

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 19.12.2018

LPA-666-2015 (O/M)

Virender Singh Hooda

..... Appellant (s)

Versus

Kulwant Kumar Kalsan and others

..... Respondent (s)

LPA-717-2015 (O/M)

Virender Singh Hooda and others

..... Appellant (s)

Versus

Monika Malik, HCS, and others

..... Respondent (s)

LPA-873-2015 (O/M)

Ajay Malik and others

..... Appellant (s)

Versus

Kulwant Kumar Kalsan and others

..... Respondent (s)

LPA-957-2015 (O/M)

Virender Kumar Dahiya and another

..... Appellant (s)

Versus

Kulwant Kumar Kalsan and others

..... Respondent (s)

LPA-972-2015 (O/M)

Lalit Kumar

..... Appellant (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gurminder Singh, Senior Advocate, with,
Mr. Inder Pal Goyat, Advocate,
for appellant (s) in LPA-666-2015, LPA-717-2015.

Mr. Satish Garg, Advocate,
for appellant (s) in LPA-873-2015.

Mr. D.S. Patwalia, Senior Advocate, with,
Mr. Sehaj Bir Singh, Advocate,
for appellant (s) No. 14, 15 in LPA-666-2015 and
for appellant (s) in LPA-957-2015, LPA-972-2015.

Mr. Puneet Bali, Senior Advocate, with,
Mr. Arun Gupta, Mr. Vibhav Jain, Advocates,
for respondent No. 1 in LPA-666-2015.

Dr. Surya Parkash, Advocate,
for respondents No. 3 to 5 in LPA-666-2015.

Mr. Sunil Panwar, Mr. Dhananjay Singh, Advocates,
for respondents No. 7, 9, 10 in LPA-666-2015.

Mr. Birender Singh Rana, Senior Advocate, with,
Mr. Harshit Singla, Advocate,
for respondent No. 12 in LPA-666-2015.

Mr. Rajiv Atma Ram, Senior Advocate, with,
Mr. Abhishek Arora, Mr. Nishant, Advocates,
for respondent No. 6 in LPA-972-2015.

Mr. R. Kartikeya, Advocate,
for applicant in CM-100-LPA-2018 in LPA-666-2015.

Mr. Samarth Sagar, Additional A.G. Haryana.

Mr. H.N. Mehtani, Advocate,
for respondent-HPSC.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH, J.

This order will dispose of abovenoted connected Letters Patent Appeals (hereinafter referred to as 'LPA') against judgment dated 1.4.2015, passed by Single Bench of this Court, whereby four connected civil writ petitions i.e. CWP-21564-2012, CWP-22211-2011, CWP-20080-2012, CWP-7791-2012, filed by petitioners Kulwant Kumar Kalsan, Monika Malik and others, Virender Singh Hooda and another, Jai Krishan Abhir and others, were disposed of by issuing a writ of mandamus directing Government/official respondents to redraw seniority list of HCS (EB) Officers as are parties to present cases, in terms of judgment by keeping in

view amended Rule 20 of Punjab Civil Services (Executive Branch) Rules, 1930, as applicable to Haryana, (before they were repealed and replaced in year 2008 by new Rules) with seniority assigned from respective dates of actual appointments to service as they occurred, i.e., when each of them came to be borne for first time on HCS cadre as Members of service.

The dispute pertains to inter se seniority between officers of Haryana Civil Services (Executive Branch) (hereinafter referred to as 'HCS (EB)'), selected in different batches, i.e. 1992, 1997, 1999, and special recruitment batch, recruited in year 1994 (hereinafter referred to as '1992 batch', '1997 batch', '1999 batch' and 'special recruitment 1994 batch').

1. **Facts of CWP No. 21564-2012, titled as 'Kulwant Kumar Kalsan**
Versus
State of Haryana and Virender Singh Hooda, Ajay Malik, Amarjit Singh Mann, Arvind Malhan, Dinesh Singh Yadav, Sujan Singh, Ashok Kumar Garg, Pushpender Singh, Pardeep Godara, Virender Kumar Dahiya, Sandeep Singh, Haryana Public Service Commission

Fact of abovenoted civil writ petition are that petitioner Kulwant Kumar Kalsan was appointed in Haryana Civil Services (Executive Branch) on 25.6.1997 by clearing competitive examination, held in October, 1993. The services of petitioner are governed by PCS (EB) Rules, 1930, as applicable in State of Haryana. It is stated that in 1989, Haryana Public Service Commission (hereinafter referred to as 'HPSC') advertised 12 posts for HCS (EB) (7 posts for general category and 5 posts for reserved category) and a number of posts in the Allied Services. A common written test was held in February, 1991. After interview, final result was declared on 19.6.1992. HPSC made recommendations on 22.6.1992 for making appointment against 12 posts for Haryana Civil Services and 48 posts for Allied Services. The appointments were made in December, 1992. Private respondents No. 2 to 10, namely, Virender Singh

Hooda, Ajay Malik, Amarjit Singh Mann, Arvind Malhan, Dinesh Singh Yadav, Sujan Singh, Ashok Kumar Garg, Pushpender Singh, Pardeep Godara, were not selected in HCS (EB), but were appointed in Allied Services, as per their merits. On 24.11.1992, another advertisement was issued by HPSC for filling up of 12 posts (9 general category and 3 reserved category) in HCS (Executive Branch) and 50 posts in Allied Services. The written examination for same was held in October, 1993, but result was declared on 20.1.1996. Thereafter, interviews were held on 20.1.1996 and final result was declared on 15.3.1996. Private respondents No. 11 and 12, namely Virender Kumar Dahiya and Sandeep Singh, were appointed to posts in Allied Services and not in Executive Branch. Further, on 24.5.1996, another advertisement was issued by HPSC for filling up of 10 posts in HCS(Executive Branch) and 33 posts in Allied Services. By a corrigendum to said advertisement, 10 more posts for HCS (Executive Branch) were added. The written examination for these posts was held in December, 1997/January, 1998, and result thereof was declared on 29.4.1999. Present petitioner was selected in 1997 batch. It is further averred that private respondent No. 2, namely, Virender Singh Hooda, could not make it to HCS (EB) in 1992 batch, for which advertisement was issued in 1989. Claiming the benefit of circulars dated 22.3.1957 and 26.5.1972, issued by State Government, laying down that vacancies becoming available within six months, are to be filled in from waiting list, Virender Singh Hooda spearheaded a long litigation. He filed CWP-6057-1994, titled as **Virender Singh Hooda Versus State of Haryana and another**, before this Court, praying for directing official respondents to appoint him to post of HCS (EB) from the date when candidates, who appeared alongwith him were selected and appointed to post of HCS (EB).

Said writ petition was dismissed by a Division Bench judgment of this Court on 12.5.1994 (Annexure-P-2). Special Leave Petition (SLP) against said judgment was dismissed by Apex Court on 30.10.1995, giving liberty to private respondent No. 2 to file a proper writ petition before High Court for getting appointment on the basis of circulars dated 22.3.1957 and 26.5.1972, issued by State Government. Consequently, Virender Singh Hooda (private respondent No. 2) alongwith other private respondents No. 4 to 6, namely, Amarjit Singh Mann, Arvind Malhan and Dinesh Singh Yadav, filed CWP No. 2557-1996, before this Court, praying for directing respondent State to appoint them to HCS (EB) from the date, persons selected in pursuance to advertisement issued in year 1989, were appointed. Said writ petition was also dismissed by a Division Bench of this Court on 1.4.1997 (Annexure-P-3). The matter was taken to Apex Court by way of filing Special Leave Petition (Civil) No. 478 of 1998, which was later on converted into Civil Appeal No. 2286 of 1999, reported as **Virender S. Hooda and others Versus State of Haryana and another**, (1999) 3 SCC 696 (known as V.S. Hooda-I case). The judgment passed by High Court was set aside and petitioners therein i.e. Virender Singh Hooda and his associates, mentioned above, were ordered to be appointed by passing following order :-

'5. Therefore, we have no hesitation in directing the respondents to consider the cases of the appellants for appointment to posts of the Haryana Public (Civil) Service (Executive Branch). However, it is made clear that the appellants shall be fitted to the posts ranking below to those who had been selected alongwith the appellants at the time of recruitment made pursuant to the result declared on 19.6.1992. The appellants will be fitted in appropriate posts and they will be accorded appropriate scale of pay by giving them the benefit

of increments, if any, but they will not be entitled to any monetary benefits for the period for which they have been kept out of employment. Let such action be taken by Government expeditiously but not later than a period of three months.'

Later on, some other officers claiming similar benefit approached this Court. As a result of which private respondents No. 2 to 10 were appointed in similar way to HCS (EB), vide different orders, passed by this Court. Same is reproduced in tabulated form as under :-

Sr. No.	Name	Date of appointment	Case No.	Date of Decision
1	Virender Singh Hooda	15.12.1999	C.A. No. 2286 of 1999	13.3.1999
2	Ajay Malik	31.12.2004	CWP No. 17792 of 1999	8.9.2000
3	Amarjit Singh Mann	10.12.1999	C.A. No. 2286 of 1999	13.3.1999
4	Arvind Malhan	31.1.2005	CWP No. 5037 of 2000	8.9.2000
5	Dinesh Singh Yadav	15.12.1999	CA No. 2286 of 1999	13.3.1999
6	Sujan Singh	6.3.2002	CWP No. 10397 of 1999	30.1.2001
7	Ashok Kumar Garg	22.10.2003	CWP No. 2157 of 2000	7.2.2002
8	Pushpinder Singh	6.3.2002	CWP No. 10397 of 1999	30.1.2001
9	Pardeep Godara	6.3.2002	CWP No. 10397 of 1999	30.1.2001

For the advertisement issued on 24.11.1992 (1997 batch), Virender Kumar Dahiya and Sandeep Singh also filed civil writ petitions/appeals before this Court as well as before Apex Court. Said civil writ petitions/appeals were ultimately allowed by Apex Court, vide judgment and order dated 9.11.2000, titled as **Sandeep Singh Versus State of Haryana and another**, (2002) 10 SCC 549 (known as Sandeep Singh's case). Here, Apex Court, while allowing writ petitions/appeals of Sandeep

Singh and others for the same reasoning as in V.S. Hooda-I case, ordered
appointment of Sandeep Singh and others by passing following order :-

'3. In the aforesaid premises, we set aside the impugned judgments of the Punjab and Haryana High Court and allow these appeals and writ petitions and direct that these four persons, who had appeared at the competitive test in the year 1993 pursuant to the advertisement dated 24.11.1992 should be considered for being appointed to the Haryana Civil Services (Executive Branch). We make it clear that if any other persons, who had appeared at the said examination and who had not approached the Court till today, will not be entitled to file any such application for getting this relief in question so far as the examination of the year 1993 is concerned. It is also made clear that the appellants will get the benefit of this order prospectively i.e. from the date of appointment. The Government may decide the matter within three months.'

In this way, Sandeep Singh and associates were given benefit of order prospectively i.e. from date of appointment.

To overcome difficulty created by V.S. Hooda-I judgment, Government of Haryana passed Haryana Civil Services (Executive Branch) and Allied Services and Other Services Common/Combined Examination Act, 2002 (Haryana Act No. 4 of 2002), which was made effective with effect from 29.8.1989 and was to cover recommendations made by HPSC after said date. The instructions contained in Circulars, issued in years 1937, 1957, 1972, 1993, 1998, 2001, were repealed. Section 4 of Haryana Civil Services (Executive Branch) and Allied Services and Other Services Common/Combined Examination Act, 2002, (hereinafter referred to as 'Act of 2002'), lays down as under :-

'Bar to appointment beyond the number of advertised posts.'

4 (1) No appointment shall be made to any post or service to which this Act applies beyond the number of posts advertised.

(2) Notwithstanding anything to the contrary contained in any judgment, order decree or decision of a court of law, Act, rule, regulation or executive instructions, no candidate, from the date of commencement of this Act, shall, on the basis of his merit or placement in a Common/Combined Examination, have right to seek appointment to Haryana Civil Services (Executive Branch) and Allied Services or Other Services beyond the number of advertised posts.

(3) The State Government shall not be competent to offer appointment to a candidate, who is placed in the waiting list or who claims himself to be in the waiting list on the basis of Common/Combined Examination, for a post for which his name was not recommended by the Commission :

Provided that if a candidate has been appointed or offered appointment over and above advertised posts for any reason, the services of such candidate shall be dispensed with. However, he shall be entitled to be appointed to the service/post, if any, for which his name was originally recommended by the Commission :

Provided further that no recovery of higher salary, emoluments or any other financial benefits drawn by such candidate as a result of his appointment in excess of the advertised posts, shall be made from him but his pay shall be fixed in the scale of the post to which he is found entitled for appointment under this Act.'

In this way, under Act of 2002, it was laid down that no appointment can be made beyond advertised posts. Act of 2002 was challenged before this Court and matter was taken to Apex Court by Virender Singh Hooda and others. The case is reported as **Virender Singh Hooda and others Versus State of Haryana and another**, (2004) 12 Supreme Court Cases 588 (popularly known as V.S. Hooda-II case).

The Apex Court, vide judgment dated 27.10.2004, upheld the validity of Act of 2002, and power to Legislature to make retrospective law and take away the basis of V.S. Hooda-I decision and concluded as under :-

- '(1) The impugned Act, to the extent of its retrospectivity, except to the limited extent indicated above, does not amount to usurpation of judicial powers by the legislature. It is not ultra vires. It has removed the basis of decisions in Hooda-I and Sandeep Singh's cases.
- (2) The Act is not violative of Articles 14 and 16 of the Constitution except to a limited extent noticed below.
- (3) The first proviso to Section 4 (3), to the limited extent it provides for dispensing the services of candidates already appointed, is harsh, excessive, arbitrary and violative of Article 14 of Constitution.

The benefits already granted to the petitioners in Writ Petitions No. 215 to 218 and 224 of 2002 could not be taken back. To this extent, retrospectivity is ultra vires. In all other respects, it is valid.

- (4) The directions of the High Court in favour of respondents Ajay Malik and Arvind Malhan, subject matter of Civil Appeals No. 3937-38 of 2001, are maintained. For the same reason, Jagdish Sharma and Mahavir Singh being higher in merit than Lalit Kumar and Virender Singh Lather would also be entitled to similar treatment.'

Petitioner claims that respondent No. 1, after drawing tentative seniority, fixed seniority of different batches of HCS (EB), vide order dated 12.12.2006 (Annexure-P-16), whereby abovenoted private respondents No. 2 to 10 were put over and above petitioner and vide another order dated 16.4.2010 (Annexure-P-24), seniority was redrawn and now private respondents No. 11 and 12, namely, Virender Kumar Dahiya and Sandeep Singh, were put over and above petitioner. Claim of petitioner is that as per Rules 9 and 20 of PCS (EB) Rules, 1930, as applicable in State of Haryana,

seniority of a member of HCS (EB) shall be determined from the date of his appointment. The plea is that since basis of V.S. Hooda-I case was taken away by Act of 2002 and seniority was not commented upon and determined by Apex Court in V.S. Hooda-I and V.S. Hooda-II, therefore, Rule 20 of PCS (EB) Rules, 1930, as applicable in State of Haryana, will prevail and seniority of different batches of HCS(EB) will have to be determined on the basis of date of appointment and not on the basis of V.S. Hooda-I case or Sandeep Singh's case (supra). Hence, petitioner prays for setting aside seniority list dated 12.12.2006 (Annexure-P-16) and another seniority list dated 16.4.2010 (Annexure-P-24) and refix seniority list as per Rule 20 of PCS (EB) Rules, as applicable in State of Haryana.

2. **Facts of CWP-22211-2011, titled as 'Monika Malik, Jaibir Singh Arya, Surinder Kumar Setia, Maheshwar Sharma, Shiv Parshad, Girish Arora, Mukesh Ahuja**
Versus
State of Haryana, Virender Singh Hooda, Ajay Malik, Amarjit Singh Mann, Arvind Malhan, Dinesh Singh Yadav, Sujan Singh, Ashok Kumar Garg, Pushpender Singh, Pardeep Godara

Abovenoted petitioners, namely, Monika Malik etc. have filed present petition against abovenoted official respondent, namely, State of Haryana and abovenoted private respondents, for issuance of a writ in the nature of mandamus for directing official respondents to reframe entire seniority/gradation list of HCS (EB) on the basis, as has been done, vide order dated 30.6.2011 (Annexure-P-3) only qua parties to CWP No. 3549 of 2007, decided on 3.8.2010 (Annexure-P-1) and further confirmed, vide order dated 3.6.2011 (Annexure-P-2), passed in LPA No. 1015 of 2011 as Rule 20 of PCS (EB) Rules, 1930, as applicable in State of Haryana, governing seniority of petitioners. Present petitioners were appointed in 1997 batch. They also seek similar relief.

3. **Facts of CWP-7791-2012, titled as 'Jai Krishan Abhir, Pardeep Kumar, Jitender Kumar, Dharamender, Dharambir Singh**
Versus
State of Haryana, Urvashi Gulati, Varinder Kumar Dahiya, Sandeep Singh, Mahavir Singh, Jagdish Sharma, Lalit Kumar, Varinder Singh Lather'

In this writ petition, abovenoted petitioners, namely, Jai Krishan Abhir etc. have also sought quashing of seniority list dated 12.12.2006 (Annexure-P-11) as also another seniority list dated 16.4.2010 (Annexure-P-18), vide which abovenoted private respondents No. 3 to 8, namely, Varinder Kumar Dahiya, Sandeep Singh, Mahavir Singh, Jagdish Sharma, Lalit Kumar, Varinder Singh Lather, were made senior to them. Present petitioners were appointed in 1999 batch. They have taken more or less same grounds as taken by petitioner Kulwant Kumar Kalsan in CWP No. 21564-2012.

4. **Facts of CWP-20080-2012, titled as 'Virender Singh Hooda, Ajay Malik**
Versus
State of Haryana, Sunita Verma, Sultan Singh Ghoswal, Geeta Bharti, Smt. Pankaj Choudhry'

In this civil writ petition, abovenoted petitioners, namely, Virender Singh, Ajay Malik, have sought quashing of order dated 13.12.2006 (Annexure-P-7), whereby their seniority as HCS (EB) officers has been downgraded from already granted seniority to petitioners and other officers, which was in compliance of directions, issued by Apex Court in V.S. Hooda-II case.

It is to be noted that no Letters Patent Appeal against said petition has been filed.

Written statement on behalf of official respondents

In the written statement, factual position of long litigation, as claimed in petition, is not denied. It is stated that State Civil Service was

governed by Punjab Civil Service (Executive Branch) Rules, 1930, prior to 13.2.2008. Now, new rules have been framed in year 2008. Petitioners were appointed by way of direct recruitment from Register 'B'. The Government reiterated that under new Rule 20 of Amended Rules, 2008, seniority of members shall be from the date of appointment. The State Government maintained that tentative list of HCS (EB) was drawn up and circulated amongst officers, vide Government order dated 12.8.2005. They were directed to submit their objections within twenty one days. 50 HCS (EB) Officers filed objections. These were dealt with in accordance with judgments pronounced by Apex Court and this Court and seniority was finalized, vide order dated 12.12.2006/13.12.2006. It is further stated that seniority of private respondents No. 11 and 12, namely, Virender Kumar Dahiya and Sandeep Singh in CWP-21564-2012, was refixed, vide order dated 16.4.2010, in compliance of order/judgment of Apex Court dated 9.2.2010 in I.A. No. 4 in Civil Appeal No. 7422 of 1999, titled as **Sandeep Singh Versus State of Haryana and another**.

Needless to say that private respondents maintained that their seniority was correctly fixed by said two orders i.e. order dated 12.12.2006 (Annexure-P-16) and another order dated 16.4.2010 (Annexure-P-24).

We have heard learned senior counsel/learned counsel for parties and have also carefully gone through file.

Perusal of common judgment dated 3.8.2010 (Annexure-P-19), passed by learned Single Judge of this Court in CWP No. 3549 of 2007, titled as **Wazeer Singh Goyat and others Versus State of Haryana and others**, alongwith connected cases CWP No. 9712 of 2007, titled as **Ram Swarup Verma and others Versus State of Haryana and others**, CWP No. 5791 of 2008, titled as **Jitender Kumar and others Versus State of**

Haryana and others, CWP No. 19454 of 2007, titled as **Ms. Hema Sharma and others Versus State of Haryana and others**, shows that officers recruited as a result of special recruitment in 1994 and officers of 1999 batch, namely, Ram Swarup Verma etc. and Jitender Kumar etc. have filed CWP-9712-2007 and CWP No. 5791-2008 respectively. Ms. Hema Sharma etc. and Wazeer Singh etc. (1999 batch) had also filed separate civil writ petitions i.e. CWP No. 19454-2007, CWP No. 3549-2007. In all said civil writ petitions, seniority dated 12.12.2006, fixed by Government of Haryana, was challenged.

Present petitioners, who belong to 1997 batch, did not file any petition. The matter was heard by Single Bench of this Court. At that time, Amended Rules of 2008, had come into operation. The Single Bench, after taking into consideration, entire history, amendments, decision in V.S. Hooda-I and V.S. Hooda-II, Rule 20 of PCS (EB) Rules, as applicable in State of Haryana, as existed prior to 1.1.1992 and after amendment, after considering contentions of petitioners and respondents and further contention that they were not party to writ petitions, decided earlier and that directions of Apex Court are per incuriam and ignoring that seniority should be determined as per Rule 20 of PCS (EB) Rules, 1930, (as applicable in State of Haryana, as it exists after amendment, dismissing claim of 1999 batch petitioners qua seniority over and above private respondents, passed following order :-

' Petitioners in CWP No. 19454 of 2007 and 5791 of 2008 have no right to claim seniority over and above the private respondents for the simple reason that these writ petitioners were appointed pursuant to the advertisement issued in March, 1997. Though, they were appointed and joined on 1.6.1999. Admittedly, they are appointees of later selection and cannot claim seniority over and above the private

respondents, who were the candidates in the selection held in the year 1992 and have been appointed pursuant to the Court directions, though, later than these writ petitioners. CWP No. 9712 of 2007, 19454 of 2007 and 5791 of 2008 are thus liable to be dismissed.

LPA No. 1796-2010 against said judgment was dismissed by a Division Bench of this Court, vide order dated 22.12.2010 (Annexure-P-20). SLP (C) No. 7785-2011 against said judgment was dismissed in limine by Apex Court, vide order/judgment dated 1.4.2011 (Annexure-P-21). In this way, judgment of Wazeer Singh's case (supra), was delivered, pertaining to 1994 batch, recruited as a result of special recruitment and 1999 batch writ petitions were dismissed and same have become final. Now, after dismissal of said SLP, judgment has become final. Now, officers of 1997 batch have filed present writ petitions. However, in this case, in addition to seniority list of 12.12.2006 (Annexure-P-16) and another seniority list of 16.4.2010 (Annexure-P-24), have been challenged.

In V.S. Hooda-II case, reported as (2004) 12 Supreme Court Cases 588, regarding private respondents Jagdish Sharma and Mahavir Singh in para 72, Apex Court has observed as under :-

'72. On the aforesaid analogy, IA No. 4 of 2004 in Writ Petition No. 215 of 2002, filed by Jagdish Sharma and Mahavir Singh is allowed since the applicants are higher in merit than Lalit Kumar and Virender Lather aforenoted and also satisfy condition placed in **Sandeep Singh's** case (Sandeep Singh Versus State of Haryana, (2002) 10 SCC 549) by this Court. They are thus entitled to be given similar treatment as Ajay Malik and Arvind Malhan in view of the peculiar facts of their case. In this view, the direction of the High Court in judgment dated 3.7.2004 in CWP No. 7281 of 2000 also does not call for any interference.'

That would practically mean that Jagdish Sharma and Mahavir

Singh are also entitled to benefit of Sandeep Singh's case (supra) being higher in merit than Lalit Kumar and Virender Singh Lather (1997 batch). That would mean that private respondents, namely, Jagdish Sharma and Mahavir Singh, were also entitled to benefit of Sandeep Singh's case (supra) and rank higher in seniority list to Lalit Kumar and Virender Singh Lather of 1997 batch.

The background of this case was discussed and produced in V.S. Hooda-II judgment and for ready reference, relevant extracts from same are reproduced as under :-

'3. Before we examine the contentions and questions of law that have been raised, it is necessary to note the background which led to the passing of the Act.

4. In the year 1989, the Haryana Public Service Commission (hereinafter referred to as 'the Commission') advertised for recruitment to the Haryana Civil Service (Executive Branch) (for short 'the Executive Branch') and other Allied Services through combined competitive examination. The advertisement included 12 posts in the Executive Branch (7 general and 5 reserved) and a number of posts in the Allied Services. A common written examination was held in February 1991, the result was declared in December, 1991, interviews were held between 31.3.1992 and 9.6.1992 and the final result was declared on 19.6.1992. The Commission on 22.6.1992 made recommendations for making appointment against 12 posts in the Haryana Civil Service and 48 posts in the Allied Services to the State Government. The appointments to 12 posts were made in December 1992 and to 48 posts on various dates between December 1992 and April 1993. The three petitioners in Writ Petition (Civil) No. 215 of 2002, Virender Singh Hooda, Amarjit Singh Mann and Dinesh Singh Yadav, having regard to their position in the merit list being at Serial Nos. 8, 10 and 12 respectively were not appointed to the posts in the Executive Branch as only 7 general category posts

were advertised. One of them was already holding the post of Excise and Taxation Officer and the other two were appointed to posts in the Allied Services, one as Excise and Taxation Officer and the other as Tehsildar.

5. On 24.11.1992, another advertisement was issued for filling up of 12 posts (9 general and 3 reserved) in the Executive Branch and 50 in the Allied Services. The written examination for these posts was held in October 1993 but the result of the said examination was declared on 20.1.1996. The interviews were held between 29.1.1996 and 11.3.1996. The final result was declared on 15.3.1996 and on the same day recommendations were made by Commission for the appointments as per merit and options exercised by the candidates. The appointments to the 12 posts in the Executive Branch were made on 25.6.1997 and to the posts in the Allied Services on different dates between June and July, 1997. Sandeep Singh, Lalit Kumar, Virender Lather and Virender Singh Dahiya were appointed to posts in the Allied Services and not the Executive Branch in view of their merit.

6. On 24.5.1996, another advertisement was issued by the Commission for filling up 10 posts in the Executive Branch and 33 in the Allied Services. By a corrigendum to this advertisement, 10 more posts in the Executive Branch were added. The written examination was held in December 1997/January 1998, interviews were held between 16.3.1999 and 7.4.1999 and the final result was declared on 29.4.1999. On 4.5.1999, the Commission made the recommendations for appointments and thereafter on 1.6.1999 the State Government made 20 appointments to the Executive Branch and 33 appointments to the Allied Services were also made on different dates from 23.6.1999 to 28.7.1999.

7. Writ Petition (Civil) No. 6057 of 1994 filed by Virender Singh Hooda, who could not be appointed to the Executive Branch in view of his merit position as aforementioned seeking such appointment against the posts of the Executive Branch

advertised on 24.11.1992, was dismissed by the High Court of Punjab and Haryana on 12.5.1994. In a special leave petition filed in this Court, Amarjit Singh Mann, Dinesh Singh Yadav being similarly placed as Virender Singh Hooda, were impleaded as parties and the said petition was disposed of on 30.10.1995 by this Court granting liberty to the aforesaid person to file proper petition before the High Court. That petition was filed but it was also dismissed by the High Court. The decision of the High Court was, however, set aside by this Court in terms of the judgment dated 13.4.1999 in Virender S. Hooda Versus State of Haryana, (1999) 3 SC 696, and the State Government was directed to consider their case for appointment to the posts in the Executive Branch.

8. On 3.12.1999, in compliance with the judgment of this Court, the aforesaid 3 persons were appointed to the posts in the Executive Branch.

9. Relying upon the decision in Hooda case, the claim of Sujan Singh, Pushpender Singh and Pardeep Godara (petitioners in Writ Petition No. 216 of 2002) being similarly placed as the petitioners in Virender S. Hooda Versus State of Haryana, (1999) 3 SC 696, was accepted by the High Court for being appointed against posts advertised in the year 1992. The special leave petition filed by the State Government challenging the judgment of the High Court dated 13.1.2001 was dismissed on 12.10.2001. Review petition was also dismissed on 19.2.2002. As a result, these three were also appointed to the posts in the Executive Branch on 4.3.1992.

10. The case of the aforesaid six officers concerns the advertisement issued in the year 1989 and their claim for appointment to the posts in the Executive Branch is base on the advertisement in respect of posts advertised in the year 1992 as aforesaid.

11. On publication of advertisement in the year 1996, as aforesaid, a writ petition was filed in the High Court by Sandeep Singh, Lalit Kumar, Virender Lather and Virender Singh Dahiya (petitioners in Writ Petitions No. 217, 218

and 224 of 2002) claiming right to be appointed to posts in the Executive Branch relying upon the decision of this Court in Hooda case. These four candidates as already noticed pursuant tot heir position on merit list (1992 advertisement) had been appointed to the posts in Allied Services and not in the Executive Branch. The writ petition was dismissed by the High Court but the judgment of High Court was set aside by this Court on 9.11.2000 in Civil Appeal No. 7422 of 1999. In implementation of the judgment, these 4 candidates were appointed to the posts in the Executive Branch on 5.12.2000.

12. On 29.1.1999 another advertisement was issued by the Commission for filling up 14 posts in the Executive Branch and 53 in the Allied Services. The written examination was held in December, 2000 and January, 2001, interviews were held between 22.10.2001 to 19.11.2001 and the final result was declared on 3.5.2002. The Commission made recommendations on 6.6.2002. The candidates who were selected and recommended as a result of advertisement have filed Writ Petition No. 114 of 2003 supporting the Act and the stand of State of Haryana.

13. The impugned Act was passed on 27.3.2002, i.e., before the declaration of the final result in respect of posts advertised on 29.1.1999.'

The learned senior counsel Mr. Gurminder Singh has vehemently argued that controversy has already been settled. 1994 batch and 1999 batch have already tried their luck by challenging seniority list of 12.12.2006 before this Court and were unsuccessful upto Apex Court. The seniority was refixed in year 2006. The Apex Court finally decided the matter in year 2011. Present batch of 1997 officers filed petitions before this Court in year 2012, i.e. after 6 years of issuance of final seniority list of 2006. It is to be mentioned here that State Government earlier issued tentative seniority list on 12.8.2005 and invited objections from officers and as many as 50 officers filed their objections. The tentative list as well

as final seniority list was circulated amongst those officers. Therefore, present petitions are barred by delay and latches and are liable to be dismissed on this ground alone. The learned Single Judge has erred in going into entire controversy which was decided by Apex Court and passed order of refixing seniority as per Rule 20 of PCS Rules, 1930, as applicable in State of Haryana, ignoring the mandate of Apex Court in V.S. Hooda-II, case as well as affirmed in Wazeer Singh's case (supra).

On the other hand, the learned counsel for respondents petitioners before Single Bench Mr. Puneet Bali, has stated that there is no delay and latches. The seniority was being disturbed time and again. It was not only on 12.12.2006 that seniority was disturbed, but subsequently also on 16.4.2010, seniority was disturbed and Sandeep Singh etc. were shown senior to them. Therefore, fresh cause of action arose on 16.4.2010.

It is to be noted that by way of application, two more respondents, namely, Jagdish Sharma and Mahavir Singh, were allowed to be impleaded before this Court as respondents and applicant Narhari Singh Banger, who has filed application for impleading him as respondent in LPA-666-2015, which shall be disposed of in terms of present judgment.

For delay and latches, learned senior counsel Mr. Puneet Bali has placed reliance upon authorities of Apex Court in **Shiba Shankar Mohapatra and others Versus State of Orissa and others**, 2010 (12) SCC 471, **P.S. Sadasivaswamy Versus State of Tamil Nadu**, AIR 1975 SC 2271 and **K.K. Srivastava Versus National Hydroelectric Power Corporation**, 2004 (4) SCT 200.

We are of the view that seniority was fixed on 12.12.2006, after inviting objections from officers by passing a speaking order. Said speaking order was required to be challenged within a reasonable time.

Period of three to four months is considered to be a reasonable time to challenge said order. Since 1997 batch officers did not challenge said seniority of 12.12.2006 within a reasonable time, therefore, challenge to said seniority list is barred on account of delay and laches and their writ petitions are liable to be dismissed on this ground. However, petitioners have approached this Court by way of filing civil writ petitions within time qua seniority list of 16.4.2010, and their petitions qua seniority list of 16.4.2010 are liable to be decided on merits.

The learned senior counsel for respondents have further argued that petitioners were not party to previous proceedings in Sandeep Singh's case (supra) and V.S. Hooda-II (supra) case.

We are of the view that when Virender Singh Hooda and others approached this Court, when result of their batch was already declared. Present petitioners, who are of 1999 batch, were not in picture and were not required to be made party qua selection of 1992 batch. If they felt that they need to contest same, they should have filed appropriate application before Apex Court to claim that they were also being adversely affected.

The learned senior counsel for respondent Mr. Rajiv Atma Ram has argued that directions of Apex Court in V.S. Hooda-I case are per curiam since it did not consider instructions of 1993 which restricted selection to number of posts advertised and Rule 20 of PCS (EB) Rules, 1930, as applicable in State of Haryana which provides that seniority is to be determined from the date of appointment.

In this regard, the learned senior counsel for respondent Mr. Rajiv Atma Ram has placed reliance upon authorities of Apex Court in **Central Board of Dawoodi Bohra Community and another Versus State of Maharashtra and another**, (arising out of I.A.

No. 4 in W.P. (C) No. 740 of 1986, decided on 17.12.2004) and **Siddharam**

Satlingappa Mhetre Versus State of Maharashtra and others, 2011 (1)

SCC 694.

Further reliance has been placed by learned senior for respondent upon observations made by Apex Court in **Sandeep Kumar Bafna Versus State of Maharashtra and another**, 2014 AIR (SC) 1745, paras 13, 14 and 15 are reproduced as under :-

'13. The Constitution Bench in **Union of India Versus Raghubir Singh**, 1989 (1) RRR 552; 1989 (2) SCC 754, has come to the conclusion extracted below :-

'27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative

thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. The principle has been followed in India by several generations of Judges.'

'14. This ratio of Raghbir Singh was applied once again by the Constitution Bench in **Chandra Prakash Versus State of U.P.**, 2002 (2) SCT 776; AIR 2002 SC 1652. We think it instructive to extract the paragraph 22 from Chandra Prakash in order to underscore that there is a consistent and constant judicial opinion, spanning across decades, on this aspect of jurisprudence :

'Almost similar is the view expressed by a recent judgment of a five-Judge Bench of this Court in Parija's case (supra). In that case, a Bench of two learned Judges doubted the correctness of the decision a Bench of three learned Judges, hence, directly referred the matter to a Bench of five learned Judges for reconsideration. In such a situation, five-Judge Bench held that judicial discipline and propriety demanded that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges. On this basis, the five-Judge Bench based on the doctrine of binding precedent.'

'15. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per

incuriam rule is of great importance, since without it certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ration with that of a previously pronounced judgment of a Co-equal or Larger bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ration decidendi and not to obiter dicta. It is often encountered in High courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.'

We are of view that Rule 20 of PCS (EB) Rules, 1930, as applicable in State of Haryana, was argued and considered by this Court in Wazeer Singh's case (supra) and same was adjudicated upon. The said judgment in Wazeer Singh's judgment was upheld by Apex Court. Therefore, same was considered. Any argument, which is not raised before Court in Wazeer Singh's case (supra) and V.S. Hooda-II case, is deemed to have been considered and decided. Therefore, even if instructions of 1993 were not brought to the notice of Apex Court, same are taken to have been considered and decided and the issue cannot be reopened by the High Court for the said reason. Therefore, we are of the considered opinion that directions given by Apex Court in V.S. Hooda-II case are not per incuriam and will apply with full force to present case. Moreover, seniority qua 1997 batch has already become final on account of dismissal of writ

petition by this Court and on being affirmed by Apex Court. Therefore, subsequent 1999 batch cannot claim different application of law to them which would even adversely affect 1997 batch.

So far as Jagdish Sharma and Mahavir Singh are concerned, they are entitled to same treatment and benefits as allowed to Ajay Malik and Arvind Malhan, as per observations of Apex Court, and they would rank higher in seniority list than Lalit Kumar and Virender Singh Lather of 1997 batch.

The learned senior counsel for interveners Mr. D.S. Patwalia has taken us to seniority list. It is contended that after decision of Single Bench of this Court, a fresh seniority list was proposed and that it will adversely affect interveners and Sandeep Singh etc.

The learned senior counsel for respondents has vehemently argued that seniority was never determined or commented upon in V.S. Hooda-I case or in V.S. Hooda-II case and even if they are entitled to benefits which they received in V.S. Hooda-I case, that would not mean that Virender Singh Hooda and others, who got benefit of V.S. Hooda-I case, are also held entitled to seniority.

Perusal of V.S. Hooda-I case shows that appellants, namely, Virender Singh Hooda and others, were ordered to be fitted to the posts ranking below to those who were selected alongwith appellants at the time of recruitment made pursuant to result declared on 19.6.1992. It was further ordered that appellants will be fitted in appropriate posts and that they will be entitled to get appropriate scale of pay by giving them benefit of increments, but they will not be entitled to any monetary benefits for the period for which they were kept out of employment. Virender Singh Hooda and others, who were selected and appointed in pursuance to V.S. Hooda-I

case, were to be fitted below 1992 batch, result of which was declared on 19.6.1992 in the order of their merit in original select list. That would mean that they will be senior to 1997 batch and 1999 batch, who were selected after 1992 batch. Therefore, by way of implication, Virender Singh Hooda and others, who were selected and appointed on the basis of V.S. Hooda-I case by various orders of Apex Court and various order of High Court, will get seniority over subsequent batches i.e. 1994, 1997, 1999 batches.

The learned senior counsel for respondents contends that Rules 9 and 20 of PCS (Executive Branch), Rules, 1930, as applicable to State of Haryana, were not brought to notice of Apex Court. He has also referred to authority of Apex Court in **Hoshier Singh Versus State of Haryana**, 1993 Supp. (4) SCC 377 wherein it was held that persons over and above vacancies advertised cannot be appointed which is exactly provided by amended Rule 20 of PCS (EB) Rules 1930, as applicable in State of Haryana.

We are of view that Hoshier Singh's judgment was also considered in earlier judgments of this Court and further considered by Apex Court. Therefore, we are of considered view that after so much time, there is no ground to quash seniority list dated 12.12.2006 as challenge to same is barred by delay and latches. Otherwise also on merits, seniority list was drawn as per judgment of Apex Court in V.S. Hooda-I case. The appointments made, in pursuance to judgment of V.S. Hooda-I, were specifically saved in V.S. Hooda case and with some modifications in Sandeep Singh's case. Consequently, petitions qua challenging seniority list dated 12.12.2006, are liable to be dismissed and judgment of learned Single Judge is liable to be reversed.

Now, we come to seniority list dated 16.4.2010, vide which Sandeep Singh and others were made senior to petitioners. This was done on the basis of order passed by Apex Court I.A. No. 4 in Civil Appeal No. 7422 of 1999, on 9.2.2010. Prayer made before Apex Court and order passed thereon are reproduced as under :-

- 'i) clarify the judgment dated 9.11.2000 passed by this Hon'ble Court in Civil Appeal No. 7422 of 1999, as to how the Appellants therein are to fitted in the cadre i.e. as per Service Rules and Instructions, thereby giving them fitment as per their position in the joint/common merit list prepared by HPSC and ;
- ii) Pass any other or further order/s which this Hon'ble Court may deem fit and proper in the circumstances of the case'

The order passed is as under :-

'The learned counsel for the opposite party has no objection to the abovesaid prayer being allowed as per clause 1 (i).

I.A. No. 4 is disposed of accordingly.'

The order passed by Apex Court shows that it was allowed as per Clause 1 (i). Respondents State of Haryana had sought as to how appellants therein are to be fitted in the cadre i.e. as per service rules and instructions, thereby giving them fitment as per their position in joint/common merit list prepared by HPSC. The Apex Court did not give any specific reply and, therefore, said order passed in I.A. No 4 in Civil Appeal No 7422 of 1999, gives nothing to petitioners therein and Government was wrong in concluding that it would mean that Sandeep Singh and others have to be given fitment, as per their position in joint/common seniority as prepared by HPSC over and above other petitioners. Infact, specific direction was given that they will get benefit of order prospectively i.e. from the date of their appointments. Therefore, date

of appointment of Sandeep Singh and others is relevant date to grant them benefit for salary, seniority and other consequential benefits. The Government has virtually undone effect of Sandeep Singh's case (supra) by issuing fresh seniority list dated 16.4.2010. Therefore, granting seniority to Virender Kumar Dahiya, Sandeep Singh, Lalit Kumar and Virender Singh Lather, from the date earlier than their appointments is against mandate of Apex Court in Sandeep Singh's case (supra) and V.S. Hooda's case (supra) though, inter se seniority of Virender Kumar Dahiya, Sandeep Singh, Jagdish Sharma, Mahavir Singh, Lalit Kumar and Virender Singh Lather, is to remain, as per their merit in select list (1997 batch). Consequently, seniority list dated 16.4.2010, is liable to be quashed and seniority of Sandeep Singh and others is to be fixed from the date of their appointments and not from date earlier thereto.

The learned senior counsel for respondent Mr. Rajiv Atma Ram has relied upon authorities of Apex Court in **Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others Versus State of U.P. and others**, 2006 (4) SCT 487, **Ajit Kumar Rath Versus State of Orissa**, 1998 (8) JT 578 and **Jagdish Ch. Patnaik Versus State of Orissa**, 1998 (3) JT 105, to press that seniority has to be determined from date of appointment. Admittedly, same is general rule. However, when there are specific order regarding fitment of persons of a particular batch, in which they were selected and Courts make an exception for reasoning mentioned in judgment, judgment will prevail being exception to rule.

The learned senior counsel for respondents Mr. Rajiv Atma Ram has also relied upon authority of Apex Court in **State of Rajasthan Versus Uchhab Lal Chhanwal**, 2014 (1) SCT 342, to press that no order can be passed at the back of a person who is adversely affected.

Further reliance has been placed by learned senior counsel for respondent upon observations made by Apex Court in **Union of India Versus S.S. Uppal**, 1998 (1) SCT 384, which are reproduced as under :-

'13. There is also another aspect of the case. The appointment as IAS, after inclusion of the name of a candidate in the select list, is not automatic. Mere inclusion of the name in the panel does not confer any right of appointment. This is also not a case of inordinate delay. The State Government as well as the officer concerned had to go through certain formalities before the actual appointment was made. It appears from the facts of this case that after the vacancy had arisen on 1.2.1989, a proposal of appointment of Uppal to IAS from the State Government was put up on 14.2.1989. Thereupon, Uppal was promoted to IAS on 15.2.1989. It cannot be said that there was unusual delay in appointing him to IAS by which he could be said to have been prejudiced. The revised rules that come into force on 3rd February, 1989, applied uniformly to all officers who were appointed on or after that date.

17. This case again does not throw any light on the controversy raised before us. Uppal was being taken into Administrative Service. He was actually inducted into service on 15th February, 1989. The rules which were in force on that day for determination of seniority will clearly apply to his case. It is true that Uppal's name was included in a panel drawn up some time in August, 1988. But mere inclusion of his name in the panel did not confer upon him any right to automatic appointment to the I.A.S. Nor can it be said that he was to be treated as to have been appointed from date when a suitable post fell vacant. It has been stated in the affidavit filed before the tribunal by Shri Hari Singh, Under Secretary to the Government of India that although a vacancy had arisen on 1st February, 1989, the proposal for appointment of Uppal to I.A.S. Was received from the State Government only on 14th February, 1989. The seniority of an officer appointed into the I.A.S. is determined according to the seniority rules applicable

on the date of appointment to the I.A.S. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. In case of **Shankarasan Dash Versus Union of India**, JT 1991 (2) SCT 555; 1991 (2) SCT 194, it was pointed out by this Court that the existence of vacancies did not give any legal right to selected candidate.'

We are of the view that present case is a different case. In the said case, there was no judgment like Virender Singh Hooda, applicable to some of petitioners. Therefore, said authority cannot apply to facts of present case.

The learned senior counsel for respondents Mr. Puneet Bali has brought to the notice of this Court that earlier I.A. No. 5-9/2013 was filed in Civil Appeal No. 7422-1999 before Apex Court, in which following order dated 12.9.9.2014, was passed :-

'The applicants are aggrieved by clarificatory order dated 9.2.2010 passed by this Court, clarifying the final judgment dated 9.11.2000. In any case, we are informed that the writ petitions are filed in the High Court as well. However, in the applications which were filed by other parties and in which clarificatory order was made, these applicants were not parties and, therefore, they can always raise a plea in the High Court that said order is not binding upon them.

With these observations, these applications are disposed of. We may further clarify that we have not entered into the merits of the applications.'

Consequently, we make following order :-

ORDER

1. LPA-666-2015, LPA-717-2015, LPA-873-2015, LPA-957-2015 and LPA-972-2015 are partly allowed. Consequently, Civil Writ Petitions, qua challenging seniority list dated 12.12.2006,

are dismissed and seniority list dated 12.12.2006 is upheld.

- 2 Seniority list of 16.4.2010, placing Sandeep Singh and others of his batch above petitioners appointed prior to their appointment, is hereby quashed.
3. Pending CM-100-LPA-2018 in LPA-666-2015 is accordingly disposed of.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

19.12.2018
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No