

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

Civil Writ Petition No. : 20842 of 2019(O&M)

Date of decision : November 27, 2019

Chandigarh Administration and another ...Petitioners

Versus

Satwinder Singh and another ...Respondents

2. Civil Writ Petition No. : 20875 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Ajay Kalwaniya and another ...Respondents

3. Civil Writ Petition No. : 27080 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Aanchal and another ...Respondents

4. Civil Writ Petition No. : 20820 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Parveen Kumar and others ...Respondents

5. Civil Writ Petition No. : 20826 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Ravinder Kaur and another ...Respondents

6. Civil Writ Petition No. : 20938 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Parvesh Kumar and another ...Respondents

7. Civil Writ Petition No. : 20939 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Sunita Devi and another ...Respondents

8. Civil Writ Petition No. : 20954 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Pawan Kumar and others ...Respondents

9. Civil Writ Petition No. : 20962 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Suman and others ...Respondents

10. Civil Writ Petition No. : 20970 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Anupam Sethi and others ...Respondents

11. Civil Writ Petition No. : 20913 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Pardeep Singh and others ...Respondents

12. Civil Writ Petition No. : 21017 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Hemant Kumar and others ...Respondents

13. Civil Writ Petition No. : 26402 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Ashok Kumar and others ...Respondents

14. Civil Writ Petition No. : 26405 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Satish Kumar and others ...Respondents

15. Civil Writ Petition No. : 26407 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Rakhi and another ...Respondents

16. Civil Writ Petition No. : 26413 of 2019(O&M)

Chandigarh Administration and another ...Petitioners

Versus

Vinod Kumar and others

...Respondents

17. Civil Writ Petition No. : 26459 of 2019(O&M)

Chandigarh Administration and another

...Petitioners

Versus

Manmohan and others

...Respondents

AND

18. Civil Writ Petition No. : 26482 of 2019(O&M)

Chandigarh Administration and another

...Petitioners

Versus

Rupesh Kumar and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Gurminder Singh, Senior Advocate with
Ms.Madhu Dayal, Advocate and
Ms.Harpriya Khemka, Advocate for
the petitioner – Chandigarh Administration.

Mr.Puneet Bali, Senior Advocate with
Mr.Vibhav Jain, Advocate
for respondents No. 2, 4 & 9 in CWP-26459-2019.

Mr.R.K.Malik, Senior Advocate with
Mr.Sunil Hooda, Advocate for respondents No.1 to 13
in CWP-21017-2019.

Mr.Akshay Bhan, Senior Advocate with
Mr.A.S.Talwar, Advocate
Mr.Akhilesh Barak, Advocate and
Mr.Mayank Matur, Advocate for respondents.

Mr.Amit Jhanji, Advocate and
Mr.Abhishek Kumar Premi, Advocate in CWP-26405-2019.

Mr.Narender Singh, Advocate for
Respondents No.30 & 34 in CWP-26459-2018.

Mr.Jagdeep Jaswal, Advocate

for respondents in CWP-20842-2019.

Harinder Singh Sidhu, J. :

1. This judgment shall dispose of eighteen writ petitions, CWP No.20842 of 2019, CWP No.20875 of 2019, CWP No.27080 of 2019, CWP No.20820 of 2019, CWP No.20826 of 2019, CWP No.20938 of 2019, CWP No.20939 of 2019, CWP No.20954 of 2019, CWP No.20962 of 2019, CWP No.20970 of 2019, CWP No.20913 of 2019, CWP No.21017 of 2019, CWP No.26402 of 2019, CWP No.26405 of 2019, CWP No.26407 of 2019, CWP No.26413 of 2019, CWP No.26459 of 2019 and CWP No.26482 of 2019. In these petitions challenge is to the judgment and order dated 06.05.2009 of the Central Administrative Tribunal, Chandigarh Bench vide which a bunch of Original Applications filed by the respondents in these petitions has been allowed. The order dated 30.05.2018 (Colly) passed by the petitioner – Chandigarh Administration scrapping the entire selection process of JBT and TGT teachers was set aside as being illegal, arbitrary and violative of Articles 14, 16, 21 and 311 of the Constitution of India.

2. For facility of reference the facts are being referred from CWP No.20842 of 2019.

3. The Education Department of Chandigarh Administration issued an advertisement on 03.11.2014 inviting applications for recruitment and appointment, inter-alia, to 489 posts of Junior Basic Teacher (JBT) and 103 posts of Nursery Teachers on regular basis. The advertisement set out the detailed procedure for the selection i.e. qualifications required for the

posts, the number of posts for various subjects, mode of selection, selection procedure etc. Another advertisement was issued on 10.11.2014 inviting applications for selection and appointment to 548 posts of Masters / Mistresses (TGT) on regular basis.

4. As per the advertisement two objective type tests of 100 marks each were to be conducted. Candidates were to be selected on the basis of total marks obtained in the two tests. Qualifying marks for each test were 40% for SC category candidates and 45% for all other candidates. No interview was to be conducted and there was no negative marking. For JBT test Paper 1 consisted of Multiple Choice Questions having 20 questions each on English, Hindi, Mental Ability, General Awareness and Teaching Aptitude. Paper-2 consisted of Multiple Choice Questions having 25 questions each on Science, Social Studies, Mathematics, and Punjabi. The level of questions was to be as per qualification prescribed for the post. For the post of TGT the Paper-1 was to consist of Multiple Choice Questions having 20 questions each on English, Hindi, Mental Ability, General Awareness and Teaching Aptitude . Paper-2 was to have Multiple Choice Questions related to the subject (s) for which the candidate had applied.

5. The exam for JBT was held on 31.1.2015 / 1.2.2015 and for the post of TGT it was conducted from 14.2.2015 to 28.2.2015. As many as 43491 applications were received against advertisements (27075 for TGT Cadre; 12921 for JBT and 3495 for NTT). The result of test was declared on 1.3.2015. It was revised after considering the objections raised by the candidates in the month of May, 2015. The offers of appointment to the selected candidates were given in the month of August, 2015. 443

candidates had joined as JBT, 31 candidates joined as NTT and 430 candidates as TGT. As per their appointment letters the candidates were to be on probation for a period of two years. They were to receive fixed monthly emoluments equivalent to the minimum of the pay band of the post as per instructions issued by Chandigarh Administration vide letter dated 10.7.2015.

6. In 2016 during investigation into allegations pertaining to illegalities committed in the process of recruitment of employees of PUNSUP a disclosure statement was made by an accused arrested in that case that he had also leaked the paper of JBT and TGT conducted by Education Department, Chandigarh Administration. The Director Vigilance Department, Punjab made a complaint dated 29.07.2016 regarding the leakage of question papers regarding this examination. FIR No. 128 was dated 29.7.2016 was registered at Police Station, Sector 11, Chandigarh under Sections 420/120-B IPC and Sections 8/9/13 of the Prevention of Corruption Act, 1988., wherein names of 32 candidates, who were selected and appointed as JBT, were included. On candidate from TGT was named. Another FIR No.201 dated 11.10.2017 was registered wherein names of 7 candidates of TGT were included.

7. Vide order dated 12.07.2017 the probation period of the selected teachers was extended and it was directed that their probation be not cleared till the final outcome of the investigations. A Special Investigation Team (SIT) was constituted. The detailed police investigations revealed large scale irregularities. Three status reports dated 6.11.2017, 14.3.2018 and 21.3.2018 were submitted. The list of 49

beneficiaries who had access to leaked question papers was also given. Report under Section 173 Cr.P.C. was submitted.

8. Upon receipt of the status report dated 6.11.2017 the Administrator U.T. Chandigarh constituted a High Powered Committee comprising of (i) Finance Secretary (ii) Secretary Education (iii) Special Secretary Personnel (iv) Legal Remembrancer or his Nominee (v) Director School Education (vi) Senior Standing Counsel Chandigarh (vii) S.P. (Operation) SIT to examine it. The Committee considered the status reports dated 06.11.2017, 14.03.2018, 21.03.2018 as well as the challan submitted under Section 173 Cr.P.C. It concluded that the question papers of JBT and TGT were leaked from the printing press and large number of candidates obtained the question papers after paying bribes. As the leakage and further distribution of question papers to the candidates was done through several conduits it was practically not possible to ascertain the total number of candidates who had used the leaked question papers. It concluded that the whole recruitment process of JBT and TGT teachers of 2015 had got vitiated due to number of malpractices as explained by the Investigating agency.

9. The Committee suggested two alternatives:

First: to terminate the services of 43 candidates out of 49, whose names are mentioned in the status report, as 5 candidates were not offered appointment and one had expired,
Second: to cancel the selection for the post of JBT and TGT and consequently terminate the services of candidates. A fresh test be held for all the applicants, who had applied for the post of JBT, TGT in response to the advertisement issued in

October/November, 2015.

10. The Education Department accepted the report of the Committee after taking approval of the Competent Authority. It chose the second alternative suggested by the Committee. Vide order dated 30.05.2018 the selection based on the written test conducted in 2015 was cancelled and the services of the selected candidates were dispensed with. All the candidates who had applied for the post of JBT/TGT in pursuance of the advertisement in October/November 2014 were given a chance to appear in a fresh written test to be held for all the applicants. The eligibility conditions and other requirements would remain the same. In the event of their selection in the fresh written test the claim for counting of past service rendered upon their earlier selection now cancelled would be considered as per instructions/ rules applicable in this regard.

11. The order dated 30.05.2018 was challenged by the aggrieved candidates. Number of Original Applications were filed. The Original Applications have been disposed of by the common impugned judgment.

12. Ld. Tribunal faulted the order of the Administration on various counts. The relevant paragraphs from the judgment of the Tribunal are as under:

(i) *ARBITRARINESS:*

“ 23. A perusal of the sequence of events and the facts mentioned in the aforesaid impugned orders, make it more than clear that the SIT has formed its opinion, based upon an FIR which is further based on an disclosure statement and the authorities have not cared to sort out the tainted persons from untainted one and for the sins of few persons, who could have

been pin pointed, the entire lot has been castigated. In fact the very language used in the order indicates that the authorities have tried to save their skin from conducting a proper enquiry and to escape from their liability to find out the truth, they have decided to find out a easy way out to cancel the entire selection itself with a view to dispense with the services of the applicants. What is intriguing is that after mention of the sequence of facts and judgements and even underling a portion of the same that it may be difficult to identify innocent ones from those who indulged in malpractices, the competent authority has not even cared to record a specific finding that it would be difficult or impossible for them to identify the innocents or guilty persons out of the entire lot. In fact, their enthusiasm and zeal to find an easy way out is apparent when it is observed that investigation in process is still going on, which may take long time to complete and as such entire recruitment process had got vitiated and recommendation was made. In other words, there has not been any investigation, worth the name, to find out the truth of the matter and the decision to scrap the selection is based on conjectures and surmises, which cannot be appreciated by a court of law. After cancellation of entire process, they have decided to conduct the re-test of only those candidates who had applied including the applicants who were selected and offered appointment. To us, it is a clear cut case of arbitrariness on the part of the competent authority and the impugned order, in that relevant connection, stands vitiated. It is well settled law that the discretion vested in an authority must be exercised judicially and not in an arbitrariness else it would be illegal on the touchstone of constitutional provisions. This issue is no longer res-integra and stands settled.

(ii) TERMINATION OF SERVICE DURING PROBATION

PERIOD

“26. The issue is, whether the impugned action of the respondents can be justified or not because the services of the applicants have been terminated, while they were working during extended period of probation. As can be seen from the rule position itself, in order to invoke the clause of dismissal from service during probation period, the competent authority has to examine the work and conduct of an employee, whether he is fit to be retained in service or not. In the present case, the respondents have not spelt out even a single reason that the work and conduct of the applicants is good or bad. There is no inkling in that regard, at all. The order clearly indicates that it has been passed on the ground that the selection process is tainted and therefore, their services have been terminated which is not sustainable. For this, we have to go through the concept, meaning and purpose of probation.

xxx xxx xxx

32. Now examining the case in hand, in the light of rules and law on the subject, admittedly, the applicants came to appointed in the year 2015 precisely on 13.8.2015 and they were put on probation for a period of two years and before their period of probation could expire, it was extended and ultimately vide order dated 13.8.2018 (Annexure A-1) their services were terminated. The argument raised by the learned counsel for the applicants is that the respondents could not dispense with their services during the period of probation, on the ground other than that of their suitability, as provided in rules. Since their services have been terminated, which is based upon an enquiry by the SIT, thus, the impugned orders are liable to be interfered with and are to be quashed by this Court based upon the law laid down in the case of Parshotam Lal Dhingra and Dipti Prakash Banerjee (supra). The plea, apparently appears to be having force and deserves to be

accepted. Admittedly, the basis of impugned order is two FIRs, the report of SIT and view of Committee based upon the report of the SIT which was apparently done behind the back of the affected persons and the respondents have terminated the services of the applicants by cancelling the selection based upon the written test conducted from 14.2.2015 to 28.2.2015. Once the motive behind the termination of the services of the applicants is an FIR dated 29.7.2016 registered under Sections 409/420/120-B of IPC and Sections 8/9/13 of Prevention of Corruption Act, 1988, which was in turn was deliberated by SIT, where the allegations are that since the paper has been leaked before the scheduled examination as per the disclosure statement, at the initial stage itself, from printing press, and thus it has travelled to hundred hands, thus, to have a fair game, decision was taken to dispense with their services with a rider to give a chance to appear in a fresh test and if they are able to make out, then they will be taken back in service with full benefits. The phrase that the respondents have used, while dispensing with the services of the applicants, cannot be approved because by this order, they have terminated the services of all selected candidates by levelling them as tainted as the persons, who secured appointment by illegal or irregular method. To prove their innocence, they have not even been given a chance to defend. Thus, effectively, all those candidates who were found eligible and offered appointment stand branded as culprits or in other words accused who have to reappear in the written test and if they pass, the stigma will be removed otherwise they will carry stigma for entire life that they had secured appointment by unfair means. Thus, apart from 49 candidates against whom an FIR has been registered and have been termed as tainted, others whose names are not there, have also been kept in same bracket, without their being any fault

on their part having been pinpointed by respondents. Merely if some of them are found to have indulged in an illegal procedure for securing appointment, which is not known to others, the entire lot cannot be penalized for the sin of few as it would be travesty of justice.

34. Thus, we have no hesitation in holding that order terminating the services of a probationer on a ground, other than of his/her conduct, during the probation period, cannot be allowed to sustain. It is also not in dispute, as noted in the preceding paras, that their services have been terminated during the probation period. There is no whisper that their work and conduct is not satisfactory, rather, they have been thrown out of service on a report of SIT, which was concluded based upon two FIRs on a disclosure statement by an accused in some other selection namely PUNSUP, Punjab, and without recording any reason on their conduct during the probation period, the impugned orders have been passed, which to our mind, cannot sustain in view of the law laid down in the cases of Parshotam Lal Dhingra and Dipiti Prakash Banerjee(supra).”

(iii) VIOLATION OF PRINCIPLES OF NATURAL JUSTICE AND NON ADHERENCE TO ARTICLE 311(2) OF THE CONSTITUTION.

“35. Now coming to the basic issue of violation of principles of natural justice having taken place in the case in hand. Even during the course of the argument, the respondents have failed to brought anything on record or to bring to our notice that apart from SIT, the respondents have conducted any inquiry to found out that paper has been leaked or travelled to hundreds of candidates and as such they have cancelled entire examination, because the impugned orders are very clear that these are entirely based on reports of SIT, which are based on FIRs, which are further based on a

disclosure statement. Once they have yet to identify tainted and segregate the innocents, they cannot justify their action. Admittedly, the action of the respondents, on the face of it, appears to be based on no evidence. They have failed to satisfy this Court, that they have conducted any enquiry to segregate the innocents from the tainted candidates. Not only that, they have also failed to satisfy as to how they can dispense with the principles of natural justice under Article 311(2) of the Constitution of India. It is not a case that the services of the applicant have been terminated by a simplicitor order as the same contains the motive, as well as foundation and that is that entire selection is based on perceived cheating/leakage of paper on the basis of a disclosure statement of an accused in some other case relating to PUNSUP. The orders clearly indicate that the disclosure statement, followed by two FIRs, SIT Report and recommendation of a Committee became basis for dispensing with the services of the applicants. Merely, mention of words that —decision will not cast any personal stigma on any of the candidate|| would not make the orders as legal, when same are illegal on the face of it, as these cast stigma upon the applicants. In that view of the matter, the respondents could not adopt a short cut method to terminate the services of the applicants. Rather, it was obligatory for them to have followed the principles of natural justice enshrined in Article 311(2) of the Constitution of India, by conducting a proper enquiry and thereafter to pass the necessary orders.

xxx xxx xxx

52. When we apply the aforesaid legal principles to the facts of the present case, we find that the respondents have not offered any reply or explanation, what to talk of with cogent reasons, for dispensing with the enquiry as envisaged under

Article 311 or their satisfaction for not holding a regular department enquiry. In fact the impugned orders show that the respondents had made up their mind not to conduct any inquiry and their view was swayed by the decisions of Hon'ble Apex Court mentioned in the order. They have not even recorded a finding that it is not possible to conduct an enquiry. They rely upon the three quoted cases, without discussing as to in what manner the same apply to the facts of the case in hand. The only explanation is that the ongoing investigation will take a long time. Can this be a reason for dispensing with enquiry or en mass setting aside the recruitment of applicants against whom there is no proven misconduct, except 43 candidates against whom FIRs have been lodged? May be on criminal side an investigation may take time but on departmental side, this enquiry may not take much time and the respondents could have conducted an enquiry. But they chose a short cut and easy method, giving a tool in the hands of the applicants to challenge the impugned orders.

53. In the peculiar facts and circumstances of this case, it can safely and easily be concluded that dispensing with the enquiry and coming to a conclusion for terminating the services of a probationer, which is based upon a confessional statement to a Police, and on an FIR, which was considered by the SIT and then terminating their services without holding a regular departmental enquiry, and not putting them to notice by following the principles of natural justice. Thus, we are of the view that the order also deserves to be quashed being violative of Article 311 of the Constitution of India as the action in cancelling the entire result and terminating the services of the selected applicants including un-tainted candidates, without offering them an opportunity to prove their innocence, which is not known to

the service jurisprudence, cannot be sustained by a court of law. In short, we have no hesitation in holding that the classification done by respondents, of putting all the candidates in one bracket, to say the least is not proper and cannot be sustained on the touchstone of parameters laid down in Article 14 of the Constitution of India. It is well known that while Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be —arbitrary, artificial or evasive. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfill the two conditions namely, the classification must be founded on the intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group and secondly the differentia must have a rational relation to the object sought to be achieved by the act. The differentia which is the basis of the classification and the object of the act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the act which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. The classification carried out by respondents in this case, cannot be approved of by this Tribunal.”

13. The Ld. Tribunal thus held that the order of the Chandigarh Administration cancelling the selection and dispensing with the services of the candidates was illegal, arbitrary, in violation of Articles 14, 16, 21 and 311 of the Constitution and also violative of the principles of natural justice

and quashed the same.

14. The Ld. Tribunal held that the applicants fell in two categories. First category comprised the 49 candidates whose names were mentioned in the FIRs. The second category comprised those whose names were not mentioned in the FIRs and against whom there was no material that they had indulged in cheating and fraud. In respect of the candidates whose names were not mentioned in the FIRs the Tribunal held that the Administration would be free to take action against them after carrying out regular enquiry and if they were found guilty necessary action could be taken against them in accordance with law. In respect of the candidates whose names were mentioned in the FIRs action could be taken against them as per rules and law after following the principles of natural justice.

15. Sh. Gurminder Singh, Ld. Senior Counsel appearing for the appellants contended that the Tribunal had wrongly allowed the Original Applications. Status report received from SP (Operation) SIT, Chandigarh Police clearly revealed that paper for the post of JBT and TGT in Education Department, Chandigarh, which was held in the month of February 2015 had been leaked from the printing press. Large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate. The whole network was working in such a manner that all the persons involved right from the supplier of leaked paper to different conduits, agents, candidates, further candidates themselves became agents bringing still more candidates thereby making long chains/pyramids. It had become impossible to trace the entire extent of illegal acts by which the selection process was vitiated. As per the

module chart submitted by the investigating agencies, the paper was leaked by Ranbir Singh Rawat an employee of the printing press in Delhi. He handed over two sets of the question papers which led to two modules of the scam i.e., Luknow Module and Delhi, Rewari and other Module. Ranbir Singh Rawat died in 2016 due to cardio- pulmonary arrest. The main agent of the second Module Kamlesh Kumar @ Vakeel Sahib died while in custody of the Telangana Police. Accordingly the beneficiaries of the Lucknow Module could be identified to a certain extent but the beneficiaries of the Delhi, Rewari and other Module could not be identified due to the death of the main agents. The segregation of the tainted and the non-tainted had therefore become impossible. In such a situation the order dated 30.05.2018 dispensing with the services of the respondent/teachers with a provision for re-conducting the written test afresh is the only reasonable and practical way to protect the meritorious and weed out the tainted.

16. He further argued that it is well settled that neither principles of natural justice nor the statutory Service Rules for dispensation of service or the protection of Article 311 is attracted in a case where the selection is cancelled on the ground that the very source of selection and appointment is is vitiated due to large scale irregularities. Hence the order of the Tribunal faulting the termination order on these grounds cannot sustain.

17. He relied on **All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614 : Gohil Vishvaraj Hanubhai & Others versus State of Gujarat & Others (2017) 13 SCC 621 and Madhyamic Shiksha Mandal, M.P. Vs Abhilash Shiksha Prasara**

Samiti (1998)9 SCC 236

18. Ld. Counsel for the respondents supported the judgment of the Tribunal. They stressed that after completion of investigation challan has been filed and only 49 candidates have been named therein. When the investigation has revealed only 49 names the entire selection cannot be set aside on mere assumption and surmises. The respondents were appointed in August 2015. Before their termination they had worked for nearly three years. There is no complaint against their work and conduct. Rights have accrued in their favour in terms of the statutory service rules. Their service could not be terminated on the ipse dixit of the appellants without issuance of show cause notices to them. They argued that it was rightly held by the Tribunal the appellants did not make any sincere effort to segregate the tainted and the non-tainted. All the appointees cannot be made to suffer for the fault of a few. They have relied on **Inderpreet Singh Kahlon v. State of Punjab, (2006) 11 SCC 356** and **Joginder Pal v. State of Punjab, (2014) 6 SCC 644**.

19. In **Inderpreet Singh Kahlon's** case (supra), Hon'ble Supreme Court considered in detail the circumstances/ situations in which the services of persons who had been appointed and had worked for some years could justifiably be terminated on the ground that their selection was tainted.

20. This was a case where services of Punjab Civil Service(Executive) Branch and Punjab Civil Service (Judicial) Branch officers were terminated on the ground that the selections had been made by the then Chairman of the Punjab Public Service Commission after receiving

hefty bribes or on recommendations. FIRs had been registered. The modus operandi had been disclosed by one Jagman a confidant and tout of the then Chairman who had turned approver.

21. Hon'ble Supreme Court held that where the services were terminated on a finding that the selection process itself was tainted then neither the relevant service rules nor the provisions of Article 311 of the Constitution are attracted as that would be a case of the appointment being void.

“40. We at the outset would furthermore notice that having regard to the submissions made before us by Mr. Dwivedi and Mr Rao that the services of the appellants before us were terminated not in terms of the rules but in view of the commission of illegality in the selection process involved, we need not consider the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution of India. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. [See Secy., State of Karnataka v. Umadevi (3)] But before such a finding can be arrived at, the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied.”

The Court then spelled out the three essential prerequisites, fulfilment whereof was essential, before the termination of service of appointees who after appointment had put in a few years of service could be justified.

“41. If the services of the appointees who had put in few years of service were terminated, compliance with three principles at the hands of the State was imperative viz. (1) to

establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt.

42. Once such findings were arrived at, all appointments traceable to the officers concerned could be cancelled. But admittedly, although there had been serious imputations against Shri Sidhu being at the helm of the affairs of the Commission, all decisions made by the Commission during his tenure are yet to be set aside. We do not intend to enter into the said controversy as we were informed at the Bar that the High Court itself is in seisin of the matter. We may, however, note that Mr Dwivedi in his usual frankness stated that there may not be any answer to that query.

43. Apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court which have been repeated by the learned counsel for the State before us, it is difficult to accept that it was demonstrated by the State that it was absolutely impossible for it to separate the innocent people from the tainted ones.

44. It is also not a case where all the relevant records have been destroyed. The Vigilance Bureau does not say so. Question papers, answer sheets and other documents are available. Reports made by the Bureau were prepared upon examination of the materials collected by it. The High Court itself has noticed that what is not available is the records

relating to the procedure adopted in regard to the appointment of paper-setters. It may be true that such records could be destroyed only after a period of five years but it has not been pointed out by the State as to how by reason of the non-availability thereof, it became difficult for the authorities to arrive at the correct facts. We have not been informed that connecting materials were also destroyed. It has been noticed by the High Court that all relevant information was available and submitted to the court. It cannot, therefore, be said that a fair investigation into the whole affair was an impossible task or despite availability of all such records a thorough investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large-scale fraud. It has also not been found that all appointments were made on extraneous considerations including monetary consideration.

45. If fraud in the selection process was established, the State should not have offered to hold a reselection. Seniority of those who were reselected ordinarily could not have been restored in their favour. Such an offer was evidently made as the State was not sure about the involvement of a large number of employees.”

22. Hon'ble Supreme Court held that there was a distinction between proven cases of mass cheating in a Board or University examination and unproven imputed charges of corruption in respect of appointments to public service. Thus the principles and considerations which would justify cancellation of a Board examination would not justify cancellation of the selection and termination of service of employees after their appointment. Hon'ble Supreme Court stressed that in a case of this nature the question which requires serious consideration is as to whether

due to the misdeeds of some candidates, honest and meritorious candidates should also suffer. The Court elaborately discussed the law on the subject as under:

“46. A distinction moreover exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved.

47. In Bihar School Examination Board v. Subhas Chandra Sinha the Court came to a finding that the high percentage of marks obtained by the candidates who appeared at the selection of the centre in question did give rise to a suspicion that unfair means had been practised and the Board was justified in investigating the case. While the High Court held that despite the same, the principles of natural justice were required to be complied with, this Court noticed the reports of the experts and came to the conclusion that the results thereof speak for themselves. It was noticed that whereas in other centres the average of successful candidates was 50%, in the centre in question, the percentage of passing in different papers was unusually high ranging from 70% to 100%. In that view of the matter, this Court held: (SCC p. 652, paras 12-13)

“12. These figures speak for themselves. However, to satisfy ourselves we ordered that some answer books be brought for our inspection and many such were produced. A comparison of the answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an outside source. Therefore the conclusion that unfair means were adopted stands completely vindicated.

13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging anyone individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an

opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged anyone with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.”

Such is not the case here.

48. *In Anamica Mishra v. U.P. Public Service Commission an error was found out at the stage of calling candidates for interview. This Court opined that as no defect was pointed out in regard to the written examination and the sole objection was confined to the exclusion of a group of successful candidates in interview there was no justification for cancelling the written part of the recruitment examination and the situation could have been appropriately met by setting aside the recruitment and asking for fresh interview of all eligible candidates on the basis of the written examination.*

49. *Yet again in S.P. Biswas v. State Bank of India the Court refused to interfere with the result of the examination as it was shown that there had been neither any mass copying nor was the final result shown to have been influenced by unfair means by any candidate.*

50. *In those cases also tainted cases were separated from the non-tainted cases. Only, thus, in the event it is found to be impossible or highly improbable, could en masse orders of termination have been issued.*

51. *Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.*

52. *We may, at this stage, notice that the following cases would fall in the different categories which are enumerated*

hereinbelow:

(i) Cases where the “event” has been investigated:

(a) *Union Territory of Chandigarh v. Dilbagh Singh*, SCC at paras 3 and 7.

(b) *Krishan Yadav v. State of Haryana*, SCC at paras 12, 15 and 22.

(c) *Union of India v. Anand Kumar Pandey*, SCC at para 4.

(d) *Hanuman Prasad v. Union of India*, SCC at para 4.

(e) *Union of India v. O. Chakradhar*, SCC at para 9.

(f) *B. Ramanjini v. State of A.P.*, SCC at para 4.

(ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded:

(a) *O. Chakradhar*

(b) *Krishan Yadav*

(c) *Hanuman Prasad*

(iii) Cases where the selection was made but appointment was not made:

(a) *Dilbagh Singh*, SCC at para 3.

(b) *Pritpal Singh v. State of Haryana*

(c) *Anand Kumar Pandey*, SCC at para 4.

(d) *Hanuman Prasad*

(e) *B. Ramanjini*, SCC at para 4.

(iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules:

(a) *Krishan Yadav*

(b) *Pramod Lahudas Meshram v. State of Maharashtra* wherein appointments had been made without following the selection procedure.

(c) *O. Chakradhar* wherein appointments had been made without typewriting tests and other procedures of selection having not been followed.

53. It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. (See *P.S. Sathappan v. Andhra Bank Ltd.*, *M.P. Gopalakrishnan Nair v. State of Kerala* and *Haryana State Coop. Land Development Bank v. Neelam*.)

54. In *Benny T.D. v. Registrar of Coop. Societies* this Court repelled a contention raised therein that in view of the findings

of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, public interest demanded annulment of the entire selection. This Court held that the same could not be done as the same would tantamount to gross violation of the principles of natural justice which cannot be brushed aside on the ground that public interest demands annulment of the selection.

55. Yet again in Onkar Lal Bajaj v. Union of India this Court while dealing with a case of en masse cancellation of the licences granted to the LPG distributors as a result whereof unequals were said to have been clubbed by reason of arbitrary exercise of executive power, the same was held to be impermissible stating: (SCC p. 693, para 45)

“45. The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories—tainted and the rest—on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution.”

It was further held: (SCC p. 694, para 46)

“46. The aforesaid observations would apply with equal if not more force to DSBs if media exposure that the allotments were made either to the high political functionaries themselves or their near and dear ones is correct, the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any cases exposed by the media.”

This Court further observed: (SCC pp. 690-91, paras 35-36)

“35. The expression ‘public interest’ or ‘probity in governance’ cannot be put in a straitjacket. ‘Public interest’ takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether government action was taken in public interest or was taken to uphold probity in governance.

36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilised society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.”

56. Yet again in Union of India v. Rajesh P.U., Puthuvalnikathu this Court observed: (SCC p. 290, para 6)

“Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

(See also Ashok Lanka v. Rishi Dikshit, paras 42-50.)

57. The High Court, therefore, cannot be said to be right in applying the principle of mass cheating cases in the instant case.

58. Contention of Mr.Dwivedi, as noticed hereinbefore, centres around condemnation of selection and not of the candidate. But, when the services of the employees are terminated inter alia on the ground that they might have aided and abated

corruption and, thus, either for the sake of probity in governance or in public interest their services should be terminated, the court must satisfy itself that conditions therefor exist. The court while setting aside a selection may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled. We, however, do not agree with the submission of Mr Dhavan that the decision of the Commission was collegiate in nature as it is well known that one of the members of the Commission was biased, other members could also be influenced by him. (See Ajay Hasia v. Khalid Mujib Sehravardi.)

59. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.”

In his separate concurring judgment, Dalveer Bhandari J. took pains to highlight the serious repercussions that a cancellation of selection has not only on the appointees but also their families. It was stressed that though the task of segregating the tainted from the non-tainted may be difficult but it must be undertaken. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.

“117. The principal question which needs to be adjudicated is whether, in the facts and circumstances of these cases, the respondents were justified in cancelling the entire selection both of executive and judicial officers?

118. Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R.S. Sidhu, the then Chairman, Punjab Public Service Commission. On a careful scrutiny of the facts and circumstances of the case, in

my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, was it an impossible task.

119. The peculiar facts of this case which need to be highlighted are that some of the candidates have worked for about three years and their services were terminated only on the basis of criminal investigation which was at the initial stage. The termination of their services as a consequence of cancellation of selection would not only prejudice their interests seriously, but would ruin their entire future career.

120. It may be pertinent to mention that during the said period there has been no allegation regarding the integrity or efficiency of these officers.

121. The facts of this case reveal that the material supplied to the Committee having regard to the fact that majority of the officers named in the FIR belonged to 2001 batch, the respondents not only cancelled the entire selection of 2001 batch, but on the basis of the cancellation of selections of 2001 batch the entire process of 1999 and 2002 selections was also cancelled. It is also relevant to mention that the selection process for the year 1998 was not the subject-matter nor any recommendation had been made by the Committee, even then the selections of this year were also vitiated. The High Court Committee without there being sufficient and adequate material on record recommended cancellation of selections of both the executive and judicial officers and the Full Bench erred in accepting the recommendation and terminating the services of all the officers.

122. A close scrutiny of the facts of this case clearly reveals that the judicial officers did not get a fair treatment by the High Court. They were not given copies of the report and other material on which reliance was placed and they virtually had

no chance of making effective representation before the Committee or any other forum where they could ventilate their grievances and present their point of view.

123. When the basis of termination is serious allegations of corruption, then it is imperative that the principles of natural justice must be fully complied with.

124. The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.”

23. In **Joginder Pal v. State of Punjab, (2014) 6 SCC 644**, Hon'ble Supreme Court re-emphasized the necessity to adhere to the principles outlined in Inderpreet Singh Kahlon's case which were formulated as under:

“10. From the reading of the judgment in Inderpreet Singh Kahlon case, one can discern the following principles:

10.1. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It

would be a nullity. Since the services of the appellants were terminated not in terms of the Rules but in view of the commission of illegality in the selection process involved, the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution need not be considered.

10.2. *Before a finding that an appointment has been made in violation of Articles 14 and 16 of the Constitution can be arrived at, the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, can the legal principles be applied. When the services of employees are terminated inter alia on the ground that they might have aided and abetted corruption and, thus, either for the sake of probity in governance or in public interest their services should be terminated, the court must satisfy itself that conditions therefor exist. The court while setting aside a selection may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.*

10.3. *A distinction exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved. Only in the event it is found to be impossible or highly improbable that the tainted cases can be separated from the non-tainted cases could en masse orders of termination be issued. Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate*

the tainted from the non-tainted candidates.

10.4. *Cases which may arise where the selection process is perceived to be tainted may be categorised in the following manner:*

- (i) Cases where the “event” has been investigated.*
- (ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded.*
- (iii) Cases where the selection was made but appointment was not made.*
- (iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules.*

If the services of appointees who had put in a few years of service were terminated, compliance with three principles at the hands of the State was imperative viz. (1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed went to the root of the matter, which vitiated the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority had been found to be part of the fraudulent purpose or the system itself was corrupt.

10.5. *Once the necessary factual findings as enumerated above are arrived at, or it is found impossible or highly improbable to separate tainted from untainted cases, all appointments traceable to the officers concerned could be cancelled. But admittedly, in the present case, although there had been serious imputations against*

Ravinderpal Singh Sidhu being at the helm of the affairs of the State Public Service Commission, all decisions made by the Commission during his tenure are yet to be set aside.”

11. Applying these principles to the facts of the case, the Court in Inderpreet Singh Kahlon case found that no candidate for the year 2001 had been appointed and, therefore, persons who were selected in that year were on a different footing as merely a person comes in the selected list, he has no right to be appointed on that ground. However, held the Court, those who had already been appointed and had completed about three years of service, some of them had even passed the departmental test and some were given higher responsibilities and had even completed the period of probation or nearing the completion thereof and were working to the satisfaction of the authorities concerned, different yardsticks were to be applied while terminating their services. As a matter of fact, the Court found that apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court, it was difficult to accept the contention of the State Government that it was absolutely impossible for it to separate the innocent candidates from the tainted ones. In the opinion of the Court, by appointing an independent scrutiny committee it was still possible to sift the evidence and separate tainted candidates from the innocent ones. The Court also recorded that relevant records were still available and had not been destroyed, which included question papers, answer sheets and other documents. Since these records were still available, a fair investigation into the whole affair was still possible. Such an exercise was, therefore, needed when it had not been found that all the appointments were made on extraneous considerations, including monetary consideration. It was, thus, held that the High Court was not right in applying the principle of “mass

cheating cases” in the instant case.

12. The Court in Inderpreet Singh Kahlon case concluded the matter in the following manner:

12.1. If services of appointees who had put in a few years of service are to be terminated, compliance with following principles by State is imperative:

(1) sufficient materials are to be collected, to be gathered by thorough investigation in fair and transparent manner;

(2) illegalities committed must go to the root of the matter, vitiating entire selection process; and

(3) the appointees/officers in majority must be found to be part of the fraudulent purpose or the system itself must be found to be corrupt.

12.2. In the present case, above principles not having been adhered to and since it could not be said that a fair investigation into the suspected selection process to the Punjab PCS for the years 1998-2001 was an impossible task, or despite availability of a large part of the records a thorough investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large-scale fraud, the High Court was not right in applying the principle of mass cheating cases in the instant case and approve the en masse termination of services of the appellants by the State.

12.3. Impugned orders of the State Government and the High Court were set aside. Matters were remitted to the High Court for consideration afresh, status quo to be maintained in the meantime. The High Court was directed to constitute two independent Scrutiny Committees, one relating to the executive officers and the other to the judicial officers. Various directions were given for functioning of said Committees and

expeditious disposal of the matters, and State was directed to file report in this Court in each individual case. It was further directed to unearth the scam and spare no officer involved in wrongdoing, howsoever high he may be.

XXX

XXX

XXX

40. *In view of the above, the issue of entire selection process having been vitiated would have arisen only if the findings of the Committee were that it was not possible to distinguish the cases of tainted from the non-tainted ones and there was a possibility that all of them would have got the benefit of wrongdoings of Mr Sidhu and his accomplices. Fortunately for these appellants, it is not so as they have been found innocent. The appellants get ensconced, earning a safe place, once they are removed from the category of nefarious persons. Though the tainted candidates have rightly received their comeuppance, but the innocent persons cannot be punished with them. Thus, it is difficult to accept the fallible conclusion of the High Court.”*

24. The judgments relied on by the Ld. Counsel for the appellants do not pertain to cases of cancellation of selection and termination of appointments after the appointees have put in some years of service as in the present case. The present case would have to be decided in the light of the principles settled in the aforementioned two cases.

25. The question is whether the above said principles can be said to have been fulfilled in the present case:

26. The facts broadly lie in a narrow compass:

The exam for JBT was held on 31.1.2015 / 1.2.2015 and for the

post of TGT it was conducted during 14.2.2015 to 28.2.2015. After declaration of result offers of appointment to the selected candidates were made in August, 2015. As per their appointment letters the candidates were to be on probation for a period of two years. In 2016 during investigation into allegations pertaining to illegalities committed in the process of recruitment of employees of PUNSUP a disclosure statement was made by an accused arrested in that case that he had also leaked the paper of JBT and TGT conducted by Education Department, Chandigarh Administration. FIR No. 128 was dated 29.7.2016 was registered at Police Station, Sector 11, Chandigarh under Sections 420/120-B IPC and Sections 8/9/13 of the Prevention of Corruption Act, 1988, wherein names of 32 candidates, who were selected and appointed as JBT, were included. Another FIR No.201 dated 11.10.2017 was registered wherein names of 7 candidates of TGT were included. The probation period of the selected teachers was extended and it was directed that their probation be not cleared till the final outcome of the investigations. A Special Investigation Team (SIT) was constituted. Three status reports dated 6.11.2017, 14.3.2018 and 21.3.2018 were submitted. The list of 49 beneficiaries who had access to leaked question papers was also given. Report under Section 173 Cr.P.C. was also submitted. Upon receipt of the status report dated 6.11.2017 the Administrator U.T. Chandigarh constituted a High Powered Committee to examine it. The Committee considered the status reports dated 06.11.2017, 14.03.2018, 21.03.2018 as well as the challan submitted under Section 173 Cr.P.C. It concluded that the question papers of JBT and TGT were leaked from the printing press and large number of candidates

obtained the question papers after paying bribes. As the leakage and further distribution of question papers to the candidates was done through several conduits it was practically not possible to ascertain the total number of candidates who had used the leaked question papers. It concluded that the whole recruitment process of JBT and TGT teachers of 2015 had got vitiated due to number of malpractices as explained by the Investigating agency. It outlined two alternatives. Alternative 1 to terminate the services of those who were named. Alternative 2 to cancel the entire selection and hold a re-test limited to applicants for the posts. The appellants chose the second alternative.

27. As the action is based on the report of the Committee it would be appropriate to first refer to it:

“REPORT OF THE COMMITTEE CONSTITUTED TO EXAMINE THE STATUS REPORTS REGARDING SELECTION OF JBT/TGT TEACHERS DURING THE YEAR 2015

A Committee consisting of the following members was constituted as per the orders of HE – Administrator, UT, Chandigarh vide order No.DSE-UT-S4-11(203)16/3830-31, dated 01.02.2018 (Annexure-1) to examine the status report in case FIR No.128 dated 29.07.2016 U/s 409, 420, 120 B IPC and Section 8, 9, 13(1)d, 13(2) PC Act, 1988, Police Station-11, Chandigarh and for suggesting further course of action in the matter :-

- | | | |
|----|--|--------------------|
| 1. | <i>Finance Secretary, Chandigarh Administration</i> | <i>Chairperson</i> |
| 2. | <i>Secretary Education, Chandigarh Administration</i> | <i>Member</i> |
| 3. | <i>Special Secretary, Personnel, Chandigarh Administration</i> | <i>Member</i> |
| 4. | <i>Legal Remembrancer, UT or her nominee</i> | <i>Member</i> |
| 5. | <i>Director School Education, UT Chandigarh</i> | <i>Member</i> |
| 6. | <i>Senior Standing Counsel, UT Chandigarh</i> | <i>Member</i> |

SP (Operation), SIT Chandigarh Police and Deputy Director (Admn) School Education were to be associated as per requirement. Director School Education was to present the requisite record alongwith the office File No.11 (203) 16 to the committee. The

meetings of the committee were convened on 13.02.2018, 23.02.2018, 08.03.2018 and 21.03.2018 (Annexure-VII). The committee was briefed as under :-

1. Advertisement for the posts to JBT (489), NTT (103) and TGT (548) was got published in October/November, 2014 by Education Department, Chandigarh Administration. The work relating to acceptance of online application, holding of written test and preparation of merit list was outsourced to CDAC.
2. In response to the advertisement, 12921 applications were received by the Department for the posts of JBT, 3495 applications were received for the posts of NTT and 27075 applications were received for the posts of TGT. All the candidates who applied on or before due date alongwith requisite fees were issued roll no. to appear in the written test. It was mentioned in the advertisement that list of selected candidates will be released after checking of eligibility conditions.
3. The work relating to setting of question paper, printing and distribution of question paper was given to Panjab University vide letter dated 04.12.2014. Written test for the post of NTT and JBT was held on 31.01.2015/01.02.2015 and test for the post of TGT was conducted from 14.02.2015 to 28.02.2015. Result of written test was declared in March, 2015 and due to errors in answer key the result was revised in May, 2015. As per details mentioned in the advertisement, Paper-I was common for all the 12 subjects of TGT posts and was conducted on 14.02.2015. Paper-II for TGT subjects was conducted on different dates from 14.02.2015 to 28.02.2015.
4. Selection lists for the post of JBT, NTT and TGT were issued from July, 2015 onwards and appointment orders were issued from August, 2015 onwards. Till date, 443 candidates had joined as JBT, 31 candidates as NTT and 430 candidates as TGT as per details on next page.

<i>Details of appointment of teachers during the year 2015 (onwards)</i>				
<i>Sr. No.</i>	<i>Subject</i>	<i>Posts advertised</i>	<i>Appointment orders issued</i>	<i>Joined</i>
<i>1</i>	<i>JBT</i>	<i>489</i>	<i>464</i>	<i>443</i>
<i>2</i>	<i>NTT</i>	<i>103</i>	<i>32</i>	<i>31</i>
<i>3</i>	<i>TGT</i>			
	<i>Social Studies</i>	<i>112</i>	<i>102</i>	<i>94</i>
	<i>English</i>	<i>46</i>	<i>29</i>	<i>29</i>
	<i>Science Medical</i>	<i>54</i>	<i>51</i>	<i>49</i>
	<i>Sc. NM</i>	<i>61</i>	<i>36</i>	<i>31</i>

	<i>DPE</i>	<i>46</i>	<i>38</i>	<i>35</i>
	<i>Home Science</i>	<i>2</i>	<i>02</i>	<i>02</i>
	<i>Music</i>	<i>3</i>	<i>02</i>	<i>02</i>
	<i>Maths</i>	<i>27</i>	<i>23</i>	<i>23</i>
	<i>Fine Arts</i>	<i>82</i>	<i>69</i>	<i>67</i>
	<i>Hindi</i>	<i>49</i>	<i>40</i>	<i>39</i>
	<i>Punjabi</i>	<i>47</i>	<i>43</i>	<i>42</i>
	<i>Sanskrit</i>	<i>19</i>	<i>17</i>	<i>17</i>
	<i>Total (TGT)</i>	<i>548</i>	<i>452</i>	<i>430</i>
	<i>Grand Total</i>	<i>1140</i>	<i>948</i>	<i>904 *</i>

** Some of candidates have already resigned.*

5. *On the basis of a complaint of Director Punjab Vigilance Department, FIR was registered by Chandigarh Police on 29.07.2016 in Police Station, Sector 11, Chandigarh under Section 8, 9, 13 (1) d, 13 (2) PC Act, 1988, Police Station-11, Chandigarh. After registration of FIR, it was ordered vide No. 4015-DSE-UT-S-2-11 (170) 2016, dated 12.07.2017 that the probation period of newly selected teachers may not be cleared till the final outcome/investigation of FIR and the same be extended beyond 2 years.*
6. *Chandigarh Police vide Memo dated 06.11.2017 submitted the status report. Name of 49 beneficiaries are mentioned in the status report. It is also mentioned in the status report that separate case FIR No.201, dated 11.10.2017 pertaining to TGT exam held in February, 2015 has also been registered and is being investigated. Copy of Challan in the above said case was also received from Chandigarh Police vide letter dated No.1230, dated 16.02.2018.*
7. *All the relevant documents alongwith office File No.11 (203), 16 including N/P 43-44, status reports (dated 06.11.2017 Annexure-II), dated 14.03.2018 (Annexure-IV) and dated 21.03.2018 (Annexure-VI), report of CDAC dated 16.03.2018 (Annexure-V) regarding the posts of TGT, JBT and investigation report U/S 173 of CrPC (Annexure-III) were perused by the committee.*
8. *The committee discussed in details the status report received from SP (Operation) SIT, Chandigarh Police in which it is clearly mentioned that paper for the post of JBT and TGT in Education Department, Chandigarh, which were held in the month of February 2015, had been leaked from the printing press and large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate. The whole network was*

working in such a manner that all the persons involved right from the supplier of leaked paper to different conduits, agents, candidates, further candidates themselves becoming agents and bringing another candidates made long chains/pyramids. Relevant paras are as under :-

“ After getting hold of leaked examination paper, on the one hand accused Sanjay Srivastwa with the help of accused Dinesh Kumar and Bijender Nain provided the leaked paper to the candidate at Lucknow whereas on the other hand, accused Kamlesh Kumar @ Vakil Sahib (expired) with the help of Suresh Yadav, Sanjay Kumar Singh, R.K. Singh and Poonam provided the leaked paper at Nazafgarh Delhi, Rewari, Haryana and some other places. There were different modules, out of which 1) Lucknow 2) Meerut, 3) Najafgarh, Delhi 4) Rewari, Haryana have been identified till now, where the leaked JBT and TGT papers were shown to numbers of candidates by considering the varying amount of Rs.7 lacs to 10 lacs from each candidate through different conduits. Though there were more modules but as accused advocate Kamlesh Kumar @ Vakeel Sahib expired during the police custody of Telagena Police, hence complete information about the same and his associates/different conduits could not be ascertained. The whole network was working in such manner that the persons involved right from the supplier of leaked paper to different conduits, agents, candidates, further candidates themselves become agent and bringing another candidates made long chains/pyramids ”

“ From the facts mentioned above and evidence available, it has been established that the paper for the post of JBT and TGT Teachers in Education Department, Chandigarh, which were held in the month of February 2015, had been leaked from the printing press and large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate/beneficiary. Though, total number of candidate who availed the leaked question paper cannot be ascertained, as the same was provided to several conduits, who further gave to their associates for making the paper available to further more number of candidates ”

9. *The committee perused 03 status reports (dated 06.11.2017, 14.03.2018 and 21.03.2018) of Investigating Agency. These reports mainly explain the modus operandi and extent of leakage of question papers. Superintendent of Police (Operation), SIT, Chandigarh Police also briefed the committee about the large scale malpractices during the process of the printing of question papers which ultimately*

lead to leakage of question papers to several candidates well in advance i.e. before the conduct of written test. From the perusal of these 03 status reports and information shared by the investigating agency, it can be concluded that question papers of JBT and TGT (including common paper for all subjects) were leaked from the printing press and large number of candidates obtained the question papers after paying considerable amount of bribe. Since the leakage and further distribution of question papers to potential candidates was done through several conduits, it is difficult to ascertain the total number of candidates who availed the question papers. Thus it can be concluded that the whole recruitment process of JBT and TGT teachers of 2015 had got vitiated due to number of mal practices as explained by the Investigating agency.

10. *The committee referred to the following judgments of Hon'ble Supreme Court :-*

(i) *In Civil Appeal Nos.5675-5677 of 2007 Chairman, All India Railway Rec. Board and Anr. Versus K. Shyam Kumar and Ors., it was held as under :*

“44. We, therefore, find no infirmity in the decision taken by the Board in conducting the second written test for those who have obtained minimum qualifying marks in the first written test rather than going ahead with the first written test which was tainted by large scale irregularities and malpractices. The Board can now take further steps to regularize the results of the second test and the appointments of the selected candidates.

Ordered accordingly.

Appeals are accordingly allowed and the judgment of the High Court is set aside.”

(ii) *In Civil Appeal No.5680-83 of 2017, Gohil Vishvaraj Hanubhai and others Versus State of Gujarat and Others, the Hon'ble Supreme Court held as under :-*

“28. The submission by the appellants is that the mere fact that some of the candidates resorted to some malpractice cannot lead to the conclusion that the entire examination process is required to be cancelled as it would cause undue hardship to huge number of innocent candidates. In other words, the appellants urge this Court to apply the primary review test.

29. We have already held that there were large scale malpractices at the examination process and the State was entitled to take appropriate remedial action. In the context of occurrence of such malpractice obviously there can be two classes of candidates: those who had resorted to malpractice and other who did not. By the impugned action, no doubt, all of them were treated alike. Whether

such herding together would amount to the denial of the equal protection guaranteed under Article 14 ? is the question.

Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process to be conducted by the State. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the objects sought to be achieved by the State, by herding all the candidates at the examination together.

30. We see no reason to interfere with the judgment under appeal. The appeals are, therefore, dismissed, with no order as to costs.”

(iii) In Civil Appeal Nos.470 of 1997 Madhyamic Shiksha Mandal, M.P. Versus Abhilash Shiksha Prasar Samity, the Hon'ble Supreme Court observed :

“ In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again ”

After going through the details mentioned in the above

said 03 status reports, information shared by the Investigating agency and judgments of Hon'ble Courts, the following alternatives were discussed by the committee :-

“ALTERNATIVE - I

To terminate the services of 43 candidates (out of 49 candidates whose names are mentioned in the status report, 05 candidates were not offered appointment and 01 candidate has expired).

It was observed by the committee that out of 43 candidates who have joined as teachers, only 06 candidates have been accused in the challan. As informed by SP (Operation), investigation is still going on and the Chandigarh Police may file supplementary challan in due course of time. However, it is clearly mentioned in the status report that paper had been leaked from the printing press and large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate. As such, it is not logical to conclude that only these 43 candidates were the beneficiary of the leaked papers.

“ALTERNATIVE-II

To cancel the written test conducted on 01.02.2015 for the post of JBT, from 14.02.2015 to 28.02.2015 for the post of TGT and to dispense with the service of all the candidates selected on the basis of these written tests. Written test is to be conducted again for all the applicants who had applied in pursuance of the advertisement issued in October/November, 2015.”

It was observed by the committee that as per the report of Chandigarh Police, examination paper for JBT and TGT were leaked. The investigation process is still going on and the process may take a long time to complete. Here, it is relevant to refer to the judgments of Hon'ble Supreme Court in Civil Appeal No.5680-83/2017 wherein it has inter alia been observed (in para 29) that :

“Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only identified wrongdoers be eliminated from the selection process and until such identification is completed the process cannot be carried on, it would not only result in great inconvenience to the administration, but also result in a loss of time even to innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process to be conducted by the State.”

Committee also noted the cancellation of written test by Punjab and Haryana High Court for the post of HCS (Judicial) due to alleged leakage of question papers. With the cancellation of written test for

the post of JBT and TGT, services of all selected candidates will be dispensed with and opportunity will be given to all the applicants who had applied in pursuance of the advertisement issued in October/November, 2015 to appear in the written test to be conducted afresh.”

28. The report of the Committee was accepted. The second alternative suggested by the Committee was chosen and the following order was passed:

*“Directorate of School Education
Chandigarh Administration
(School-II Branch)
Additional Deluxe Building, 1st Floor
Sector 9 Chandigarh, 160009*

ORDER

Whereas, the Education Department of Chandigarh Administration had advertised 548 posts of Master/Mistress(TGT) in the month of October/November, 2014. Written test for the said posts was held on 14-02-2015 to 28-02-2015 and the selection lists were released in July, 2015. Accordingly, the appointment orders were issued in the month of August, 2015 and consequent thereto the said selected candidates had joined the services on different dates;

And whereas, the then Director of Vigilance Department, Govt of Punjab had made a complaint vide No.367/5E/16 DDA LEGAL, R3745/DSPCENT dated 29-07-2016 regarding leakage of question paper, on the basis of which the aforementioned appointment orders were issued to the various candidates for the post of Master/Mistress(TGT);

And whereas the Chandigarh Police had registered FIR No.128 dated 29/07/2016 under section 409/420/120-B of IPC & Section 8/9/13 of Prevention of Corruption Act, 1988 at Police Station, Sector 11, Chandigarh. Thereafter, Special Investigation Team (SIT) was constituted to carry out the detailed investigation in the matter;

And whereas consequent upon the registration of the above mentioned FIR, it was ordered by the then Education Secretary that the probation period of newly selcted Master/Mistress (TGT) will not be cleared till the final outcome/investigation of FIR and the same may be extended beyond 2 years and the said orders were issued vide No.4015-DSE-UT-S2-11 (170) 2016 dated 12-07-2017;

And whereas the Superintendent of Police (Operation) SIT, Chandigarh Police had submitted detailed status report dated 06-11-2017 in the matter, wherein it was clearly mentioned that the question paper of the entrance test held in the month of February, 2015 for the post(s) of JBT & TGT in Education Department,

Chandigarh had been leaked from the printing press and large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate/beneficiary. The whole network was working in such a manner that all the persons involved right from the supplier of leaked paper to different conduits, agents, candidates, acting as agents who invited other candidates and provided them the leaked question paper and as such long chains/pyramids were made for leakage of papers and availing of unlawful benefit therefrom.

And whereas H.E, the Administrator, UT, Chandigarh had constituted a Committee consisting of Senior Officers of Chandigarh Administration vide order No.DSE-UT-S4-11(203)16/3830-31, dated 01-02-2018 to examine the status report dated 06-11-2017 and to suggest further course of action. Accordingly, the committee discussed the said status report, in detail, by holding various meetings. The Committee had also taken briefing from the investigation agency from time to time beside taking into consideration the subsequent status reports dated 14-03-2018 & 21-03-2018.

Whereas, the committee had also made reference to and relied upon the judgments passed by the Apex Court in the following cases:-

- (i) Civil Appeal Nos.5675-5677 of 2007-Chairman, All India Railway Rec. Board & Anr. Versus K. Shyam Kumar & Ors., wherein it was held that there is no infirmity in the decision taken by the Board in conducting the second written test for those who have obtained minimum qualifying marks in the first written test rather than going ahead with the first written test which was tainted by large scale irregularities and malpractices. The Board can now take further steps to regularize the results of the second test and the appointments of the selected candidates.*
- (ii) Civil Appeal No.5680-83 of 2017, Gohil Vishvaraj Hanubhai & Others versus State of Gujarat & Others, wherein it was held that identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is must and only identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process*

to be conducted by the state. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the objects sought to be achieved by the State, by herding all the candidates at the examination together.

- (iii) *Civil Appeal Nos.470 of 1997-Madhyamic Shiksha Mandal, M.P. Vs Abhilash Shiksha Prasar Samiti, wherein it was held that “.... In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehavior of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again.....” (emphasis added).*

And whereas after examining the status report submitted by the SIT, going through the facts and record of the case and making reference to the various judgments passed by the Hon’ble Apex Court of India, the Committee had observed that the investigation process is still going on, which may take long time to complete. Further, the Committee also took note of the fact of the cancellation of written test of HCS(Judicial)-2017 by the Hon’ble Punjab and Haryana High Court at Chandigarh due to alleged leakage of question papers. Accordingly, the committee arrived at a view point that the entire recruitment process of JBT & TGT of 2015 had got vitiated and recommended as under :-

- (i) *Selection based upon the written test conducted in 2015 for the post of JBT and TGT teachers be cancelled. Consequently, the services of selected candidates, who were offered appointment or were appointed to the post of JBT and TGT in pursuance thereof, be dispensed with in accordance with law.*
- (ii) *Fresh written test be held for all the applicants, who had applied for the posts of JBT, TGT in pursuance of the advertisement issued in October/November, 2014. Eligibility conditions and other requirements will remain unchanged.*

And whereas the above mentioned facts and

circumstances of the entire matter were placed before the HE the Administrator, UT, Chandigarh and after his approval it has been decided to cancel the selction based on the written test conducted from 14-02-2015 to 28-02-2015 for recruitment of Master/Mistress (TGT) against posts advertised in the month of October/November, 2014 under direct recruitment. Consequently, the services of all the candidates (list as per Annexure-1) selected for the post of Master/Mistress (TGT) on the basis of written test conducted in February, 2015 are hereby dispensed with. Further written test for all the applicants, who had applied for the post of Masters/Mistress (TGT) in pursuance of the advertisement issued in October/November, 2014 will be re-conducted after giving prior notice in the news papers. It is further clarifited that eligibility conditions and other requirements as prescribed in the aforesaid advertisement in the year 2014 will remain unchanged qua the candidates, whose services are dispensed with vide this order. Furthermore, in the eventuality of selection in written test, which is to be conducted afresh, the claim of counting past service rendered consequent upon appointment in pursuance of selection based on written test dated 14-02-2015 to 28-02-2015 in UT Schools will be considered as per instructions/rules applicable in this regard. Notwithstanding above, it is made clear that this decision will not cast any personal stigma on any of the candidate specified in Annexure-1 above. This order issues/takes immediate effect.

This issue with the approval of HE, the Administrator, UT, Chandigarh.

*Dated : Chandigarh
the 30th May, 2018*

*Rakesh Kumar Popli,
Director School Education,
Chandigarh Administration”*

29. The material conclusion of the High Powered Committee is contained in paragraph 9 of its report and is as under:

“9. The committee perused 03 status reports (dated 06.11.2017, 14.03.2018 and 21.03.2018) of Investigating Agency. These reports mainly explain the modus operandi and extent of leakage of question papers. Superintendent of Police (Operation), SIT, Chandigarh Police also briefed the committee about the large scale malpractices during the process of the printing of question papers which ultimately lead to leakage of question papers to several candidates well in advance i.e. before the conduct of written test. From the perusal of these 03 status reports and information shared by the investigating agency, it can be concluded that question papers of JBT and TGT (including common paper for all subjects) were leaked from the printing press and large

number of candidates obtained the question papers after paying considerable amount of bribe. Since the leakage and further distribution of question papers to potential candidates was done through several conduits, it is difficult to ascertain the total number of candidates who availed the question papers. Thus it can be concluded that the whole recruitment process of JBT and TGT teachers of 2015 had got vitiated due to number of mal practices as explained by the Investigating agency.”

The Committee has also extracted portions from the status report submitted by SP (Operation) SIT in paragraph 8 of its report:

“8. The committee discussed in details the status report received from SP (Operation) SIT, Chandigarh Police in which it is clearly mentioned that paper for the post of JBT and TGT in Education Department, Chandigarh, which were held in the month of February 2015, had been leaked from the printing press and large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate. The whole network was working in such a manner that all the persons involved right from the supplier of leaked paper to different conduits, agents, candidates, further candidates themselves becoming agents and bringing another candidates made long chains/pyramids. Relevant paras are as under :-

“ After getting hold of leaked examination paper, on the one hand accused Sanjay Srivastwa with the help of accused Dinesh Kumar and Bijender Nain provided the leaked paper to the candidate at Lucknow whereas on the other hand, accused Kamlesh Kumar @ Vakil Sahib (expired) with the help of Suresh Yadav, Sanjay Kumar Singh, R.K. Singh and Poonam provided the leaked paper at Nazafgarh Delhi, Rewari, Haryana and some other places. There were different modules, out of which 1) Lucknow 2) Meerut, 3) Najafgarh, Delhi 4) Rewari, Haryana have been identified till now, where the leaked JBT and TGT papers were shown to numbers of candidates by considering the varying amount of Rs.7 lacs to 10 lacs from each candidate through different conduits. Though there were more modules but as accused advocate Kamlesh Kumar @ Vakeel Sahib expired during the police custody of Telagena Police, hence complete information about the same and his associates/different conduits could not be ascertained. The whole network was working in such manner that the persons involved right from the supplier of leaked paper to different conduits, agents,

candidates, further candidates themselves become agent and bringing another candidates made long chains/pyramids ”

“ From the facts mentioned above and evidence available, it has been established that the paper for the post of JBT and TGT Teachers in Education Department, Chandigarh, which were held in the month of February 2015, had been leaked from the printing press and large number of candidates availed the same through different conduits by paying consideration amount of Rs.7 to 10 lacs per candidate/beneficiary. Though, total number of candidate who availed the leaked question paper cannot be ascertained, as the same was provided to several conduits, who further gave to their associates for making the paper available to further more number of candidates ”

30. As per the aforesaid Status Report of the SP (Operation) SIT, Chandigarh Police extracted above, the total number of candidates who availed the leaked question paper cannot be ascertained, as the same was provided to several conduits, who further gave to their associates for making the paper available further to more number of candidates.

31. The Committee after going through the various status reports and the report under Section 173 Cr.P.C. though acknowledged (in paragraph 9 of its report) that as *“the leakage and further distribution of question papers to potential candidates was done through several conduits, it is difficult to ascertain the total number of candidates who availed the question papers”* yet *“concluded that the whole recruitment process of JBT and TGT teachers of 2015 had got vitiated due to number of mal practices as explained by the Investigating agency.”*

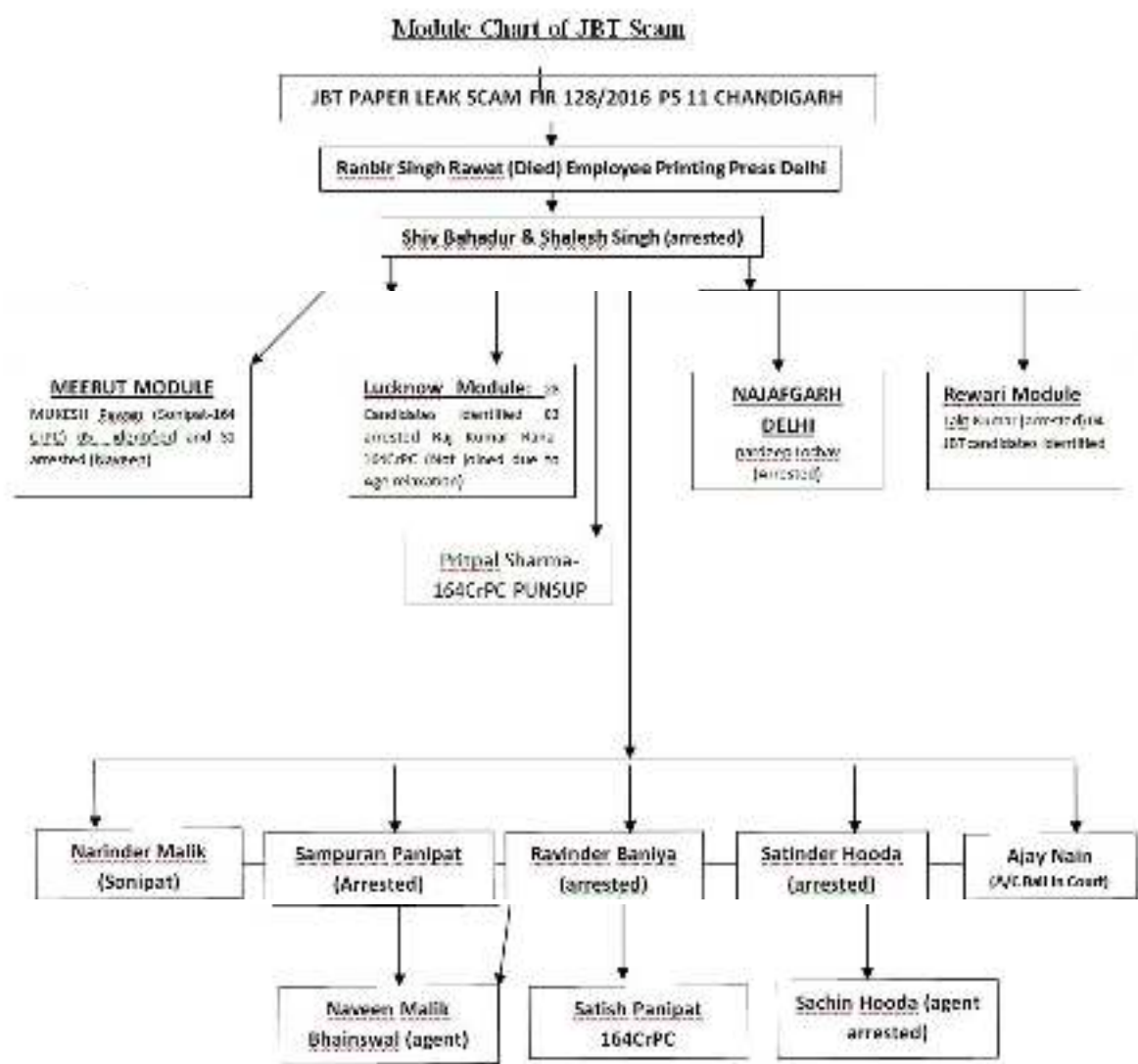
32. The above conclusion of the Committee that the whole recruitment process of JBT and TGT teachers had got vitiated is only an inference drawn from certain facts disclosed during investigation which

revealed 49 candidates as being beneficiaries of the leaked question papers. The material before the Committee in the form of the Status Reports and the report under Section 173 Cr.P.C. thus was not such from which a firm/positive satisfaction could be recorded that the entire selection process was tainted. Thus, the first principle laid down in **Inderpreet Singh Kahlon's** case was not met.

33. There is no finding recorded by the Investigating Agency or the Committee that the task of identifying the beneficiaries is impossible. They only mention that the task is difficult.

34. Ld. Counsel for the appellants has sought to explain that the task has become impossible as Ranbir Singh Rawat an employee of the printing press in Delhi who had handed over two sets of the question papers which led to two modules of the scam i.e., Luknow Module and Delhi, Rewari and other Module has died in 2016 due to cardio- pulmonary arrest. The main agent of the second Module Kamlesh Kumar @ Vakeel Sahib died while in custody of the Telangana Police.

35. It is not possible to accept this contention. The report dated 14.03.2018 under Section 173 Cr.P.C. by Krishan Kumar Dy.S.P. Operations SIT, Sector 26, Chandigarh was filed against 17 accused persons which included those who leaked the papers, their agents, touts etc. This report has given a Module Chart of the JBT Scam as under:



The report states that the chain shown in the graph needs to be consolidated and further evidence needs to be collected to unearth the whole scam. It mentions that further investigation regarding the financial transactions made in the scam will be carried out by custodial investigation of the other accused persons. There is not a whisper therein that the task has become impossible.

36. In these circumstances, the Ld. Tribunal is right in concluding that the Administration has chosen to act in undue haste by cancelling the selection without waiting for the entire facts to unravel.

37. There is another aspect that needs consideration. 12921 applications were received by the Department for the posts of JBT, 3495

applications were received for the posts of NTT and 27075 applications were received for the posts of TGT making a total of 43491 applicants. The number of applicants who took the test is not known. 489 posts of JBT were advertised, 548 TGT posts were advertised and 103 posts of NTT were advertised. Appointment letters were issued to 464 JBT teachers, 32 NTT and 452 TGT teachers. 443 JBT teachers joined, 31 NTT teachers joined and 430 TGT teachers joined. The status report mentions the names of 49 candidates. As per the report of the committee out of those 49 whose names are mentioned in the status report 05 candidates were not offered appointment and 01 candidate has expired. Further, out of 43 candidates who have joined as teachers, only 06 candidates have been accused in the challan.

38. Thus, out of the 904 candidates who have joined service only 43 are named in the status report. This surely is not such a large number. It certainly is not a majority of the appointees. One of the three essential principles which was stressed by Hon'ble Supreme Court in **Inderpreet Singh Kahlon's** case (supra) before the selection could be cancelled was that the appointees in majority must be found to be part of a fraudulent process. In the present case those named in the status report constitute about 5.42% of those appointed. Thus, the third essential principle is also not satisfied.

40. The Committee has noticed that as informed by SP (Operation), investigation is still going on and the Chandigarh Police may file supplementary challan in due course of time. There is no material on record and nothing has been pointed out during the course of the hearing

that any more names have been disclosed during the further investigation.

41. Thus, there is no option but to conclude that order cancelling the entire selection and terminating the services of all the JBT and TGT teachers is illegal and cannot be sustained and the same has been rightly quashed by the Tribunal. However, qua those against whom FIR has been registered and whose names figure in the FIRs, the status report and/or in the challan and against whom there is specific material of their being beneficiaries of the cheating the orders cancelling their selection are justified as their selection can certainly be held to be carrying a taint or blemish.

42. Accordingly, qua the candidates whose names do not figure in the FIRs and against whom no evidence of wrong doing has surfaced during the investigation these writ petitions are dismissed.

43. Qua the candidates whose names find mention in the FIRs as there is evidence that their selection is tainted the order dated 30.05.2018 cancelling their selection is valid and would take effect without any further requirement to issue any notice or follow the principles of natural justice. The writ petitions qua them are thus partly allowed and the order of the Tribunal modified to this extent that qua the candidates mentioned in the FIRs the order 30.05.2018 cancelling their selection would take effect without any further requirement of issuing any notice or following the principles of natural justice.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 27, 2019

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No