

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

CWP No. 5203 of 2012 (O & M)

Reserved on: 08.12.2017

Date of decision: 28.02.2018

Naresh Kumar and others

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr.Shekhar Verma, Advocate, for the petitioner(s)
in CWP-5203-2012 and CWP-12748-2013.

Mr.G.S.Gopera, Advocate,
for petitioners No.1 to 3 & 5 in CWP-5203-2012.

Mr.B.S.Rathee, Advocate, for the petitioner(s)
in CWP-14953-2012 & CWP-5725-2013.

Mr. Gunjan Mehta, Advocate, for the petitioner(s)
in CWP-20334-2017.

Mr. Harish Rathee, Sr.DAG, Haryana.

Mr.R.K.Malik, Sr.Advocate
with Mr.Bhupinder Malik, Advocate
for respondents No.7 to 13, 15 to 18, 20 to 27, 29, 31 to 37, 39,
40, 42 to 44, 46, 47, 49, 51 to 53.

Mr. B.S. Bairagi, Advocate, for respondent No.45.

None for respondent No.3 in CWP-12748-2013.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of 5 writ petitions i.e. CWP
Nos. 5203, 14953 of 2012; 5725, 12748 of 2013 and 20334 of 2017, since
common questions of facts and law are involved in all the writ petitions.

Facts are being taken from ***CWP No. 5203 of 2012, Naresh Kumar and
others vs. State of Haryana and others.***

The petitioners challenge the final list of 47 candidates chosen to be selected for the post of Driver at Sonapat Depot issued on 29.08.2011 (Annexure P-9) under Articles 226/227 of the Constitution of India by way of a writ of certiorari. The same is in pursuance of the advertisement issued by the Transport Department in the year 2007 for the recruitment of 910 posts of Drivers on contract/daily wage basis. Resultantly, a writ of mandamus is also sought directing the official respondents to select and appoint the petitioners on the posts of Drivers at Sonapat Depot being more meritorious.

The pleaded case of the petitioners is that vide the advertisement dated 22.07.2007, applications were made for filling up 910 posts of Drivers on contract/daily wages in the Transport Department (Annexure P-1). A candidate was required to submit only one application to the General Manager of any Haryana Roadways Depot in the State where he would like to appear for the tests. The list of 20 depots of Haryana Roadways was also given in the advertisement. The selection process comprised of DUG test, a road test followed by an interview test. In the advertisement also, prescribed educational qualifications for these posts was to be 10th class with Hindi from any recognized Board. The professional qualification prescribed was to have a valid driving license of a transport vehicle and the eligibility which is prescribed was that the candidate should have at least two years experience of driving a transport vehicle including the passenger vehicle. The clause reads thus:-

“A candidate must (a) be a citizen of India, (b) be of good moral character, (c) be of sound health, (d) not have more than one spouse living, (e) should have passed matric school examination with Hindi as

language subject and should have a TRANSPORT VEHICLE DRIVING LICENSE. The candidate should have at least two years of experience of driving a transport vehicle including a passenger vehicle. Eligibility shall be determined with regard to the last date fixed for the receipt of the application form.”

It is the case of the petitioners that they being duly qualified had applied for the post within the prescribed period and their driving licenses are appended as Annexures alongwith their experience certificates. Since they belonged to Sonapat district, they submitted applications for the test in the said depot. The DUG test had been conducted on 12.11.2007 to 23.11.2007 and the petitioners had all duly qualified. Thereafter, zig zag test was held from 24.11.2007 to 28.11.2007 and the road test on 29.11.2007 and 30.11.2007. The petitioner having qualified these tests were accordingly called for interview which was held between 09.01.2008 to 11.01.2008. A final list of 48 candidates had been issued for the drivers of the Sonapat Depot on 20.06.2008 (Annexure P-4) and names of the petitioners found mention in the said list at Sr. Nos. 9, 46, 6, 11, 4, 35, 39, 28 and 45 respectively. The said petitioners had thereafter joined duties w.e.f. 24.06.2008 and allotted their numbers.

However, ***CWP Nos. 728 and 3772 of 2009*** titled as ***Sanjay Kumar and others vs. State of Haryana and Jitender Kumar and others vs. State of Haryana*** respectively came to be filed by the unselected candidates. The writ petition was allowed on 11.03.2011 (Annexure P-5) and directions were issued to hold selection afresh for the Sonapat Depot by considering all 100 candidates who had passed the three tests afresh. Resultantly, appointments given to the petitioners and other selected

candidates had been ordered to be withdrawn vide order dated 31.03.2011 (Annexure P-6).

Resultantly, fresh advertisement was issued on 20.05.2011 (Annexure P-8) for holding fresh interview for 102 candidates who had passed the three tests which had been held in the year 2008 for the Sonapat Depot. The candidates were required to appear on 06.06.2011 and 07.06.2011. The names of the petitioners duly found mention in the list and they appeared for interview which was held on 20.06.2011 and 21.06.2011 in which the petitioners had also participated. A fresh list of 47 candidates was chosen to be issued by the Selection Committee on 29.08.2011 (Annexure P-9) for appointment to the posts of drivers. The same was on the basis of the gradation list (Annexure P-10). The petitioners not finding their names in the said list accordingly challenged the selection. Necessary averments were accordingly made that one candidate Sanjay Kumar at Sr. No. 47 neither passed the three road tests at Sonapat Depot and nor had appeared for the interview and neither his name finds mention in 102 candidates in the advertisement dated 20.05.2011. The said candidate is respondent no. 53 in the present writ petition.

The grounds taken by the petitioners is that many of the selected candidates were involved in various cases of accidents during their previous appointments and, therefore, were ineligible as per the terms of the advertisement. The 12 candidates had been chosen to be selected and awarded excellent grades A+ and A by the Selection Committee who had been involved in accidents. The petitioners had only been awarded A or B grades in spite of having good record of service in the three years before the selection had been set aside. Resultantly, it has been further pleaded that

out of the 47 various candidates who did not fulfill the requisite eligibility conditions in the advertisement but had been awarded higher grades in the fresh interview. The same was not in consonance with the grades in previous interviews and also the marks scored in the driving test. It was further averred that application forms were incomplete wherein, specific details of heavy passenger transport vehicle licence and the experience was to be given and, therefore, the mandatory information details had not been filled in. The experience certificates were doubtful and suspicious since details of the license, number of the bus operator had not been given. Similarly, experience certificate was issued by truck unions did not give the details of the types of vehicle driven by the persons but these ineligible candidates had been given excellent grades of A or A+.

In the reply filed by respondent no. 1, the plea taken was that the first selection had been set aside and directions had been issued to hold selection afresh considering 100 candidates who had passed the three tests. A committee had been constituted for interview that the process should be completed before 05.06.2011 as per letter dated 20.05.2011 (Annexure R-1). Resultantly, eligible candidates were informed through registered posts or through English and Hindi newspaper for the interview which was to be conducted on 06.06.2011 and 07.06.2011. The Chairman of the Selection Committee was the General Manager, Haryana Roadways, Sonapat and he had sent list of all the candidates after allotting grades on 11.07.2011 (Annexure R-2). Thereafter on 05.08.2011, the Director General-respondent no. 2 had sent the list of 47 candidates for appointment who were to be issued the necessary letters. Resultantly, appointments have been offered on 29.08.2011 and 09.09.2011 to the meritorious candidates

(Annexures R-4 and R-5).

In the reply filed by respondent no. 3-Varinder Luthra, ADC, the then General Manager, it was averred that to comply with the guidelines of the Transport Commissioner dated 01.01.2008, questions relating to driver skill and general intelligence were asked from the candidates in order to award grades. The grade list was sent to the head quarters who informed that vide letter dated 29.06.2011 that 4 candidates were wrongly included in the grade list sent. The checking was done and it was evolved that four candidates were wrongly included and accordingly left out were called on 11.07.2011 and accordingly final grades awarded by the Committee were sent to the Head quarters. Resultantly, the earlier grades had no relevance after the second interview had taken place.

Respondent no. 4, the Traffic Manager in his reply, has admitted that he was Member of the Committee which has been duly constituted after the selection had been set aside by this Court. Due to strike on 08.06.2011, interviews of drivers were postponed to 20.06.2011 and 21.06.2011 (Annexure R-3) and interview of four left out drivers was to be conducted on 11.07.2011. The grades were accordingly given to the candidates and a final amended list was forwarded to respondent no. 2 for taking appropriate necessary action. It is thus clarified that interviews which took place on 20.06.2011 and 21.06.2011 were duly as per the directions issued on 01.01.2008 (Annexure R-4) regarding the grading aspect. The earlier grades had no relevance with the grades awarded in view of the decision by this Court. Certain information had been supplied by the Public Information Officer at his own level to Raj Kumar Sharma, Advocate and Amit Khatri, Advocate on their applications without

obtaining written comments from the answering respondent who were not in agreement with the information supplied.

Replies filed by respondent no. 5, the Works Manager, who was also Member and respondent no. 6-Sh. R.K. Goyal, District Transport Controller were also on the same lines as respondent no. 4. It was clarified that the Committee Members had jointly awarded grades to each candidates based on the performance of the candidate in the interview. Candidates had been given sufficient time to assess his performance regarding safety and efficiency as a Driver.

In the written statement filed by private respondent nos. 7 to 13, 15 to 18, 20 to 27, 29, 31 to 37, 39, 40, 42 to 44, 46, 47, 49, 51 to 53, it was pleaded that the petitioners had competed and lost and had no *locus standi* to challenge the selection and appointment of the answering respondents. The fact that some of the respondents were not fulfilling the essential qualifications prescribed for the post is without any basis. All of them were duly qualified for the posts and before appointments, their eligibility was checked by the competent authority who had thereafter issued appointment letters after due verification. The factum that Sanjay Kumar and Vijender Singh had not attached experience certificates was wrong. The experience certificates were accordingly attached as Annexure R-7/1 and R-7/2. Similarly, averments made that Kailash Kumar was not working as bus driver were wrong and he had rendered services in the Sonapat Truck Owners' Union (Annexure R-7/3).

Similarly, Vinod Kumar's experience certificate was appended as Annexure R-7/4 to clarify that he was working as a driver. Averments made regarding experience of Virender Singh, the certificate issued were

denied and the experience certificate dated 15.07.2007 was appended as Annexure R-7/5. The factum of Jitender Singh not mentioning the date was also denied as in the original certificate everything had been mentioned. Similarly, Surender Singh son of Mool Chand, factum of working on a particular post was as a bus driver with Kataria Travels from 2002 to 15.07.2007. Similarly, qua Satbir Singh son of Chattar Singh that no date had been mentioned in the experience certificate was wrong and reliance was placed upon the certificate Annexure R-7/6. Qua Anil Kumar that no name had been mentioned of the issuing authority, reliance was placed upon the certificate Annexure R-7/7. The certificate of respondent no. 40 namely Vinod Kumar was appended as Annexure R-7/8 and, thus, dismissal of the writ petition was prayed for.

Respondent nos. 19, 38, 41 and 50 had adopted the written statement filed by the other private respondents and also took the plea that they had earlier also been selected and due to the fault of official respondents not to provide the concerned record, the selection had been set aside qua Sonapat Depot. Therefore, they pleaded the writ petition be dismissed.

In view of the directions issued on 06.01.2015 that the Director Transport would examine the entire matter while going through the record and apprise the Court about the status, affidavit of Chander Parkash, IAS, Director General, State Transport, Haryana, respondent no. 2 was filed dated 21.01.2015 wherein it was clarified that petitioner nos. 2, 3 and 5 were involved in FIRs under Sections 279, 337 and 304-A IPC in various police stations. Explanation was accordingly given of how Anoop Singh was selected in the ESM category in the selection list of 2008. His driving

license subsequently had been found fake and he was dismissed from service on 31.03.2009 by the General Manager, Haryana Roadways, Sonapat. Interview of 103 candidates had been conducted, out of which 48 were selected and their appointments had been quashed in *Sanjay Kumar's case (supra)*. 102 persons were called afresh for interview and Anoop Singh was not called as already having been dismissed due to the fake driving license. 94 candidates appeared for interview before the Selection Committee of Sonapat Depot and the names were forwarded to the Headquarters on 11.07.2011. The recommendations of the Selection Committee of 94 candidates were merged in the state level seniority list of 2008 and thereafter a fresh merit list was prepared at the level of Headquarters by adding the names of 94 candidates.

All the 5 candidates of the ESM category of waiting list of 2008 came in the selection zone at merit nos. 1688 to 1692. Sanjay Kumar was at merit no. 1693 and selected and appointed as Driver in place of Anoop Singh as none other was available of ESM category. The candidates had already qualified the technical skills tests in 2008 and had been interviewed by the Selection Committee by using special software used by Maruti Udyog which was adopted. The discretion of the Committee was almost nil and the interview was conducted on the basis of pre-designed software under the name of "Maruti Driving School interactive CD ROM for car drivers". Four options were provided to each candidate as answer, one of which was correct. On an average, five questions were asked from each candidate and on the basis of correct answers, grades were provided from amongst A+, A, B or C. The candidates who were from Grade A+ and selection of the remaining candidates who were selected from Grade A was

according to their date of birth, criteria for which was 'elder first, then younger'. Consolidated seniority list of successful candidates was prepared as per criteria fixed in the office of the deponent vide letter dated 01.01.2008. As per consolidated seniority list, the Combined State Merit List was prepared for general category and other reserved categories respectively.

It was admitted that Sanjay Kumar son of Dilip Singh who was at serial no. 1 of the selection list of 2011, had appended experience certificate of Heavy Transport Vehicle with the application form duly signed by signatory alongwith stamp but no date or number had been mentioned. Similarly, Vijender Singh, at serial no. 27 had appended photocopy of driving experience certificate issued by Shekhpura Cooperative Transport Society Limited but no original or attested copy of experience certificate was on record. Anil Kumar son of Sadhu Ram at serial no. 43 had annexed photocopy of driving license with application form without any stamp or signature of issuing authority duly attested by the Notary Public. There were 25 candidates out of 47 who were selected and were having driving licenses issued by the licensing authorities of other states. All of them were got verified including other selected candidates from the licensing authority of respective states. The details were given of the respondents who were involved in accidents but it is pertinent to notice that all the dates of FIRs are post the cut off date which is 10.08.2007 and thus, the same would not be of much relevance and counsel for the petitioner also did not press this part of the argument.

On 02.02.2015, counsel for the State had taken time to file an affidavit. Resultantly, additional affidavit came to be filed by the Director

General dated 23.02.2015. It was clarified that grades were given by Selection Committee (Annexure R-1) and the said merit list was merged with the State Level and a fresh merit list was prepared Annexure R-2. 46 candidates of the Sonapat Depot came into the selection zone, prepared at the State Level out of the total list of 2328 candidates. 809 candidates of various categories were selected including the reserved ones as per Annexure R-3. 33 candidates of general category came into the zone of selection having A+ and A grades and the rest 33 to 45 and 47 came from the reserved category having A+, A and B in the selection zone. The list of 46 selected candidates of Sonapat Depot was accordingly appended as Annexure R-4.

After adding/ intermingling the merit list prepared by the Selection Committee of Sonapat Depot, the candidates of general category upto merit no. 319 of the list prepared at the State Level came in the selection zone. The detail of the merits of the petitioners was accordingly mentioned to show that they were not within zone of consideration and falling at various merit positions below the same ranging from 433 as the highest to 1397 as lowest. The 25 selected candidates who had licenses from other states, 14 had been issued licenses from Delhi, 4 from UP, 2 from Assam and 2 from the State of Nagaland. 8 candidates had got driving licenses renewed from the licensing authorities of Haryana after verifying from the States who had originally issued the licenses.

Additional affidavit was filed by one of the petitioners to rebut the affidavits filed by the Director General. The plea taken was that no such software had been used and fresh interviews had been conducted very casually and the said plea had not been taken earlier. The plea taken was

that the selection was made on the basis of Depot wise only and not on the basis of State wise merit list. Instances were given of 3 selected candidates who were not holding any valid driving licenses namely respondent nos. 30, 31 and 39 to demonstrate that they were less than 20 years of age and therefore could not have the necessary experience of two years. Objections were raised to the licenses issued by other states and reference was again made to reiterate the allegations as the incomplete forms were submitted by various candidates. Similarly, candidates involved in accidents were mentioned and it was justified that the three petitioners were only involved in simple injury cases and were duly acquitted.

The private respondent nos. 7 to 13, 15 to 18, 20 to 27, 29, 31 to 37, 39, 40, 42 to 44, 46, 47, 49, 51 to 53 submitted additional reply further explaining the detail regarding the incorrect facts mentioned in their applications and also appended judgments of acquittal alongwith the said reply of the private respondents.

On 24.04.2017, co-ordinate Bench passed a detailed order dismissing the writ petition as infructuous qua respondent nos. 8, 14, 15 and 38 as the persons had died. It was noticed that in the advertisement, it was mentioned that incomplete forms were liable for summary rejections and requirement was of submitting attested copy of experience certificates and some candidates had submitted photocopies and they had also been considered. Reference was also made to one case where driving license issued was before the completion of 18 years. The argument raised that accidents had taken place after the cut off date was needless is without any basis since accidents had not taken place before the said date. However, regarding incomplete forms, it was noticed that the relaxation seem to have

done at the level of the persons who were processing forms and no order was obtained from the appointing authority and therefore, directions were issued to respondent no. 1 to file his personal affidavit after having all the forms examined and bring out the particulars of respondents whose forms were incomplete as well as the facts of respondent no. 7 who was less than 18 years of age at the time of issuance of license. It was also noticed that since some candidates had served the state for 10 years and as such may be of over age, it would be extremely inequitable to now unseat those candidates and the affidavit should also mention the said factum of defence which was taken by the private respondents.

Resultantly, affidavit dated 23.05.2017 of Shri S.S. Dhillon, Additional Chief Secretary, Government of Haryana, Transport Department, came to be filed. It was accordingly averred that the fact finding enquiry was constituted under the Chairmanship of General Manager, Haryana Roadways, Chandigarh comprising of General Manager, Sonapat and Superintendent, Establishment (Headquarters) which had submitted its report dated 17.05.2017 (Annexure R-1/A). The Committee had accordingly noticed that 19 candidates mentioned in [(Annexure A-1) of Annexure R-1/A] had furnished incomplete descriptions in the prescribed column of forms/ applications. The Committee had found that the forms were incomplete with respect to column nos. 10 and 12 to 14. Column no. 10 was relating to license i.e. License number/ date of issue/ validity/ name of licensing authority/ name of training institute. Column no. 12 was relating to experience gained by the candidates and column nos. 13 and 14 were relating to traffic accidents and conviction by court of law. 13 candidates out of the 19 were found to have furnished incomplete

information regarding column no. 12 pertaining to the experience. 2 candidates i.e. respondent nos. 40 and 43 had furnished incomplete information regarding column no. 10 and 3 candidates i.e. respondent nos. 44, 35 and 28 had furnished incomplete information regarding column nos. 10 and 12. In column nos. 13 and 14, information had to be marked “yes” or “no” but Rajesh Kumar respondent no. 28 had not marked the column. Respondent nos. 24, 18 and 50 did not have attested experience certificates and as per the terms of the advertisement, non furnishing of information would make the candidature liable to be rejected outrightly. However, keeping in view the nature of post, the omissions were minor and therefore, it could be said to be an irregularity but not an illegality to vitiate the entire selection. Some of the candidates who were selected in the first round as well in the second round had now served the State for 10 years and it would be extremely inequitable to unseat them and the information stood supplied through the documents attached with the forms.

It was further mentioned in the said affidavit that the posts of Drivers were governed under the Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995. Rule 9(g) provided for recruitment of heavy vehicle driver as per Appendix B of the Rules. The age of selection was from 18 to 40 years with relaxation of 5 years for candidates belonging to SC, BC, ESM and Outstanding Sports Persons. In view of the bar contained under Section 4(2) of the Motor Vehicles Act, 1988, persons under the age of 20 years could not drive transport vehicle at any public place subject to the provisions of Section 18 and therefore, allegations against respondent no. 27, Naresh Kumar were correct that he had got license when he was below 20 years and therefore, the driving

license was ex-facia illegal. Similarly, in the case of respondent no. 33-Bijender Singh, license had been issued when the candidate was below 20 years of age. Respondent no. 31, Sandeep Kumar did not have 2 years of experience as on the cut off date i.e. 10.08.2007 and an adverse report was given by the Committee regarding the said respondent nos. 27, 33 and 31 and notices were being issued as to why their services be not terminated.

Counter affidavit was thereafter filed that against four selected candidates, respondent nos. 14-Satbir, 30-Vijay (expired), 45-Krishan and 52-Laxmi Narayan, FIRs had been registered on 29.03.2017 under Sections 120-B, 420, 467, 468, 468 and 471 IPC (Annexure P-24). The same had been registered on the basis of raid conducted by the Flying Squad from the office of the Chief Minister, Haryana regarding furnishing false and fabricated licenses. Doubt was also raised on license issued of respondent no. 28, Rajesh Kumar as per information received under the Right to Information Act, 2005 and reply received from the concerned Department (Annexure P-25 and P-26). Accordingly, plea was taken that incomplete application forms could not be ignored as mere irregularities as per the terms and conditions of the application forms.

Additional affidavit of respondent no. 27, Naresh Kumar was filed that he had obtained a driving license for a non gear vehicle only and the date of birth was 02.05.1982 and the license was issued on 28.12.2001. He was more than 16 years of age at that time and the license had been duly verified. All private respondents had attached documents alongwith their application forms which had been duly verified and thereafter the appointments were made. It was not the case of the petitioners that documents had not been attached and therefore, many of the respondents

have become over age and on account of technical mistake, they should not be prejudiced.

Additional affidavit dated 17.10.2017 of Mr. R.R. Jowel, Additional Chief Secretary to Government of Haryana, Transport Department, was filed in which it was clarified that Committee had submitted its report dated 22.08.2017 that FIR no. 121 had been registered on 29.03.2017 and Satbir Singh had already died and the services of Vijay had been terminated vide order dated 09.11.2016 on account of illegal driving license. Krishan Kumar and Laxmi Narayan have been served show cause notices dated 31.05.2017 and 05.09.2016, respectively on account of having forged academic eligibility documents/ certificates. Rajesh and Naresh Kumar had been offered appointments on verification but a complaint had been received from one Narender and therefore, request had been made for re-verification and appropriate action had already been taken regarding incomplete forms.

Counsel for the petitioner has thus vehemently submitted that on account of incorrect and incomplete application forms as per report dated 17.05.2017 (Annexure R-1/A), 19 persons had been wrongly appointed and their candidature was liable to be rejected at the outset and therefore, it could not be termed as an illegality as such. Counsel accordingly argued that the selection was at the district level and not at the state level and the same was vitiated for the second time and the gradations had been wrongly made.

Counsel for the State and the private respondents had accordingly defended the action on the ground that it is not only that the forms of the respondents were incomplete but even the forms of the

petitioners were similarly incomplete. Necessary documents had been attached which had been duly taken into consideration and it was mere irregularity as such and the appointments now after a period of 6 years were not liable to be set aside. It is submitted that accordingly, they should be protected keeping in view the judgment of the Apex Court in ***Mrs. Rekha Chaturvedi vs. University of Rajasthan, 1993 SCC 592.***

Mr. Rathee, counsel for the State has accordingly contended that it is a second round of litigation and the dispute was only regarding the issue of gradation at this stage and the candidates had gone beyond the stage of scrutiny and therefore, at this point of time, there should be no interference as such. Resultantly, it was argued that the fact of private respondents having FIRs lodged against them on account of causing accidents while in service was of no relevance.

The terms of the advertisement would go on to show that the cut off date was 10.08.2007 which is also the case of the petitioners that the experience certificate is to be counted two years prior to that. The applications which were incomplete and also regarding age are liable to be rejected as per clause nos. (iii) and (iv) which read thus:-

“(iii) Applications which are incomplete/ received after the last date for the submission of application form/ not accompanied by required documents and not signed by the candidates himself are liable to be rejected out rightly.

(iv) cut off date for age and qualifications is the last date for the receipt of application.”

The professional qualification was of having a valid driving license of a transport vehicle and the selection process was firstly the practical tests followed by the interview test. The relevant portion reads as

under:-

“Selection Process : DUG TEST, ROAD TEST, followed by an interview.

.....

EDUCATIONAL QUALIFICATION :

10th class with Hindi from any recognized board or university

.....

PROFESSIONAL QUALIFICATION :

VALID DRIVING LICENSE OF TRANSPORT VEHICLE

.....”

The fact remains that on an earlier account also, the selection process was subject matter of challenge in CWP Nos. 728 and 3772 of 2009 which was decided on 11.03.2011. The practical tests had been undergone by the candidates at that point of time and it was only on account of the fact that the original grading list of interview had not been produced before this Court, it had felt that the selection process was not fair and transparent and how the assessment has been made of the candidates. Accordingly, the selection process was set aside with liberty to hold the selection afresh by considering all the 100 hundred candidates who had passed the three tests afresh.

As noticed, some of the petitioners themselves were beneficiaries of the said process earlier as per pleaded case and had found appointments in the first selection made in 2008. The selection was accordingly quashed by directing that the selection process would be of 100 candidates who had passed the three tests and a fresh selection list should be prepared of the entire State of Haryana by including the result of the fresh selection of Sonapat Depot. The relevant portion reads thus:-

“During the course of proceedings, this Court

summoned the original record of the selection. The respondents produced the original record pertaining to number of other centres except Sonapat. Time was granted to them repeatedly to produce the original list prepared by the Selection Committee in order to enable this Court to evaluate the allegations set up in the petition and to test their veracity.

The record was however not produced. What is pertinent to note here is the contention which has been raised by Sh. H.S.Hooda, learned Advocate General appearing for the State of Haryana. He has contended before this Court that the result list which has been appended to the petition as Annexure P-6 is merely a compilation which was received by the Head Office and on the basis of which the result was prepared. He has stated that similar compilations were received from all the centres and on receipt thereof, a common merit list was prepared at the Head Office by which all the posts were sought to be filled. He has further stated that the petitioners names also find mention in the list appended to the petition as they had participated in the interview and few of them got A grading but they had to be kept out of the purview of selection because there were younger candidates available and in view of the guidelines issued by the Transport Commissioner, the relevant of which is extracted herebelow, candidates who are younger in age were preferred to some of the petitioners (these guidelines were however not set up in the reply but in any eventuality since they have been brought to the notice of this Court, they are permitted to be taken on record as mark 'A'):-

“The general practice followed for slotting a driver in the merit list has been on the basis of date of birth whenever there

was a tie among two or more candidates;”

It has further been contended by the learned Advocate General that the Selection Committee of Sonapat depot in their wisdom supplied this very list to them and no other list to the contrary is existing.

I have heard learned counsel for the parties and have perused the material on record as also the relevant record pertaining to the selection of Sonapat depot as also few other depots such as Karnal and Chandigarh.

What is interesting to note is that in the depots pertaining to Karnal and Chandigarh as also the few others, the Selection Committee has awarded the grades in their own hand and each page has been signed by them and thus forwarded to the Head Office. In some of the proceedings the total tabulation of the candidates who have received A+, A, B and C grades have also been recorded and to verify further the total number of candidates interviewed have been tallied with the persons who have been granted these grades. This reflects an insight into the mind of the Selection Committee which is conducting the process in a fair and transparent manner. But in so far as Sonapat depot is concerned, no such proceedings are available on record despite the persistence of this Court. Learned Advocate General with vehemence at his command has contended repeatedly that the list sent by the Sonapat depot is a compilation and even if this plea is accepted, the Court wants to know the foundation and the basis from which such compilation is carried out in print. It is not conceivable that the members of the Selection Committee would have prepared this list at the time of conducting the interviews and what transpired during the interview has to find its

manifestation in the proceedings which the members would have resorted to ordinarily and prudently.

The approach of the State of Haryana has thus been evasive in this regard which when evaluated against the available record qua the other depots speaks volumes and can merely invite a cynicism of the Court. The process of selection has to be fair and transparent and any attempt which even remotely casts a shadow of doubt delivers a double blow. Not only does it adversely impact the aspirations of gullible person seeking appointment but it also hits at the credibility of the system and the Government and its functionaries do not have the liberty to put it at stake and if it does so Court has to intervene because if the credibility of the system is threatened it shakes the confidence of the people, and the process of selection in public appointments, for these reasons, cannot be given any other colour than fairness.

To the mind of this Court, the process of selection does not seem to be fair as the perusal of the list reveals an attempt at a tailored selection list. It is not a reflection of the proper selection. Candidates from Sr. no. 1 to 28 have been assessed as excellent. Thereafter from 29 to 61 have been consistently assessed as very good and from 62 to 78 have been assessed as good and thereafter the remaining have been assessed as average.

xxx

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“The writ petition is thus accepted. The impugned selection of the Drivers pertaining to the Sonapat depot is set aside and the respondents – State of Haryana is directed to hold the selection afresh by considering all the 100 candidates who have passed the three tests afresh. After the same is done, the list of the

selected candidates shall be sent to the Head Office which shall prepare a fresh selection list of the entire State of Haryana by including the result of the fresh selection of Sonapat depot.”

Thus, the stage qua the scrutiny of documents etc. otherwise was all over and it was only the issue whether the gradation was rightly done and it had to be done afresh. In the considered opinion of this Court, now to raise the issue of documents being incomplete or liable to be rejected cannot be termed to be a serious illegality which would warrant setting aside of the appointments at this belated stage keeping in view the judgment of the Apex Court in *Mrs. Rekha Chaturvedi's case (supra)*, as admittedly, some of the respondents have also served the State twice, firstly from 2008 to 2011 and thereafter from 2011 till now. The relevant paragraphs from *Mrs. Rekha Chaturvedi's case (supra)* read thus :

“5. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in

*praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in **A.P. Public Service Commission, Hyderabad & Anr. v. B. Sarat Chandra & Ors., (1990) 4 SLR 235** and **The District Collector & Chairman, Vizianagaram (Social Welfare Residential School Society) Vidanagaran & Anr. v. M. Tripura Sundari Devi, (1990) 4 SLR 237.***

6. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in

exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, 'it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. it is for this purpose that we lay down the following guidelines for the future selection process:'"

The argument also raised regarding the persons being ineligible on account of accidents caused and as per the list given is also without any basis as noticed that the said persons were involved in accidents after the cut off date and therefore, it cannot be said that they had concealed any factum at the time of applying for the posts. If during their service period, during the first term of employment, they were involved in some accidents, it cannot be said that they have become ineligible for consideration at the second stage which was to be on the basis of grading. Even otherwise, their nature of job as such is hazardous to that extent that they are on the road at all points of time and if they had been involved in minor accidents, it would not as such erode them of their right of consideration in view of the direction issued by this Court on an earlier account. Their selection had to be undergone afresh for the interview stage only. Out of the 47 selected candidates, 5 have already expired between the years 2013-2016 (Annexure A-4) and to set aside their selection would cause hardship to their families who would be beneficiaries in one way or the other. Similarly, 16 persons' documents have been found complete in all respects and, therefore, to set aside the selection process would also cause extreme hardship to them as

they have already served the State since 2011. Respondents no. 19, 41 and 50 are in service since 2008 as they had been successful in getting appointed again and merely because certificate of respondent no. 50-Balwan was not properly attested, to throw him out of job would be inequitous especially since this Court is not inclined to grant the benefit of appointment to the petitioners. Thus, other respondents who did not properly fill up the application forms and did not get proper certification done are liable to be given the benefit of continuing in the peculiar facts and circumstances of the case.

Even otherwise, this Court on an earlier occasion dealt with the issue of the same selection process whereby 809 candidates had been appointed against the advertised posts of 910 in ***CWP No. 746 of 2009, Kishan Sahai and others vs. State of Haryana and others***, decided on 01.11.2017. The argument raised that the process of selection was done at Depot level was rejected and the defence of the State that the recruitment was at the State Level was accepted. The relevant portion reads thus:-

“22. In such circumstances, once a categorical stand has been taken that as per the Rules the selection was at the State level and it was a universal grading which had been given across the Board by all Depots and the vacancies were filled up on the strength of those no fault as such can be found in the recruitment process which had been adopted. Accordingly, finding no merit in the writ petition, the same is dismissed. However, respondent no. 1 would ensure that the show cause notices which have been issued to 41 candidates whose qualifications are not as per the Rules and the advertisement and have been found not eligible by the Committee will be given due opportunity of hearing

and then appropriate orders will be passed in each case where they have been found to be not fulfilling the prescribed criteria for appointment. The said exercise will be conducted within a period of 3 months from the date of receipt of certified copy of the judgment.”

However, certain persons the State has chosen to appoint are apparently never eligible which has come in the report of the Committee also. Regarding respondent nos. 27, 31 and 33 (Naresh, Sandeep and Bijender), the Committee had at this stage commented upon their licenses on account of they being below the prescribed age and therefore, were not eligible for the heavy transport vehicle license. Resultantly, their appointments cannot be held to be justified and it is not disputed that show cause notices have been issued to them which Mr. Gunjan Mehta, Advocate has clarified that they have filed CWP Nos. 13197 and 20334 of 2017 in which interim orders have been passed that their services would not be terminated.

Resultantly, their appointments as such cannot be held to be justified and are necessarily to be quashed keeping in view the fact that they did not have the requisite eligibility criteria as per the advertisement on the cut off date. Similarly, the licenses of respondent nos. 14, 45 and 52 have been also found to be forged on account of an FIR dated 29.03.2017 lodged against the said respondents. Respondent no. 30 has already expired and the defence of the State was that their licenses had been duly verified and it has also been mentioned that services of Vijay had already been terminated on 09.08.2016 whereas Krishan Kumar and Laxmi Narayan have been served show cause notices dated 21.05.2017 and 05.09.2016, respectively.

Accordingly, the State shall act on those notices and proceed in

accordance with law and take appropriate action after verifying the factum and double checking whether the licenses issued in favour of the said persons are genuine or not and accordingly, proceed in accordance with law.

Similarly, qua respondent no. 53, Sanjay Kumar who was adjusted in the wait list of DESM, the State has not been able to justify as to how he made the grade and whether any offer was made to the persons at serial nos. 1 to 4 in the wait list of the said category. Admittedly, his name was not among the 102 candidates who were called vide notice dated 20.05.2011 (Annexure P-8) by the General Manager, Sonapat and he has been adjusted from the central pool as such against the reserved seat. The same was, thus, not permissible as only the persons who were called for interview as per the above said notice were to be interviewed and the joint gradation was to be made at the State Level and appointments were thus to be issued. The other candidates higher in merit in DESM category who have not been admittedly called by the State before adjusting the said respondent and therefore the explanation given is not acceptable and accordingly, appointment of the said respondent no. 53 also cannot be justified.

Resultantly, the writ petition is partly allowed to the extent that the appointments of respondent nos. 27, 31, 33 and 53 are quashed as they were not appointed in terms of the advertisement and were not in consonance with the same and the eligibility qua three candidates was totally missing and respondent no. 53-Sanjay Kumar could not have been adjusted in the Sonapat selection as his name did not figure in the list of candidates in the notice dated 20.05.2011 and, thus, has been wrongly adjusted by the respondent-State to grant appointment. Qua other respondent nos. 14, 45 and 52 on account of FIR being lodged against them,

State shall take necessary action for verifying the same as the licenses have been issued by other States and then proceed in accordance with law. CWP No. 20334 of 2017 filed by Sandeep Kumar is accordingly dismissed and State shall take appropriate action against Naresh Kumar, writ petitioner in CWP No. 13917 of 2017 subject to the final decision of the said writ petition as he has a stay operating in his favour after show cause notice was issued to him.

The entitlement of the petitioners as such at this stage for selection in a process which was initiated in 2007 and for appointment against any vacancy does not arise and no such relief can be granted on that account. Resultantly, the prayer for writ of mandamus is declined and the writ petition is disposed of in the above said terms.

28.02.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

