitioners' contention that consultation with the Commission has not been carried out in accordance with Article 320(3) of the COI while promulgating the 2008 rules is not legally sustainable, as these Rules were framed in the year 2008 after due consultation with the Commission and thereafter Rule 30 has been added, whereby the Government has been empowered to grant relaxation in any of the rules applicable to the prospective candidates. Once the process of consultation with the Commission has been made at the time of initial framing of Rules under Article 309 of the COI, it is not necessary to consult the Commission again for exercising the powers of relaxation conferred under the Rules. Therefore, the petition on such plea is devoid of merit and is not legally sustainable on this point.

27. State says that the contention of the petitioners that respondent-6 being himself the Chief Secretary to Government of Haryana and designated Chairman of the Selection Committee himself recommended relaxation and thereafter being the Administrative/Chief Secretary to the Government of Haryana granted relaxation vide impugned order which is not bona fide use of powers, is again devoid of merit, as the recommendation made by the Committee was unanimous and it was not an individual recommendation. The approval came from the Chief Minister, Haryana as per the Rules of Business of Government and merely because of the fact that respondent 2 & 6 were members of the Selection Committee, the recommendation for getting the approval of relaxation cannot be held to be illegal, arbitrary or otherwise a biased decision in any manner. The power of relaxation has been prescribed under Rule 30 and the same has been exercised by the Government keeping in view; to quote, the **“broader competitive aspect and not to show any favour to any individual”**.

28. State further asserts in its pleadings and arguments on the point that the petitioners well knew that rule was relaxed and in spite of that they appeared in the interview before the Commission without demur. They participated in the selection process willingly and thereafter decided to challenge the relaxation and selection when they failed to achieve their goal. They played the game and lost. The principle of estoppel by conduct applies. Thus, the petition is liable to be dismissed on this ground also.

29. State also says that the allegations of bias are based on assumptions and presumptions and are not fortified by any cogent and convincing evidence. To devise selection criteria is the prerogative of the Commission and the answering respondents have no role to play in any

manner in the judicious discretion of the Commission to adopt the manner and method of assessment of suitability of the candidates who appeared before it. There are no allegations of mala fides, bias or favouritism shown to the selected candidates by any of the members of the Commission. None of the members of the Commission is arrayed as respondent to substantiate the allegations of favouritism, bias or any other mala fides. All the 29 candidates were given equal treatment by the official respondents and the Commission. No material illegality was committed in the entire selection process.

30. On merits, the averments regarding the appointment of Mr. S.C.Chaudhary, IAS (Retd.), the then Chief Secretary to Government of Haryana, as Chief Commissioner, Haryana Right to Service Commission vide order dated 31.07.2014 and Mr. Sarban Singh, IAS (Retd.), as Commissioner, Haryana Right to Service Commission vide order dated 27.07.2014 are admitted they were appointed but the allegations and insinuations in para.15 of the petition that these appointments were a result of *quid pro quo* between respondents 6 & 7 on the one hand and respondents 4 & 5 on the other have been denied as wrong.

31. The Secretary, HPSC, Haryana (respondent No.3) has filed separate written statement. Mr. H.N.Mehtani, learned counsel appearing for the Commission, has submitted, after hearing arguments advanced by the other counsel, that only vague allegations have been made against the Members of the Commission, which have not been seriously pressed by the counsel appearing for petitioners at the time of hearing as a point on which the selection can be faulted, as the entire burden of the song has fallen on the work of the Committee at 2nd Stage [rule 10(3)] which has nothing to do

with the task performed by the Commission as it was obliged to interview all the candidates in the list sent to it. Nor was it the business of the Commission to question its validity. Also, nothing meaningful has been said on the criteria evolved by the Commission to evaluate the merit of the candidates and even otherwise, it is well settled that the Commission being a constitutional authority can device its own criteria of selection and apply it uniformly to all the candidates.

32. The former Chief Minister, Haryana arrayed as respondent No.4 by name has filed a short reply stating that on perusal of the averments made in the writ petition, it is borne out that vague averments have been made regarding the selection having been made on political considerations. No personal allegations indicating any interference in the selection in question has been levelled against the answering respondent. Political interference in the selection in question has been denied. The answering respondent had no interest in any candidate and the allegations made in the petition that the selection was rushed through for political reasons are wrong and are specifically denied.

33. M.S.Chopra, respondent No.5 impleaded by name has filed his separate reply averring that he has not been “connected/associated” with the selection and appointment process in any manner though he does not dispute that respondent No. 10 was his Personal Assistant. His name deserves to be deleted from the array of parties in the present case. While admitting so he denies that he influenced the selection process. Allegations of favouritism, interference, mala fides etc. levelled against him are wrong and misconceived and have been vehemently denied.

34. The allegations of mala fides, nepotism and political considerations at play in the selection have also been denied by respondents 9 to 11 by way of their separate personal affidavits.

35. The present Chief Secretary to Government, Haryana has filed an additional affidavit dated 07.08.2018 in answer to the following query posed in interim order dated 17.07.2018, which reads:

“Let the Chief Secretary, Haryana file an additional affidavit disclosing the reasons for departure from Rule 10 and Resort to Rule 30 by placing on record the opinion of the Government at the time the decision was taken that it was necessary and expedient to relax Rule 10 and the reasons recorded in writing on the basis of the existing record.”

36. The affidavit is studiously and carefully drafted and is non-committal and based on record, as it ought to be, as nothing more could be said thereon while speaking from the official record. It is admitted that keeping in view the recommendations of the Committee and the reasons given by it, the State Government had relaxed the provision of preparing a list equal to twice the number of vacancies of persons considered suitable for being entered in Register A-II as provided in Rule 10(3) of the Rules vide order dated 22.07.2014. This has been explained as per the recommendations dated 01.07.2014 and 14.07.2014, when the Committee found itself not in a position to evolve any objective criteria to adjudge the comparative merits of the candidates and prepare a list equal to twice the number of vacancies of candidates, in order of merit, on the basis of evaluation done by different Departments.

37. Keeping in view the above backdrop in which the selection was made, I have heard at length learned senior counsel Mr. Rajiv Atma Ram; Mr. S.P. Arora and Mr. Aman Arora, learned counsel for the respective

petitioners and Mr. Puneet Bali, learned senior counsel representing respondent No.11; Mr. Gurminder Singh, learned senior counsel representing respondent No.10; Mr. R.K.Malik, learned senior counsel representing respondent No.9 as well as Mr. D.S.Nalwa, learned Additional Advocate General, Haryana and Mr. H.N.Mehtani, learned counsel representing the Commission.

38. The findings on the questions framed vide interim order dated 15.02.2018 and reproduced in para. 2 above are as follows:

The consideration of questions/issues

39. Questions No.(i) to (iii) in para.2 are intrinsically inter connected. The answer to these questions depends on interpretation of Rule 10 of the Rules. A great deal of debate has followed Rule 10(3) of the Rules where the word 'shall' has been used by the Rule making authority 5 times in different but connected contexts of the scheme involving the work at 2nd Stage of the process by the statutory Committee after it was seized of recommendations received under Section 10(1) from the authorities specified competent to make nominations from Group-C services working under their offices or to the offices subordinate to them.

40. A plain reading of Rule 10(3) leaves hardly any manner of doubt that the word 'shall' has been used in the imperative sense. The authorities under Rule 10(3) shall send recommendations to the Committee headed by the Chief Secretary as Chairman. No other person can be Chairman of the Committee, who is not the Chief Secretary of the State. The word 'may' has been used to empower the Government to nominate two members of the Committee from time to time. The Committee is bound to examine all the recommendations received from various authorities and shall

prepare a list equal to twice the number of vacancies, which in the view of the Committee comprise persons considered suitable for being entered in Register A-II. If the word 'shall' is to be read in the mandatory sense, then it leaves no room or scope for the Committee to expand the zone of consideration from anything over twice the number of vacancies with the suitability in the first instance to be adjudged by the Committee during the 2nd Stage when the list prepared by the Committee shall be sent to the Commission for recommending candidates, in order of merit and equal to the number of vacancies.

41. Mr. Rajiv Atma Ram, appearing for the petitioners as well as Mr. Puneet Bali and Mr. Gurminder Singh, the learned senior counsel representing private respondents 10 & 11 respectively, argue that the word 'shall' should be construed in the sense that it is directory. It is argued by Mr. Atma Ram that the word 'may' has been used in stage 1 i.e. Rule 10(1) and the thread of that reasoning should permeate to Rule 10(3). Therefore, going by that reasoning and logic it should follow that there is nothing wrong in sending names more than the prescribed number i.e. twice the number of vacancies. At the same time, they are in unison that if Rule 10(3) is directory, and if that were true then there was no need to resort to Rule 30, which confers power on the Government to relax rules. Thus, the word 'may' in Rule 10(1) has certainly nothing to do with the imperatives in Rule 10(3). They apply in totally different situations, contexts, stages and purposes. The word 'may' in Rule 10(1) only means that the recommending authorities 'may' send recommendations but there is no compulsion on them. I was told during the course of hearing that there are over 80 departments in the State of Haryana with as many Heads of Department and,

therefore, the zone of consideration for 1st Stage is rather large, but is restricted to the authorities who may choose to recommend names to the extent allowed from employees in Group-C services working under them or in offices subordinate to them. This argument that the word 'may' in rule 10(1) flows into Section 10(3) to make the latter directory is to my mind a dangerous and a flawed contention advanced by Mr. Atma Ram which if accepted would work against the petitioners main complaint by expansion of zone of consideration for which they have come to court. If Section 10(3) is directory, the restriction of twice the number of vacancies would stand removed. Then where would one stand if Section 10 (3) could do what Section 30 could also. More of this would come later in the course of the judgment.

42. It is then argued that the result of sending all the names could not be achieved without amending the restriction in the rule and therefore resort to Rule 30 was only to circumvent the prescribed law, which is legally impermissible. But this argument in my view is also fallacious and I would not subscribe to it in the presence of the rule of relaxation in Rule 30 which is itself a part of the statutory framework of the rules and confers ample statutory power on the Government to step over rule 10(3) if it is found necessary and expedient to do so by an order in writing. When power of relaxation is vested in an authority all that is required to be seen is that it must be exercised reasonably and fairly and not arbitrarily and in a discriminatory manner. It is for the petitioners to show to the contrary as the burden of proof is on them to discharge. Otherwise it cannot be held as an axiom that power was exercised unreasonably and arbitrarily.

43. On the other hand, Mr. Nalwa, learned Additional AG, Haryana, has taken an emphatic stand that Rule 10(3) is mandatory, but in the facts and circumstances of the case and in view of the insuperable difficulties faced by the Committee in evolving a criteria to adjudge the suitability on the merits of the candidates received from different authorities under Rule 10(1) which hurdle it could not overcome, that the Government had decided to depart from the rule by relaxing it wholesale while agreeing with the suggestion of the Committee. He repeats here the written stand of the Government of the “broader competitive aspect and not to show any favour to any individual”. In such a situation the recommendation of the Committee was accepted by the Chief Minister and became a relevant factor or input for Government to consider invoking Rule 30 of the rules. If the rule is not read in the mandatory sense, and was merely directory then obviously there was no occasion to exercise the power of relaxation provided by rule 10(3) of the rules.

44. The question as to whether a provision is mandatory or directory has been debated with the help of case law on how would one construct the words ‘shall’ and ‘may’ in statutes in which they appear, is to be answered by keeping in view several controlling factors such as are indicated in May George Vs. Special Tahsildar & others, (2010) 13 SCC 98, the Supreme Court elucidating in a land acquisition case by referring to its earlier dicta, the universal legal position as follows:

“15. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its

application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.

16. In *Dattatraya Moreshwar v. State of Bombay*, AIR 1952 SC 181, this Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below: (AIR p. 185, para 7)

“7. ... It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.”

17. A Constitution Bench of this Court in *State of U.P. v. Babu Ram Upadhyaya*, [AIR 1961 SC 751] decided the issue observing: (AIR p. 765, para 29)

“29. ... For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.”

18. In *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur*, [AIR 1965 SC 895] and *State of Mysore v. V.K. Kangan* [AIR 1975 SC 2190], this Court held that as to whether a provision is mandatory or directory, would, in the ultimate analysis, depend upon

the intent of the lawmaker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other (SCC p. 899, para 10).

19. In *Sharif-ud-Din v. Abdul Gani Lone*, AIR 1980 SC 303, this Court held that the difference between a mandatory and directory rule is that the former requires strict observance while in the case of latter, substantial compliance with the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific consequence, the provision has to be construed as mandatory.

20. Similar view has been reiterated by this Court in *Balwant Singh v. Anand Kumar Sharma*, (2003) 3 SCC 433; *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* AIR 2003 SC 511 and *Chandrika Prasad Yadav v. State of Bihar* AIR 2004 SC 2036.

21. In *Rubber House v. Excelsior Needle Industries (P) Ltd.* AIR 1989 SC 1160, this Court considered the provisions of the Haryana (Control of Rent and Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application and held the provision to be directory though the word “shall” has been used in the statutory provision for the reason that non-compliance with the rule i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.”

45. Again, explaining the position in law in Arjan Singh & others Vs. State of Punjab & others, 2015 SCC Online P&H 10493, the Division Bench of this Court in Para.14 observed:

“14. The question whether provisions in a statute are directory or mandatory has very frequently arisen before the courts in India. There is no general rule but in every case the object of the statute must be looked at. When the provisions of the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been a practise to

hold such provisions to be directory only. The use of word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid."

46. The provision in Section 10 (3) for calling twice the number of vacancies is not of a substantive nature. It wears a look which is procedural in character. A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

47. Keeping in mind this, the view of the State Government on a plain reading of Rule 10(3) appears to me to be the acceptable legal position that Rule 10(3) is closer to being mandatory in nature and allows Committee by restriction to send names no more than twice the number of vacancies. Nevertheless, the effect of breach of Rule 10(3) has not been spelled out in the Rules. The State seems to me not to have taken any chances on interpretation or dissection of the said rule and had fallen on principle of abundant caution with the aid of Rule 30 of the rules. But in this it cannot be held that State acted arbitrarily or capriciously.

48. What is next to be examined is; whether sending names of all the candidates by relaxing the Rule was the only legally possible and non-arbitrary action to be resorted by giving opportunity across board to all the 29 candidates to stand the test of merit before the Commission. The short answer to this is that if one or more options are available to Government or for that matter to the Statutory Committee (Stage 2) the choice of adoption is their prerogative and the court cannot choose one or the other as a better option so long it is not an impossible one. A distinctly possible view may not be overturned by court if it is non-discriminatory, non-arbitrary or

reasonable and achieves the goal realistically and practically. The Committee could have sent all the names back to Stage 1 to redo the work by laying down fresh criteria of evaluation. But these are points to ponder. They are not a legal issue on which the entire selection should be set aside.

49. Accordingly, Questions No.(i) to (iii) have been answered as above. But what remains partly to be seen under Question No.(i) is; whether exercise of power under Rule 30 was legal and valid. This discussion on the point would also need to take into account Question No.(iv), whether the recommendations made by the Committee of all the 29 candidates was vitiated by mala fides.

50. It is argued by Mr. Atma Ram that once the Committee has evaluated all the candidates as directed by the Government on 09.07.2014, it could not have made its recommendation on 14.07.2014 to relax the Rule except by way of mala fide intention, and the quid pro quo is well established by the subsequent appointments of the Chairman and one of the Members to plum post-retirement jobs.

51. Per contra, it is argued on behalf of the State that the recommendation to relax Rule is not to be seen as binding on the Government, but only an input in decision-making process under Rule 30. It would also be far-fetched to accept or return a finding that the Committee acted with a pre-disposed mind only to secure appointments after retirement. There is nothing extraordinary in offering post-retirement appointments in Commissions etc. to senior and experienced functionaries of Government due to retire from service. It would also be far-fetched to imagine that appointments were offered only to get three candidates selected. Thus, the argument is too weak to sustain without adequate material to connect the

two facts, the present selection process and the appointments of the Chairman and one of the Members of the Committee. Merely because the Chief Secretary and a member of the Committee were offered post retirement jobs to my mind does not by itself establish without reasonable doubt that there was an unholy nexus with the appointments of respondents 9 to 11 which might tend to vitiate the entire selection process. This is not a cause of concern while judicially reviewing the selection process. The argument is thus rejected.

Rules of Business.

52. The Government in its reply has referred to the Rules of Business of Government of Haryana, 1977. So Mr. Atma Ram and Mr. S.P.Arora would argue that Rule 5 of these rules read with Point No.2 & 17 of the Schedule attached thereto prescribe that proposals involving any important alteration in the conditions of service of the members of the State Service or in the method of recruitment to the service or post to which appointment is made by Government, are referred to the Council of Ministers and the spirit and intent of the Rule was given a complete go by and the mandatory procedure provided by Rule 10 of the 2008 rules was actually not adhered to. Resultantly, it is urged that the order of relaxation is invalid and without jurisdiction as the same has been issued by the Chief Secretary, who was the Chairman of the Committee acting under dictates of the Chief Minister only to favour the private respondents.

53. Per contra, it is the contention of the State that the Chief Minister held dual charge of the Department and it was not necessary to amend Rule 10(3) nor could it be said that Point No.17 was violated, which deals with proposal for alteration in the conditions of service of the members

of the State Service or in the method of recruitment. Rule 30 is not a method of recruitment. It is independent source of power to relax any of the provisions of the Rules and so long as the power is exercised in a bona fide and reasonable manner which is at the same time felt valid, necessary and expedient to do so. Then the State can always resort to its prerogative and overriding authority conferred by Rule 30 of the 2008 rules. It is not that a part of the list was sent beyond twice the number of vacancies, but the entire list was sent to be fair to all the contestants, which is a facet of non-arbitrariness and non-discrimination and, therefore, the action is not apparently in violation of Articles 14 & 16 of the COI. Besides, none of the conditions of service was being altered to the advantage or disadvantage of any one of the 29 candidates since all of them were placed on a level playing field. When the work of Commission is not to be faulted as actuated by bias or mala fides, then the ultimate decision cannot be disregarded as in violation of any of the fundamental rights of the petitioners. Once having participated in the selection process they cannot turn around and challenge it. If they had succeeded they would have had no complaint. It is then no argument to say that the selected candidates were far down in the list sent by the Committee. In any case the list sent and reiterated in two of the Meetings of the Committee were not a selection list independent of itself, as that work vested in the Constitutional authority of the Commission.

54. That apart, the word 'hardship' is not used in Rule 30, as is suggested by Mr. Atma Ram in his arguments and in his synopsis. The wording of Rule 30 is once again reproduced below for ready reference:

“30. Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons

to be recorded in writing, relax any of the Provisions of these rules with respect to any class or category of persons.”

55. The requirement of Rule 30 is that Government should be of opinion that it is necessary or expedient to do so it may, by order, for reasons to be recorded in writing, relax any of the provisions of the Rules. Necessity and expediency are matters in the domain of the Government. What the Government thinks is necessary and expedient in a given case is not what the Court might think it ought to be, nor should be. So long as power is not exercised to achieve a contemplated and specific end, which is oblique and colourable in nature, it may be difficult to hold that power was exercised with an oblique motive to select handpicked persons by a predetermined mind of the powers that be. This argument if it is to sustain would cast a dark shadow not only on the Government but also unwittingly on the work of the Commission behind its back even when there is no direct allegation against any of the members of mala fides or a pre-arranged order of merit in the application of the criteria and the conduct of the interviews.

Reasons in writing-Rule 30.

56. The next question is; whether there are reasons recorded in writing to relax Rules. It is well settled that no elaborate or speaking order is required to be passed so long as the power exercised is within the ambit of Rule 30. If the Chief Minister agreed with the recommendation of the Committee as per meeting held on 14.07.2014 and ordered that all the names mentioned in the annexure of the proceedings dated 14.07.2014 along with its evaluation, be forwarded to Commission for its consideration, then it can only be seen as an affirmation of the recommendations of the Committee and not as a dictation by the Committee to the Government to act in a particular manner. Chief Minister was free to agree or disagree with the

recommendations of the Committee. If he chose to agree, then his decision will not be read as illegal, arbitrary and unconstitutional provided the entire list was sent relaxing the rigours of Rule 10(3) and the decision was not in piece meal. It is a possible decision and not an impossible one to tide over a problem encountered in the evaluation process adopted by the nominating authorities.

57. Similarly, there may be an argument, as was raised, that the Committee should have remitted the matter back to the Heads of the Department to bring order in the criteria adopted for making the recommendations in different nominating departments. To this I would say the difficulty faced by the Committee itself became the exception to Rule 10(3). The very fact that order made on 09.07.2014 to the effect that ‘the Chief Minister desires that evaluation on the basis of ACRs and educational qualifications be done by the Committee first and thereafter, the case be submitted’ shows that there was due reflection on the proceedings of the meeting held on 01.07.2014 and only after that exercise was completed and the list prepared, that the final decision was taken on 22.07.2014 to relax the Rules observing the Committee faced with the same difficulty was unable to evaluate comparative merit as no clear criteria was available.

Instructions dated 10.05.2013.

58. This takes us to the criteria prescribed by the Government vide instructions dated 10.05.2013 (Annex P-2). Relevant paras.2 & 3 of the instructions dated 10.05.2013 are reproduced below:

“2. The State Government has considered the matter and observed that the some concerned departments do not frame rational and transparent criteria for recommending the name(s) of eligible candidate for nomination in Haryana Civil

Service (Executive Branch). Now, the State Government has decided that the candidate shall be assessed by the department on the basis of scrutiny of their service records, relevant experience, academic achievements and other achievements. The department shall distribute the marks between the service records, experience, academic achievements and other professional achievements as follows:-

Out of maximum 100 marks, the weightage for each of the four components be given as follows:-

(i)	Service records with particular reference to ACRs for the last 10 years	70% weightage or 70 marks
(ii)	Relevant experience	10% weightage or 10 marks
(iii)	Academic achievements	10% weightage or 10 marks
(iv)	Other Professional achievements	10% weightage or 10 marks

3. The candidate should have at least 6 ACRs of “Very Good” category and 2 ACRs of not less than “Good” category during the last eight years. The department would assign 8.75 marks for “Outstanding”, 7 marks for “Very Good” and 5 marks for “Good” grading for each ACR during the last eight years. The names of the meritorious candidates shall be forwarded by the departments to the Chief Secretary to Government, Haryana.”

59. The criteria is for 1st Stage i.e. for the authorities of the concerned departments for recommending the name(s) of eligible candidate/s for nomination in Haryana Civil Service (Executive Branch). The plain reading of the chart consisting of four components leaves free play in the joints as nothing was defined regarding relevant experience, academic achievements etc. except to give weightage of 10% or 10 marks under the three heads without any sub-division.

60. To my mind, much of the confusion has been caused because of the provisions in the instructions in para.2 thereof as more thought should have been paid to divide the marks by prescribing a better and more specific break-up in the criteria in the four major components to bring clarity on the subject with precision. Para.3 lays down the benchmark. The eligibility conditions are defined as are found in deliberations of the Committee reproduced above. It is for this reason that the Committee tried to formulate its own criteria when directed to make evaluation on the basis of ACRs and educational qualifications after the directions dated 09.07.2014 were issued. There certainly were constraints upon the Committee and even the remittance of the matter to the authorities as suggested by the petitioners would not have been fruitful on the basis of the existing material/criteria of evaluation unless the evaluation work was re-done at 1st stage. The department did not frame rational and proper criteria for recommending names and the first exercise seems to have been done only with the letter dated 10.05.2013 in view, which appears to have been the result of past experience, when the earlier selections for the year 2002-03 were clouded and mired in controversy on which a CBI enquiry was ordered on the allegations of favouritism and fraud. This was like once bitten twice shy situation to overcome which and to avoid controversy that Mr. Nalwa says the power of relaxation was exercised to tide over hurdles and the best practical option or solution to the Government was to send all the 29 names to the Commission. Broadening the base is also an equitable exercise of power so as not to show favour to anyone.

61. Mr. Bali has argued that despite repeated reminders (Annex R-11/5) by office of the Chief Secretary, the Departments of both the

petitioners did not send complete evaluation sheets. In the absence of any inter se evaluation sheets, the Committee had no other option, but to send the names of all the candidates to the Commission. Government may or should in future revisit the instructions dated 10.05.2013 and lay down a criteria with specific marks under different heads found appropriate for the recommending authorities to follow. But this is presently academic but may not vitiate the selection per se. In these circumstances, the powers of relaxation exercised under Rule 30 cannot be said to be illegal, invalid or suffering from mala fides.

Question No. (v).

62. As far as Question No.(v) is concerned, the impugned relaxation order dated 22.07.2014 has been passed and circulated to all the Additional Chief Secretaries and Administrative Secretaries to the Government, Haryana and all Head of Departments in the State of Haryana and the petitioners, as rightly said by the State in its written statement, had the knowledge of it. One of the petitioners, namely, Bhajan Lal made a representation on 09.07.2014 (Annex P-10) before the order was issued, to the Chief Secretary to Government of Haryana requesting that instead of recommending all the names only twice the number of vacancies on the basis of merit should be sent, so that the Rule is not violated. The present petition was filed on 29.08.2014 after the selection process was over. If Bhajan Lal submitted the representation before the interviews were conducted complaining that only six names could be sent to the Commission, he yet appeared at the interview without protest and took his chances. He remained unsuccessful and brought the petition after declaration of result. He had acquiesced to the process by offering himself to be

considered on merit. Others did not make such complaint. No such representation has been placed on record. If they did they would also be in the same position as Bhajan Lal.

Criteria adopted by the Commission

63. It is always open to the Commission to frame criteria and it can devise its own procedure to bring up the best talent. It can do so only after receiving the recommendations from the Government igniting its jurisdiction to initiate the selection process at 3rd Stage. The requirement of law is that the criteria should be used uniformly to all the candidates. It is within the authority of the Commission to evolve its criteria in addition to the criteria of the Government which in this case was as per instructions/letter dated 10.05.2013. It can be said on authority of precedent that the Commission is free to evolve procedure for conduct of selection. How the Commission would adjudge the merit of the candidates is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the superior Courts would not ordinarily interfere therewith; See, **Andhra Pradesh Public Service Commission v. Balogi Badhavath**, (2009) 5 SCC 1.

64. The selection was based on criteria which assigned 50 marks for personal achievements, which included 32 marks for ACRs in service record preceding 08 years up to 2012-13; divided into 04 marks per year for 'Outstanding', 03 for 'Very Good' & 02 for 'Good'. 10 marks for higher qualification, sub-divided into 04 for Post Graduate, four for LLB, 02 for M.Phil, 08 marks for Post Graduate and LLB (both) and 10 for Ph.D, subject to maximum of 10 marks. 05 marks were allotted towards 'Experience' with one mark per completed year of additional service after acquiring eligibility

for consideration. 03 marks for 'Awards' received at State Level (or above) for the extraordinary Social services rendered for the welfare of the Society or any other kind of extraordinary social service recognized by Government for which a person has been honoured at any State (or above) level function at the time of Independence/Republic Day or any other occasion of National importance. The rest of 50 out of 100 marks were for 'Interview' assessed through "...oral discussion and questioning to judge the mental caliber of a candidate. The questions and discussion will be oriented to ascertain his/her overall awareness, general interest, mental alertness, poise bearing, articulation, expression, intelligence and spontaneity, critical powers of assimilation, ability to take decision, ability for social cohesion and leadership, outlook towards social & national issues job ethics & values, orientation towards public service etc."

65. The petitioners and other candidates participated after evaluation of their record under 'personal achievement' comprising four components, as mentioned above was done by the Commission and then appeared for interviews. The conditions of eligibility, assessment of professional achievements etc. are addressed to 1st and 2nd stages of the selection process, as per letter dated 10.05.2013 (Annex P-2) which are not a compulsion on the Commission in the 3rd & final stage. Therefore, the letter/criterion in policy dated 10.05.2013 has nothing to do with the selection criteria framed by the Commission.

Rules of the game-change

66. Mr. Atma Ram argues that the rules of the game cannot be changed, once the game has begun to be played. He relies on **K. Manjusree Vs. State of A.P. & another**, (2008) 3 SCC 512. In this case, the Supreme

Court dealt with appointments in Judicial Services where the minimum qualifying marks for interviews were prescribed after the interviews were over. This change in criterion after the game was over was held to be impermissible. The question in *K. Manjusree* case was whether correct criteria was adopted in making the recruitment for the posts of District & Sessions Judge (Grade II), which was governed by the Andhra Pradesh State Higher Judicial Service Rules, 1958. The Rules prescribed quota for direct recruitment, educational qualifications etc., but did not prescribed any criterion for selection. According to the prescribed criterion, there were 75 marks for written examination and 25 marks for interview. The High Court on its administrative side made two changes after written examination and interviews were over. First, marks for written examination was proportionately scaled down so as to maintain ratio between written examination and interview as 3:1 (75:25) instead of 4:1 (100:25). This was done because original criterion prescribed 75:25. Secondly, it introduced minimum qualifying marks for interview also. This resulted into reshuffling of the selection list. The Supreme Court considered effect of the resolutions of the Andhra Pradesh High Court and concluded that resolutions dated 24.07.2001 and 21.02.2002 provided qualifying marks for written examination only, but not for interview. The Supreme Court held that the first list required an arithmetical correction, that is, scaling down of written examination marks to three-fourth of what was secured by the candidates with reference to a maximum of 100 marks, so that the ratio of 3:1 could be maintained in respect of the marks for written examination and interviews. Scaling down was held to be unexceptional as it was in consonance of criterion decided by the Administrative Committee before commencing the

selection process. However, what could not have been done was the second stage by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the High Court earlier for selection of District & Sessions Judge (Grade II). Therefore, introduction of requirement of minimum marks for interview after the entire selection process consisting of written examination and interview was completed, would amount to changing the Rules of the game after the game was played, which was clearly impermissible. In these circumstances, the Supreme Court held that minimum qualifying marks for the written examination and interview to make a candidate eligible could be done, but such prescription has to be done in advance. A situation of this kind has not happened in this case where the criteria laid down by the Commission was made before the interviews were held.

67. He also relies on **Hemani Malhotra Vs. High Court of Delhi**, (2008) 7 SCC 11, which was a case involving selection to the Delhi Higher Judicial Services. Two petitions were filed directly under Article 32 of the COI with common prayer to issue a writ to amend notice dated 10.04.2007 issued by the Registrar (Vigilance), High Court of Delhi to the effect the petitioners are also declared as selected for being recommended for appointment and to prepare a combined merit list on the basis of total marks obtained in written examination as well as proportionate marks of the interview, as if, the vive voce test was of 75 marks instead of 750 marks or by adding marks obtained in written examination and the marks given to the petitioners in the interview out of 750 marks without cut-off.

68. Initially, there were prescription for minimum marks for written examination only and not for viva voce. However, the minimum marks

prescribed; after the written examination was over was held to be impermissible. Besides, the action of prescribing minimum marks for interview was contrary to recommendations of the Shetty Commission report, as approved with certain recommendations in All India Judges Association & others Vs. Union of India & others, (2002) 4 SCC 247, which expressly provided that there should not be any cut off marks for viva voce. The Supreme Court noticed its earlier decisions in *K. Manjusree* (supra) and Lila Dhar Vs. State of Rajasthan, AIR 1981 SC 1777 and held that prescription of 750 marks for viva voce is on the higher side. Both the petitioners had cleared the written examination and, therefore, adding marks obtained by them in the written examination to the marks obtained in the viva voce test, the result of the petitioners should have been declared. The Rules of the game had been changed during the selection process and when it is over is not permissible.

69. In the present case, nothing has been changed before the selection process as far as the criteria is concerned and the complaint is really that names of the candidates restricted to twice the number of vacancies advertised should have been sent to the Commission for conducting interviews. The zone could not have been enlarged. I fail to see as to how these two judgments (supra) cited apply to the facts of this case. The cases are distinguishable since in the present case, the Commission has formulated criteria to evaluate the 29 candidates on merits. More so, there is no challenge to the criteria adopted by the Commission. In any case, making criteria was a constitutional function of the Commission to act independently of the Government in the matter of selection. Also there is nothing arbitrary in assigning marks for personal achievements and interviews as the

Commission was dealing with Register A-II candidates, who had already a track record in Government service while working in Group C service.

Question No. (vi).

70. For answer to Question No.(vi), there is ample judicial authority to hold that the petitioners having participated in the selection process are estopped from challenging the same having remained unsuccessful. No elaboration is required except to refer to some of the judgments, such as, Dhananjay Malik & others Vs. State of Uttaranchal & others, (2008) 4 SCC 171; K.A.Nagamani Vs. Indian Airlines & others, (2009) 5 SCC 515 and Ashok Kumar & another Vs. State of Bihar & others, (2017) 4 SCC 357.

Question No. (vii).

71. As far as Question No.(vii) is concerned, mere haste between 2nd and 3rd Stage does not lead to an inference of illegality committed in the selection process. Haste may look suspicious on first blush and an attractive argument, but to that haste there must be cogent grounds to substantiate the influence that it has had itself leading to an improper and unfair selection. This argument cuts both ways where recruiting agencies take inordinately long time to make selections and when Government acts with speed, then there is an adverse inference that something is wrong with the selection. This was not a case of direct recruitment by way of a public advertisement. This was a process of selecting in service candidates from Group-C services, who have already a track record of Government service and had their names recommended by the nominating authorities. Even the petitioners' names were recommended by their respective authorities. In case, they had succeeded, they would have said that the selection is fair. I would, therefore,

not hold that haste smacks of arbitrariness and mala fide action sufficient to vitiate the selection process.

Media reports.

72. The Court is reluctant to go by media reports. It is advised by past precedent to refrain from taking judicial notice of reports in newspapers of hearsay, rumour mongering, murmurings and predictions made in the print media even when future events may cast shadows or turn out partially true. Evidence is still required sufficient to quash a selection other than on the solitary basis that such reports might exist. One requires legally acceptable chain of facts and circumstances to overshadow challenge to an entire selection process and to fault the end result. The claim for setting aside a selection has to be founded on independent grounds which may tend to completely vitiate the selection process and not to go by mere prophesy of a soothsayer. In every selection of the kind in dispute, the Court is required to enlarge understanding of the entire picture while sitting in judicial review; whether the selection as a whole is vitiated and actuated by bias and mala fides, corruption, nepotism, deceit and fraud practiced on public appointments. On the material presented in this case, it cannot be said authoritatively and with any certainty that the selection process was unlawful and inherently bad from the beginning till the end. The media report may shock one of a likely to be rigged selection where candidates are pre-selected. But as shock subsides in the readership of the day, reason must still take over the harness and prevail while dealing with the fate of a case in a court of law on the legal material available on record and the verifiable facts and documents. It would be too dangerous a path to tread by drum

beating the news item. Otherwise, any selection can easily be brought to disrepute and quashed on a media report without going into anything further.

73. No doubt, the petitioners have leveled allegations of favouritism and mala fides, but the burden of proving them would lie very heavily on them to discharge to the satisfaction of the court. No reliable material or clinching evidence has been brought on record or to the notice of the Court during the hearing to substantiate the allegations of personal favour done to any one of the competitors who ran the race together. Allegations leveled by the petitioners are far too weak, vague and remote to sustain a firm finding that favouritism or nepotism has played an invidious role in the selection pointing to only one and one direction that the appointments are tainted by vice which is beyond redemption. Mere allegation of mala fides is not enough; party making it is under legal obligation to place specific materials before the Court to substantiate the allegations. Bald and general allegations made without proof of tangible and dependable material in support of mala fides, favouritism, nepotism and bias are not enough to bring home the quasi criminal charge or accusation of the respondents 9 to 11 being tainted candidates or to have secured appointments by dubious ways and means. See for standard of proof on allegations of mala fides in the cases, for example, in **Chandra Prakash Singh & others Vs. Chairman, Purvanchal Gramin Bank & others,** (2008) 12 SCC 292 and **Arun Kumar Agrawal Vs. Union of India & others,** (2014) 2 SCC 609.

Question No. (viii).

74. In respect to Question No (viii), respondents 9 to 11 without prejudice to their submission on merits, submit that even assuming *arguendo*

that there is a flaw in the power to relax rule or the selection process to the degree of culpability or the same has to be set aside, even then the question remains what relief can be granted to the petitioners. Quashing of the selection will not bring any relief to them as a direction by way of mandamus will not issue for the asking to the State to appoint them to the Haryana Civil Service (Executive Branch) from Register A-II. More importantly; which of them has such a right? Petitioners have no right to appointment. Moreover, these respondents have been in harness since the last 4 years and it would be only too harsh, oppressive, inequitable and perverse even to consider an order which might result in reverting them to their liens on posts in their previous Group-C services when their appointments do not apparently suffer from the vice of taint capable of vitiating the entire selection. In the ultimate analysis, without there being a direct and plausible charge made against the Commission or its members in the third leg of the selection process and keeping in view the failure to discharge of burden of proof by the petitioners upon whom it lay, it would be rather unwise and imprudent, I think, to upset the appointments on a whim or a mere fancy guided only by a newspaper report without bringing the court to stand on *terra firma* to hold the selection bad and liable to be quashed. The petitioners and the private respondents 9 to 11 are products of the same mill. It must be remembered that in any selection there is always a margin of subjectivity and personal bias of the nominating authority or holder of office may play its part in whose hands fate of people depend but that should not be wide enough to admit strict judicial scrutiny. Man in power has inherent failings in taking objective and rational decisions not expected to act clinically as if he were sitting in a laboratory in utopia. I

guess, going by what the petitioners say, they must obviously also have been the 'favourites' of their nominating authorities who picked them up in 1st Stage and thus I wonder what genuine grievance they may have which is justiciable in court only because the zone of consideration was expanded by Government invoking Rule 30 of the rules to cover all the nominated candidates. On first principles I see nothing wrong or offensive in this, so long as the end product is above board.

75. For the variety of reasons recorded above, I find insufficient grounds in the facts to invalidate the appointments of respondents 9 to 11 on any of the pleas these petitions have been brought.

76. The petitions are, accordingly, dismissed.

77. Nevertheless, the experience of this case makes me wonder that the strait jacket formula in the rules of calling names twice the number of vacancies for filling Register-II vacancies, which will inevitably be very limited in a given year of recruitment, should be revisited by the rule making authority to provide a much larger base of consideration so that the best and most talented persons are ultimately picked up from Group-C ministerial services to serve as HCS (EB) officers. This would inspire faith and public confidence in the selection process, if it is not to rust.

12.11.2018
 Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>