

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

LPA-564-2021 (O&M)

Vijay Kumar Yadav

... Appellant

Versus

State of Haryana and others

... Respondents

(2)

LPA-571-2021(O&M)

Gulab Singh

... Appellant

Versus

State of Haryana and others

... Respondents

(3)

LPA-655-2021 (O&M)

Ravinder Singh

... Appellant

Versus

State of Haryana and others

... Respondents

(4)

LPA-737-2021(O&M)

Dinesh Singh

... Appellant

Versus

State of Haryana and others

... Respondents

Reserved on : 10.02.2022

Pronounced on: 08.03.2022

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. R.S. Kalra, Advocate for the appellants
in LPA Nos.564, 571 and 655 of 2021.

Mr. Sunil K. Nehra, Advocate for the appellant
in LPA No.737 of 2021.

Mr. Hitesh Pandit, Addl. AG, Haryana.

Mr. Govind Tanwar, Advocate for
Mr. Kanwal Goyal, Advocate for respondent-HPSC
in LPA-564 & 737-2021.

Ms. Harpriya Khaneka, Advocate for respondent-HPSC
in LPA-571 & 655-2021.

Mr. Vijay Singh Ahlawat, Advocate
for respondent No.4 in LPA-564-2021.

Mr. Vishal Nehra, Advocate for respondent No.5
in LPA-564-2021.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Gauravjit Singh Patwalia, Advocate
for respondent No.6 in LPA-564-2021.

G.S. Sandhawalia, J.

The present judgment shall dispose of above said four appeals i.e. LPA Nos.564, 571, 655, and 737 of 2021, since they all arise out of a common judgment dated 23.04.2021.

2. The writ petitions have been dismissed by coming to the conclusion that Rule 9 (1) (a) (iii) of the Haryana Civil Service (Executive Branch) Rules, 2008 (hereinafter referred to as the '2008 Rules') provides that the employees who are not facing disciplinary proceedings and against whom action was not being contemplated and had a clean slate on the date of consideration, would only be eligible for being considered for appointment to the post of Haryana

Civil Services (Executive Branch) [hereinafter referred to as the 'HCS (EB)'] from the source of District Revenue Officers (DROs)/Tehsildars. The cut-off-date for consideration which was initially 01.11.2018 was treated to be as 12.07.2019 by the learned Single Judge by noting that a list of 16 candidates was sent on the said date and the said date has to be taken the cut-off-date for determining of the eligibility. Keeping in view the facts emanating from **CWP No.24538-2019 'Vijay Kumar Yadav Vs. State of Haryana and others'** the same was treated as a lead case.

3. It was noticed that there were office notes that the Government was treating the petitioner ineligible, since disciplinary proceedings were contemplated against him on 30.08.2019 (Annexure P-16). Though the disciplinary action on the basis of the CAG Report had been dropped on 11.12.2019 which was after the cut-off-date.

4. An argument had also been raised which has also been stressed upon before us that two candidates Dheeraj Chahal and Anil Kumar Doon were also similarly placed whose names had been sent. Therefore, keeping in view the principle of equality enshrined under Article 14, the petitioner should be considered eligible, considering the fact that he had been allowed to provisionally appear on the basis of the interim orders passed in his favour. The fact that two vacancies still existed and he had made the cut on merits, as per the

result which had been produced in a sealed cover, which showed he had secured 74.25 marks was sought to be highlighted. The said argument had been rejected by the learned Single Judge on the ground that no relief had been sought by the writ petitioner on that ground, apart from which the learned Single Judge had also relied upon the representation made by the petitioner himself dated 27.08.2019 (Annexure P-15) that name of Dheeraj Chahal had already been excluded. The official noting dated 03.09.2019 in favour of Anil Kumar Doon and Dheeraj Chahal showed that they had not registered the sale deeds in question and, thus, they were excluded from the list of persons against whom disciplinary proceedings were pending. Accordingly, no proceedings being contemplated against them, the issue of discrimination as such was not further gone into. The judgment of the Apex Court passed in '**Union of India Vs. K.V. Jankirarman**', (1991) 4 SCC 109 was distinguished as the issue was not regarding pendency of disciplinary proceedings, but regarding pendency thereof. The said Rule 9 (1) (a) (iii) having not been challenged and not being shown to be illegal in any manner, the judgment thus relied upon was distinguished and petitioners were held to be not eligible on the date of consideration.

Arguments of counsels:

5. Mr. R.S. Kalra, counsel appearing in LPA Nos.564, 571

and 655 of 2021 has vehemently tried to show that the judgment of the learned Single Judge was not sustainable, while referring to the noting dated 03/05.09.2019 (Annexure A-2) to show that the matter was still pending consideration before the concerned authority and had to be put up before the Revenue Minister and Chief Minister for passing appropriate orders. In spite of that the name of the said persons had been sent in the list on 19.08.2019 by the meeting of the Selection Committee held on 13.08.2019. It is submitted that the decision was only taken on 02.12.2019 (Annexure P-18) by the Revenue Minister and one Gulab Singh's (the writ petitioner in CWP No.25000 of 2019) representation had been accepted, whereas the case of Vijay Kumar Yadav as such was sent to the Chief Minister. Eventually a decision was taken on 02.12.2019 and the formal letter was only issued on 11.12.2019 (Annexure P-20) and being after the cut-off-date, it had caused prejudice to the appellants.

6. It was, accordingly, argued that once the cut-off-date was 12.07.2019 and there was no charge-sheet against the writ petitioner till then and only on 26.08.2019 (Annexure P-13) notice had been issued to him regarding registering the sale deeds for deficiency of stamp duty and he had given his reply on 27.08.2019 (Annexure P-15). Therefore, keeping in view the law laid down in **K.V. Jankirarman's case (supra)**, that only on account of memo issued he could not be kept out from consideration to the post of

HCS (EB). Reliance was placed upon the proposal dated 30.08.2019 (Annexure P-16), whereby while considering him not eligible, one Smt. Meetu Dhankhar who was facing charge-sheet on 12.07.2019 and whose charge-sheet was only dropped on 22.08.2019 had been considered eligible as such and her name was forwarded to the Chief Secretary alongwith 11 other candidates.

7. The stand of the State in the written statement filed in the writ petition was that a draft charge-sheet had been called from the Deputy Commissioner and, therefore, only on account of the fact a decision had been taken on 14.08.2018 by the competent authority to charge-sheet the petitioner under the Haryana Civil Services (Punishment and Appeal) Rules, 2016 (hereinafter referred to as the '2016 Rules'), it would mean that disciplinary action was being contemplated.

8. It is, thus, ably argued by Mr. Kalra that only if a charge-sheet had been issued and action was to be taken after the completion of the inquiry proceedings, the provisions of Rule 9 (1) (a) (iii), the second part would come into play. It was, accordingly, submitted that there are various stages in the departmental proceedings and only after the inquiry proceedings as such had been completed on submission of the report, the contemplation of any action to be taken, would be a ground as such to withhold the names. It is, accordingly, submitted that the Rule did not provide the word 'or' and provided the word 'and'. It is further argued that reliance

placed upon the judgment of the Division Bench passed in LPA-1523-2019 titled as 'Manbir Singh Vs. State of Haryana and others' decided on 29.11.2019, was misplaced, as it was a case of a person who was facing a Vigilance Inquiry. The case pertained to Clause (iv) where a report was to be submitted from the Vigilance Bureau. The un-amended Rule was referred to that the persons who were not facing disciplinary proceedings and against whom action is being contemplated could have been kept back, to submit that in the absence of any charge-sheet being issued, the State was not justified as such to withhold his name. Reliance was placed upon the judgment of the Division Bench passed in '**State Bank of Patiala Vs. O.P. Latka**', 1995 (3) SCT 465, wherein a charge-sheet had been given subsequently and the written test and interview had already been carried out earlier. In the absence of the same on account of mere contemplation, resort to sealed cover procedure as such was held not justified, since disciplinary proceedings had not been started against the employee.

9. Learned counsel Mr. Nehra, on the other hand for the appellant in LPA No.737 of 2021 filed by the writ petitioner, Dinesh Singh has argued that there was a mere recommendation of the Deputy Commissioner, Kurukshetra, to initiate departmental proceedings against him on account of his alleged absence as a Duty Magistrate on 05/06.01.2019 in the HTET-2018 (Annexure P-18 in

CWP-26287-2019). The alleged decision to charge-sheet him as such was taken on 05.02.2019 and charge-sheet was issued on 05.11.2019 and the same was dropped on 07.02.2020 on his reply and he was only issued an advisory. It is, thus, argued that there was no charge-sheet even contemplated on the cut-off-date on 01.11.2018 and the learned Single Judge has wrongly taken the cut-off-date as 12.07.2019. Once the process had started on 30.05.2019 and the cut-off-date had been fixed, there could not be two cut-off-dates as sought to be contended by the State Counsel. It is, accordingly, argued that the Rule was being mis-used by holding back the meritorious officers whose ACRs were upto the mark, who were eligible to make the cut by issuing show cause notice on the ground that action was being contemplated. He, accordingly, submits that the learned Single Judge was in error in dismissing the writ petition.

10. Counsel for the State, on the other hand has justified the view taken by the learned Single Judge on the ground that when 2008 Rules were amended on 16.02.2017 (Annexure P-4), eight years of continuous in Government service which was one of the eligibility criteria, was by including the service rendered as Naib Tehsildar. Due to the inclusion of service period as Naib Tehsildars, DROs/Tehsildars, whose names were to be nominated by the Government, had litigated in the form of CWP-8502-2017 'Joginder

Sharma and others Vs. State of Haryana and others', wherein Naib Tehsildars as such had been arrayed as private respondents, who would come in the zone of consideration on account of the amendment of the rule. In the said writ petition an interim order dated 26.04.2017 had been passed by the Division Bench that for determining the eligibility of DRO/Tehsildar for appointment to the post of HCS (EB) under Register A-1, the service rendered as Naib Tehsildars shall not be included. The said writ petition was eventually dismissed on 13.11.2019 and it was contended that all interim orders as such had merged in the final order. It is submitted that prior to that applications were filed in the said case by the private respondents that they be permitted to appear in the interview provisionally alongwith others, which was allowed on 21.08.2019 (Annexure P-10). Another application was filed by the State on 26.08.2019 (Annexure P-11) for clarification of the said order that identically situated persons who were not party be also allowed to take benefit of the said order. The said application was allowed on 29.08.2019 (Annexure P-12) and the benefit was given to all identically situated persons.

11. It is the case of the State that in pursuance of the same, a meeting of the Committee was held on 31.08.2019. The Committee had forwarded the names of 39 persons DROs/Tehsildars (11+21+7) to the HPSC in view of the interim orders passed in the case of

Joginder Sharma (supra). It is, accordingly, contended that in such circumstances for the second set of persons the eligibility criteria as such had to be seen on 12.07.2019. It is, accordingly, argued that on 26.06.2019 it had been decided by the FCR that no action had to be taken against Anil Kumar Doon and Dheeraj Chahal, who had not signed on the sale deeds and, therefore, their names were rightly sent, since there was no action contemplated against them. It is, however, admitted that in the case of Meetu Dhankhar report of Inquiry Officer dated 26.07.2019 had been submitted and proceedings were only filed on 22.08.2019 and her name was sent on 30.08.2019.

12. It was, accordingly, contended that the intent of the Rule is to be seen and that the clean service record was the requirement and it is for the law making authorities to see that if contemplation of action was being taken, the name was not to be nominated for consideration for the post of HCS (EB). Reliance was placed upon the judgment of the Apex Court passed in '**Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar & others'**, AIR 1958 SC 538 and '**Mohan Kumar Singhania and others Vs. Union of India and others'** AIR 1992 SC 1 to submit that it is not for the Court to interpret the Rule in any other manner. It has also been contended to rebut the argument raised by Mr. Nehra that communication dated 09.07.2019 (Annexure P-8) was never subject

matter of challenge, which provided that the pending disciplinary proceedings, vigilance clearance and integrity being considered upto the date of consideration in both cases, which had fixed the date of 12.07.2019 whereby recommendations received after the cut-off-date were not be entertained.

13. Senior counsel Mr. Patwalia, appearing for the private respondents in LPA No.564 of 2021 has also assisted the Court that the writ petitioners have not impleaded the necessary parties against whom allegations have been made to take the plea of discrimination. An application had been filed by the private respondents No.4 to 6, who had got themselves impleaded, as they were in the merit zone and, therefore, had got themselves impleaded for the purpose of ensuring that they were not pushed out. It is the case of Mr. Patwalia that only challenge had been raised to the noting dated 30.08.2019 (Annexure P-16) wherein the writ petitioners were held to be ineligible on account of disciplinary proceedings being contemplated. It is, accordingly, argued that on account of non-impleading of any of the candidates whose names had been wrongly sent to the Commission for appointment to the post of HCS (EB) no relief can be granted against them. It is submitted that result was declared on 17.11.2019 (Annexure A-6) and against 23 posts 21 candidates had been appointed, subject to the final decision of the writ petitions and the writ petitioners had not amended their writ

petitions and, therefore, could not seek any relief.

14. It was, accordingly, argued that the purpose of amendment has to be seen, though show cause notice of the charge-sheet is the normal rule for consideration of initiating the departmental proceedings, as per the law laid down in **K.V. Jankirarman's case (supra)** But the rule being not challenged, the same would stand against the writ petitioners. It is submitted that it can be divided in two parts and the stand of the State is clear that action was being contemplated and, therefore, the Court could not substitute its view regarding the statue. Reliance was placed upon the judgment of the Apex Court passed in '**Saregama India Limited Vs. Next Radio Limited**', 2022 (1) SCC 701 and '**Haryana Financial Corporation & another vs M/S Jagdamba Oil Mills & another**', (2002) 3 SCC 496. Similarly, it is submitted that merely on a wrong benefit granted to similarly situated persons, it could not give them a right under Article 14 and it not being a negative concept, specially keeping in view the fact that they had not been impleaded neither their appointment had been challenged. Reliance has also been placed upon the judgment passed in '**Shanti Sports Club and another Vs. Union of India and others**', (2009) 15 SCC 705 and '**R. Muthukumar & others Vs. The Chairman and Managing Director Tangedco & others**', 2022 Live Law (SC) 140 in support of the said submission.

Pleadings of the writ petitioners:

15. Pleadings in CWP No.24538 of 2019 'Vijay Kumar Yadav Vs. State of Haryana and others' would go on to show that the prayer was for issuance of a writ in the nature of mandamus to recommend his name as per the provisions of Rule 9 (a)(iii) of 2008 Rules for appointment to the post of HCS (EB) from Register A-1. The same was sought on the basis of the compliance of directions issued in the case of **Joginder Sharma (supra)** and the interim order dated 21.08.2019 passed therein and to send his record to treat him as eligible candidate.

16. Prayer was also sought to quash the list dated 30.08.2019 (Annexure P-16) wherein he alongwith the co-appellants Dinesh Singh, Ravinder Singh and Gulab Singh had been declared ineligible, on account of disciplinary proceedings being contemplated against them and the list had been forwarded to the respondent No.3 and that he had not incurred any ineligibility.

17. It was pleaded in paragraph No.30 of the petition that Dheeraj Chawla (sic Chahal), Hari Om, Balraj and Brahm Parkash were also similarly situated persons against whom there was CAG Report, which was annexed as Annexure P-14. On 04.09.2019, the petitioner had got directions from the learned Single Judge for provisionally being considered for interview/scrutiny of documents, subject to final outcome of the decision and result was kept in a

sealed cover.

18. The stand of the State has already been noticed that there was a contemplation as such to charge-sheet him under 2016 Rules on 14.08.2018 since he accepted the deficiency in the sale deeds. Thus, he was not eligible, as per the rule. It was further the case of the State that the service record and the experience is to be considered upto 01.11.2018 as per the letter dated 09.07.2019 (Annexure P-8). The reply of the State was that there was a recommendation to seek explanation of the said persons, but in cases of writ petitioners action had been initiated, whereas in their cases only explanation had been called for. Accordingly, it was the defence of the State that a decision had been taken to initiate disciplinary proceedings.

19. Similarly, the pleadings in CWP No.25000 of 2019 'Gulab Singh Vs. State of Haryana and others' would go on to show that similar prayer was made. Gulab Singh also got interim order dated 09.09.2019 from the learned Single Judge for provisionally being considered for interview/scrutiny of documents, subject to final outcome of the writ petition.

20. The stand of the State in its reply was that a decision had been taken by the competent authority on 30.07.2018 to charge-sheet the petitioner for registering 12 sale deeds. However, the draft charge-sheet had been called from the Deputy Commissioner and the charge-sheet is yet to be issued. The stand as to the cut-off-date is

01.11.2018 and that against other officers whose names have been mentioned in CAG Report, disciplinary proceedings were not contemplated and only explanation had been called for. It is not disputed that on 11.12.2019 (Annexure P-20) disciplinary proceedings against both Vijay Kumar Yadav and Gulab Singh had been dropped.

21. Pleadings in CWP No.393 of 2020 'Ravinder Singh Vs. State of Haryana and others' would go on to show that consideration of the claim for appointment from Register-A1 was sought on the ground that candidates lower in merit to the petitioner had been appointed. The said writ petition was filed post the declaration of the result on 17.11.2019. The grouse as such was that the eligibility had to be seen on 28.06.2019 and no disciplinary proceedings were under contemplation.

22. The defence of the State in its reply was that the competent authority had taken a decision on 30.07.2018 to charge-sheet the petitioner who had registered 10 undervalued sale deeds. It is a matter of record that on 30.12.2019 (Annexure P-10) explanation was called for before initiating any disciplinary proceedings. The defence of the State was clear that the petitioner had been interviewed provisionally. He was not eligible on account of the action being contemplated and the suitability and eligibility of the candidates, who were to be considered on the parameters fixed

by the Chief Secretary.

23. Similarly, in CWP No.26287 of 2019 'Dinesh Singh Vs. State of Haryana and others' prayer for recommendation as per the provisions of Rule 9 (1) of the 2008 Rules was made, on account of no disciplinary proceedings pending against him. Further quashing of list (Annexure P-9) was sought, whereby a decision had been taken on file to charge-sheet him under Rule 7. The proceedings held on 04.09.2019 were sought to be stayed. It was specifically pleaded that on 06.01.2019 his duty had been fixed in HTET Examination 2018 at DAV Public School, Sector-3, Kurukshetra and he had been called to collect the examination papers from the Secretariat and deliver the same to the above said centre. He had reached the examination centre in spite of the fact that his two year old daughter was in grave need of medical attention.

24. The stand of the State in its reply was that he was directed to act as Duty Magistrate on 05.01.2019. On 05.02.2019 a decision had been taken to initiate disciplinary proceedings against him and therefore, he was ineligible for nomination to the post of HCS (EB).

25. It is not disputed that the petitioner was charge-sheeted on 05.11.2019 and the proceedings were dropped on 07.02.2020 (Annexure P-19) by issuing an advisory. It is, thus, the case of the petitioner that on the cut-off-date on 01.11.2018 there was no

contemplation to take action against him.

Consideration of the issues involved

26. A perusal of the record of CWP No.24538 of 2019 'Vijay Kumar Yadav Vs. State of Haryana and others' would go on to show that vide notice dated 17.04.2017 (Annexure P-5) a decision was taken by the State Government to fill up 9 vacancies of HCS (EB). Due to the amendment of the Rule on 16.02.2017, it led to the litigation in the form of **Joginder Sharma's case (supra)** and the interim order dated 26.04.2017 was passed in the following terms:-

“Notice of motion.

On our asking, Mr.Deepak Balyan, Additional Advocate General, Haryana, who is present in Court, accepts notice on behalf of all respondents. Let three sets of paper-book be handed over to him during the course of day.

List on 20.07.2017.

Reply, if any, be filed meanwhile with advance copy to counsel for the petitioners.

As an interim measures, it is directed that while determining the eligibility of District Revenue Officers/Tehsildars for appointment to Haryana Civil Services (Executive Branch) under Register A-1, their service rendered as Naib Tehsildars shall not be included.”

27. Admittedly, no recommendations were made by the Government, since it has been specifically pleaded regarding this aspect in paragraph no.19 of Vijay Kumar Yadav's case and which fact has been admitted being a matter of record by the State. Thereafter, on 30.05.2019 (Annexure P-7) a decision was taken to

fill up 23 posts from Register A-1 of the District Revenue Officers/Tehsildars and Financial Commissioner, Revenue & Disaster Management and Consolidation Departments were asked to recommend the names to fulfill the following conditions of eligibility as on 01.11.2018. Relevant portion of the said communication reads as under:-

“I am directed to invite your attention to the subject noted above and to say that Government has decided to fill 23 vacancies of HCS (Executive Branch) from Register A-1 of District Revenue Officers/Tehsildars of the year 2019 in terms of Rule 9 of Haryana Civil Services (Executive Branch) Rules, 2008. It is, therefore, requested to send a list of eligible District Revenue Officers/Tehsildars not more than five times of the number of vacancies as per rules for the aforesaid recruitment. The DROs/Tehsildars whose names are to be recommended **should fulfill the following conditions of eligibility as on 01.11.2018.**

(a) i) has completed eight years continuous Government service. However, the service rendered as Naib Tehsildars shall not to be included while determining the eligibility as per interim orders/directions dated 26.04.2017 of Hon'ble High Court of Punjab and Haryana, Chandigarh passed in CWP No.8502 of 2017- Joginder Sharma and others versus State of Haryana and others.

ii) has not attained the age of fifty years;

iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and

iv) is clear from vigilance angle;

(b) is a graduate from a recognised University.”

28. As noticed, thereafter on 09.07.2019 (Annexure P-8) clarification was made that service rendered by Naib Tehsildars were not to be included while determining eligibility, in view of the interim order dated 26.04.2017 as reproduced above. It was further clarified that the eligibility of 50 years of age on and after 01.11.2018 and the ACRs were to be considered upto year 2018-2019 and experience was taken upto the date of recommendation. It was further clarified that DROs/Tehsildars who had not attained the age of 50 years as on 01.11.2018, but attained the age of more than 50 years on and after 01.11.2018 till the date of recommendation, their experience and ACRs record be considered only upto 01.11.2018. However, pending disciplinary proceedings, vigilance clearance and integrity was to be considered upto the date of consideration in both cases. The list of eligible DROs/Tehsildars not more than five times number of vacancies were to be sent by 12.07.2019. Relevant portions of the said communication dated 09.07.2019 read as under:-

“2.-----It is further clarified that DROs/Tehsildars, who are otherwise eligible being less than 50 years of age on and after 1.11.2018, their ACRs be considered upto year 2018-2019 and experience be taken into consideration upto the date of recommendation. The DROs/Tehsildars, who had not attained the age of 50 years as on 1.11.2018 but attained the age of more than 50 years on and after 1.11.2018 till the date of recommendation, their

experience and ACRs record be considered only upto 1.11.2018. However, pending disciplinary proceedings, vigilance clearance and integrity be considered upto the date of consideration in both cases.

XXXXXXXXXXXXX

5. It is, therefore, requested to send a list of eligible District Revenue Officers/Tehsildars not more than five times of the number of vacancies as per rules for the aforesaid recruitment by 12.07.2019. Recommendations received after this date will not be entertained/considered.”

29. It is apparent that vide letter dated 19.08.2019 which finds mention in Annexure P-17, the Chief Secretary sent the names of 13 candidates on the basis of the Selection Committee meeting held on 13.08.2019, as per the recommendation of the Revenue & Disaster Management Department. The names of the said 13 candidates included Dheeraj Chahal and Anil Kumar Doon reads as under:-

Sr.No.	Name & Designation S/Sh./Smt./Ms
1.	Naresh Kumar, DRO
2.	Dilbag Singh, DRO
3.	Hari Om Attri, DRO
4.	Rajender Kumar, DRO
5.	Amrinder Singh Manais, DRO
6.	Braham Parkash, DRO
7.	Dheeraj Chahal, DRO
8.	Darshan Kumar, Tehsildar
9.	Balraj Singh, DRO
10.	Kulbir Singh Dhaka, DRO
11.	Manav Malik, DRO

12.	Dinesh, DRO
13.	Anil Kumar Doon, DRO

30. Thereafter, as per office noting dated 30.08.2019 (Annexure P-16) only 11 officers made the cut and amongst them was Smt. Meetu Dhankhar, though in the noting it was specifically mentioned that she was facing charge-sheet on 12.07.2019 and the same was dropped on 22.08.2019. The four appellants herein were rendered ineligible on account of contemplation of disciplinary proceedings. It is pertinent to notice that on 21.08.2019 (Annexure P-10) and 29.08.2019 (Annexure P-12), the order dated 26.04.2017 was got modified from the Division Bench in Joginder Sharma's case (supra) and, thereafter, the Committee met on 31.08.2019 and sent a list of 39 names.

31. As per the communication dated 03.09.2019 (Annexure A-2) which had been placed on record before the learned Single Judge, which is the noting portion, it transpires that the Deputy Commissioners had agreed with the response of Shri Anil Doon and Shri Dheeraj Chahal that they had not registered the sale deed in question, rather they were registered by the Naib Tehsildar named therein. Resultantly, the names of the said two persons were forwarded to the Chief Minister for nomination and it was noted that it was without undue favour and in larger interest and to avoid unnecessary litigation. List of various officials whose names were being considered had also been included in the noting portion

including the name of appellant-Gulab Singh and Vijay Kumar Yadav, wherein it was mentioned that draft charge-sheet as such were awaited from the District Administration and their names had been forwarded for provisional interview, as per the interim orders dated 21.08.2019 and 29.08.2019 alongwith other connected matters read with the advice of the Advocate General dated 30.08.2018. Resultantly, their cases were submitted to the Revenue Minister and the Chief Minister for consideration for passing appropriate orders.

32. The Commission as such had published the list of 54 persons who were to be interviewed on 04.09.2019 in which the names of the present appellants also finds mention, apart from the other candidates. It is not disputed that the result as such was declared on 17.11.2019 and only 21 persons were found eligible. The result which was declared was subject to final outcome of the writ petitions which were filed by various writ petitioners, which reads as under:-

“RESULT

The Haryana Public Service Commission has finalized the result for the recruitment to the posts of HCS (Ex.Br.) from Register A-I of DROs/Tehsildars against the vacancies of the year 2019. On the basis of Viva-Voce/Interview held on 04.09.2019 in Commission's office at Panchkula, the Haryana Public Service Commission has finalized the result for the posts of HCS (Ex.Br.) from Register A-I of DROs/Tehsildars against the vacancies of the year 2019. The names shown below are in order of

merit.

Category: General (No. of posts-23) **(21 eligible candidates are available)**

Amrinder Singh Manais, DRO	Meetu Dhankhar, Tehsildar
Anil Kumar Doon, DRO	Naresh Kumar, DRO
Braham Parkash, DRO	Navdeep Singh, Tehsildar
Darshan Kumar, Tehsildar	Parveen Kumar, Tehsildar
Dheeraj Chahal, DRO	Rejender Kumar, DRO
Dilbag Singh, DRO	Rajesh Kumar, DRO
Dinesh, DRO	Rajesh Punia, Tehsildar
Hitender Kumar, Tehsildar	Sanjay Bishnoi, DRO
Jagdish Chander, Tehsildar	Sanjeev Kumar, Tehsildar
Kulbir Singh Dhaka, DRO	Subhash Chander, Tehsildar
Manav Malik, DRO	

Note:

1. While preparing the result due care has been taken. However, any advertent error cannot be ruled out. The Commission reserves its right to rectify any error at a later stage.

2. The above result is further subject to outcome to CWP No.24538 of 2019, 17295 of 2019, 26093 of 2019, 23499 of 2019, 24738 of 2019, 25010 of 2019, 25000 of 2019 & 26287 of 2019 pending before Hon'ble Punjab & Haryana High Court.

3. This result is also available on Commission's website i.e. <http://hpsc.gov.in>.

Secretary
Haryana Public Service Commission,
Panchkula

Dated: 17.11.2019”

33. It is also not disputed that on 03.09.2019, which letter also finds mention in Annexure P-17, names of 11 officers as such were sent, which included the name of Smt. Meetu Dhankhar. This aspect would also be clear from the letter dated 15.11.2019 which

was addressed by the Commission to the Chief Secretary, which read as under:-

“Subject: Recruitment to 23 posts of HCS (Ex.Br.) for Register A-I of DROs/Tehsildars against the vacancies of the year 2019.
R/Madam,

I am directed to refer to your letter No.41/2/2019-5SII dated 19.08.2019 vide which you have sent a requisition to fill up 23 vacancies of HCS (Ex.Br.) for Register A-I of DROs/Tehsildars against the vacancies of the year 2019. For this recruitment, total 54 names have been received in the Commission's Officer, details of which are as under:

(A) Letter No.41/2/2019-5SII dated 19.08.2019 (copy attached)

Names & Designation of the Officers (S/Sh.Smt.)	
1. Naresh Kumar, DRO	9. Balraj Singh, DRO
2. Dilbag Singh, DRO	10. Kulbir Singh Dhaka, DRO
3. Hari Om Attri, DRO	11. Manav Malik, DRO
4. Rajender Kumar, DRO	12. Dinesh, DRO
5. Amrinder Singh Manais, DRO	13. Anil Kumar Doon, DRO
6. Braham Parkash, DRO	Note: Record of all 13 officers have been received.
7. Dheeraj Chahal, DRO	
8. Darshan Kumar, Tehsildar	

(B) Proceedings of Meeting of Selection Committee held on 31.08.2019 and letter No.62/82/2019-4-Vigilance(II)/9377 dated 02.09.2019 (copies attached).

The following 11 officers who are petitioner in CWP No.8502 of 2017 and similarly situated Officers whose record was assessed:

Names & Designation of the Officers (S/Sh.Smt.)	
1. Rajesh Poonia, Tehsildar	7. Parveen Kumar, Tehsildar
2. Hitender Kumar, Tehsildar	8. Jagdish Chander, Tehsildar

3. Meetu Dhankhar, Tehsildar	9. Navdeep Singh, Tehsildar
4. Subhash Chander, Tehsildar	10. Sanjay Kumar, Tehsildar
5. Shyam Lal, DRO (<i>Vigilance clearance was shown as pending.</i>)	11. Rajesh Kumar, DRO
6. Sanjay Bishnoi, DRO	<i>Note: Record of all 11 officers have been received.</i>

The following 21 Officers who are petitioner in CWP No.8502/2017, but either their record was not upto the mark or some disciplinary actions are pending as mentioned in proceedings mentioned above:

Names & Designation of the Officers (S/Sh.Smt.)	
1. Vijay Kumar, DRO	12. Dinesh Singh, Tehsildar
2. Manish Kumar Yadav, Tehsildar	13. Ravinder Singh, Tehsildar
3. Vikas Singh, Tehsildar	14. Ran Vijay Sultania, Tehsildar
4. Navjeet Kaur Brar, Tehsildar	15. Gulab Singh, Tehsildar
5. Vijay Mohan Syal, Tehsildar	16. Virender Kumar, Tehsildar
6. Rakesh Kumar, Tehsildar	17. Sanjay Chaudhary, Tehsildar
7. Punneydeep Sharma, Tehsildar	18. Darpan Kamboj, Tehsildar
8. Narender Singh Dalal, Tehsildar	19. Gurdev, Tehsildar
9. Chetna Chaudhary, Tehsildar	20. Sanjeev Kumar Nagar, Tehsildar
10. Ravinder Hooda, Tehsildar	21. Anil Kumar, Tehsildar
11. Rakesh, Tehsildar	

The following 7 Officers who are not parties in CWP No.8502/2017, but are identically situated persons and have not been found eligible by the department as mentioned in proceedings mentioned above:

Names & Designation of the Officers (S/Sh.Smt.)	
1. Manbir Singh, DRO	5. Sushil Sharma, Tehsildar
2. Raj Kumar Bhorla, DRO	6. Vikram Singla, Tehsildar
3. Bijender Rana, Tehsildar	7. Navneet, Tehsildar
4. Parmod Chahal, DRO	<i>Note:</i>

Further names of following 2 Officers have also been sent in view of CWP No.23499 of 2019, but found

them ineligible on account of not having 6 ACRs of Very Good category and above and 2 ACRs of not less than Good category as mentioned in proceedings mentioned above:

Names & Designation of the Officers (S/Sh.Smt.)	
1. Abhishek Bibian, DRO	2. Raj Kumar, DRO

The Commission had conducted the interviews of all the above 54 candidates on 04.09.2019 in view of the position explained above, but the result was not declared in view of pending decision of the CWP No.8502 of 2017 and other connected writ petitions. The CWP No.8502 of 2017 alongwith 6 others writ petitions mentioned therein have been decided by the Hon'ble High Court vide its orders dated 13.11.2019 (copy enclosed). Now the Commission has decided to declare the result of the said recruitment.

Therefore, your goodself is requested to kindly inform the Commission as to which Officers out of above 54 Officers are to be considered eligible for the recruitment.

Besides above, it is also requested that if any officer whose record has not been sent to the Commission and he is found eligible for this recruitment, then his/her record may also be sent to the Commission so that Commission may not face any difficulty while declaring the final result.”

Reasoning Aspect:

34. From the above record the following issues would arise for consideration, in the considered opinion of this Court:

(i) Whether the action of the respondents in not

forwarding the names of the appellants was for justifiable reasons and as per the provisions of Rule 9 (1) (a) (iii) of the 2008 Rules;

(ii) Whether there could be two cut-off-dates as argued by counsel for the State in the facts and circumstances; and

(iii) Whether there can be any claim of discrimination by invoking the provisions of Article 14 on account of the fact that similarly situated persons had been granted the benefit.

35. The provisions of rule in question reads as under:-

“9. Selection of candidates for Register A-I:-

(1) The Additional Chief Secretary and Financial Commissioner to Government, Haryana, Revenue and Disaster Management, shall by a date to be determined by the Government, prepare a list of District Revenue Officers/Tehsildars not more than five times of the number of vacancies and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers and members, as may be nominated by the Government from time to time, the name of a person shall be submitted who-

(a) (i) has completed eight years continuous Government Service including service rendered as Naib Tehsildar;

(ii) **has not attained the age of fifty years on the first day of November immediately preceding the date of submission of names by the concerned authority;**

(iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and

(iv) is clear from vigilance angle;

(b) is a Graduate from a recognized University.

(2) The Committee mentioned in sub-rule (1) shall consider all such names and prepare a list, equal to twice the number of vacancies of persons considered suitable for being entered in Register A-I. This list shall be sent to the Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register A-I, and thereafter the names of the persons so selected shall be entered in the Register A-I.”

36. A perusal of the above said rule would go on to show that Rule 9 (1) (a) (iii) provides that a date is to be determined by the Government for the preparation of the list of the DROs/Tehsildars of not more than five times of the number of vacancies to be submitted for nomination to the Committee. The requirement as such as per the rule is 8 years continuous service of DROs/Tehsildars and service rendered as Naib Tehsildar is to be counted. The candidate in question was not to be more than 50 years of age on the 1st day of November, immediately preceding date of submission of name by the concerned authority. As per Clause (ii) similarly he was not to be facing disciplinary proceedings and against whom action was not being contemplated and under Clause (iv) was to be clear from vigilance angle.

37. The letter dated 30.05.2019, wherein a decision was

taken to fill up 23 posts from Register A-1 specifically provided that the names which were to be recommended should fulfill the eligibility as on 01.11.2018. Relevant portion of the said letter has already been reproduced above in paragraph No.27. The recommendation were to be sent by 28.06.2019 and any recommendation received after the said date were not to be entertained and considered.

38. On account of the interim order dated 26.04.2017 passed in **Joginder Sharma's case (supra)**, service rendered as Naib Tehsildar was not to be included for considering the 8 years of continuous qualifying government service. Thereafter, the letter dated 09.07.2019 (Annexure P-8) was issued reiterating the said fact that the age of the concerned officials had to be less than 50 years of age on or after 01.11.2018 and their ACRs were to be considered upto year 2018-2019 and experience be taken into consideration upto the date of recommendation. The DROs/Tehsildar who had attained the age of 50 years after 01.11.2018 till the date of recommendation, their ACRs and experience was to be considered only upto 01.11.2018. Similarly pending disciplinary proceedings, vigilance clearance and integrity was to be considered upto the date of consideration in both cases. Thereafter, the applications were filed and the order of the Division Bench was got modified on 21.08.2019 (Annexure P-10) and 29.08.2019 (Annexure P-12), wherein private

respondents in the said case and similarly situated persons were also to be considered and they were allowed to appear in the interview provisionally alongwith others. The cut-off-date, thus, has to be seen from the date which is provided in the rules, which would be 01.11.2018 as per Rule 9 (1)(a)(iii) of the 2008 Rules, as the process was set into motion on 30.05.2019. It is, thus, does not lie in the mouth of the State as such to say that on account of the pending litigation and on account of the orders of the Division Bench dated 21.08.2019 and 29.08.2019, a different cut-off-date would come into play and there was a distinction as such qua the names which had been sent later. The eligibility as such has to be seen as provided in the rule itself and finding of the learned Single Judge that the cut-off-date is 12.07.2019 is based on a wrong presumption.

39. The finding recorded that the letter dated 30.05.2019 was superseded by letter dated 09.07.2019 is based on a supposition which would be contrary to the rule quoted above. Neither in the said letter it has been mentioned anywhere that the same supersedes the earlier letter dated 30.05.2019 and neither the same would be permissible in any manner. Merely because the cut-off-date for sending the list of eligible persons was extended to 12.07.2019, it does not mean that the cut-off-date would change on account of the provisions of the rule itself, which specifically provides that the age has to be seen on the 1st day of November, immediately preceding

date of submission of names by the concerned authority. The said date has thus to be seen for all practical purposes the relevant date for considering the eligibility and the disqualification, if any, of the candidates including the mandatory requirement of 8 years of service.

40. In such circumstances, the reasoning as such that list of 16 candidates had been sent on 12.07.2019 and the said date has to be taken to be the cut-off-date for determination of eligibility cannot be sustained. Resultantly, this Court is of the opinion that the cut-off-date has to be considered as 01.11.2018. It is also to be noticed, as per the response of the State also in the written statement it was their specific stand that the experience is to be considered upto 01.11.2018 and, therefore, it does not lie in the mouth of the State to contend that a different cut-off-date has to be adopted. Even otherwise the letter dated 09.07.2019 (Annexure P-8) was also issued prior to any interim orders passed by this Court on 21.08.2019 and 29.08.2019 and, therefore, the argument raised that it was on account of the orders of this Court two separate cut-off-dates were being considered, is without any basis.

41. Keeping in view the above, it is now to be seen as to whether on the said cut-off-date the writ petitioners/appellants were eligible and whether they were facing disciplinary proceedings or not and action was being contemplated against them as per the rule.

The plain reading of the said rule has to be done and it is not for this Court to go into interpretation as such, admittedly neither any challenge as such has been raised to the rule in question. It is the specific stand of the State that in the case of Vijay Kumar Yadav that a decision to charge-sheet him was taken on 14.08.2018, which was well before the cut-off-date of 01.11.2018. It is, thus, apparent that when the first list of 13 persons was sent on 19.08.2018, the writ petitioner's name did not find mention on that account.

42. Similarly, the stand of the State in Gulab Singh's case is also that a decision was taken to charge-sheet him on 30.07.2018 which was again prior to 01.11.2018 and the stand again of the State was that the cut-off-date has to be seen as 01.11.2018. In the case of Ravinder Singh also the stand of the State was that on 30.07.2018 a decision had been taken to charge-sheet the petitioner, therefore, also he was ineligible on the cut-off-date on the plain reading of the rule. Reliance can be placed upon the judgment of the Constitution Bench passed in '**Padma Sundara Rao (Dead) & Ors Vs. State Of Tamil Nadu & Ors' (2002) 3 SCC 533**, wherein it was held that it is not for the Court to go into the question which may be supposed and what has been intended. Relevant portion of the said judgment reads as under:-

12.....The Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed

in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said.”

43. The said view was followed in the case of **Saregama India Limited (supra)**, wherein it was held that if the provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it. Resultantly, it had been held that the exercise that had been done by the High Court amounted to rewriting, which was not permissible and the interim order was set aside. Relevant portion of the said judgment reads as under:-

“21. The court is entrusted by the Constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of a legislation or rules made under it. A statute may be invalidated if it is ultra vires constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute be invalidated. However, the court in the exercise of judicial review cannot supplant the terms of the provision through judicial interpretation by re-writing statutory language. Draftsmanship is a function entrusted to the legislature. Craftsmanship on the judicial side cannot transgress into the legislative domain by re-writing the words of a statute. For then, the judicial craft enters the forbidden domain of a legislative draft. That precisely is what the Division Bench of the High Court has done by its interim order. [Section](#)

31D(2) speaks of the necessity of giving prior notice, in the manner as may be prescribed, of the intention to broadcast the work stating the duration and the territorial coverage of the broadcast, together with the payment of royalties in the manner and at the rates fixed by the Appellate Board. While the High Court has held the broadcasters down to the requirement of prior notice, it has modified the operation of Rule 29 by stipulating that the particulars which are to be furnished in the notice may be furnished within a period of fifteen days after the broadcast. The interim order converts the second proviso into a “routine procedure” instead of an exception (as the High Court has described its direction). This exercise by the High Court amounts to re-writing. Such an exercise of judicial redrafting of legislation or delegated legislation cannot be carried out. The High Court has done so at the interlocutory stage.”

44. In the case of **Mohan Kumar Singhania (supra)** it was also held that the consideration on inconvenience and hardship should not be seen while interpreting a statute and the ordinary sense with reference to other clauses of the Act or Rules has to be seen. Relevant portion of the said judgment reads as under:-

67. We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various Text Books on the Principles of Interpretation of Statutes. However, it is suffice to say that while interpreting a statute the consideration of inconvenience and hard ships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as

possible, to make a consistent enactment of the whole statute or series of statutes/ Rules/ Regulations relating to the subject matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation.”

45. In such circumstances, the argument raised by Mr. Kalra that how the Rule 9 (1)(a)(iii) is to be read is without any basis. As noticed the said rule was never subject matter of challenge and it is not for this Court to go into the interpretation of the statute, since the relief only sought was that the name was not considered at that point of time. It is not for this Court to substitute its view to suit the convenience of the appellants as such. Thus, it is apparently clear that the writ petitioners/appellants Vijay Kumar Yadav, Gulab Singh and Ravinder Singh, on account of action being contemplated, cannot claim any right of consideration, in view of the rule which stares them in their face.

46. However, in the case of Dinesh Singh, it is apparent that the decision to charge-sheet him was taken on 05.02.2019 which is after the cut-off-date of 01.11.2018 and, therefore, the stand of the State that he was ineligible for nomination to the post of HCS (EB) is not justified. Even Mr. Sunil K. Nehra, is also correct to submit that '*rules of the game*' could not be changed after the game has

started since the nomination process had started on 30.05.2019. The cut-off-date had been fixed as 01.11.2018 and he was justified to submit that the learned Single Judge was in error in coming to the conclusion that eligibility has to be seen on 12.07.2019 and his case was not considered on that account and the writ petition had been wrongly dismissed.

47. Reliance can be placed upon the judgment of the Apex Court passed in **K. Manjusree Vs. State of A.P and another', 2008 (2) SCT 6**, wherein it had been held that the reduction in the criteria of minimum marks for interview shall not be introduced after the entire selection process had been completed and it would amount to changing the rules of the game after the game was played, which is not permissible. It was held that the Selection Committee was free to do the same, but the same was before the commencement of selection process. The said principle would be squarely applicable in the present case.

48. Reliance placed upon the judgment passed in **K.V. Jankirarman and O.P. Latka (supra)** as such would be without any basis, in view of the clear dictate of the rule that where action was being contemplated, the State was within its right to withhold the name for nomination. The factual aspect has already been discussed above and, therefore, for the first three appellants namely Vijay Kumar Yadav, Gulab Singh and Ravinder Singh, it has been

found that action in principle was being contemplated. Therefore, it does not lie in their mouth as such to claim that their names have been wrongly withheld.

2nd Issue of Discrimination

49. On the issue of discrimination as such that two other similarly situated persons names had been recommended namely Shri Dheeraj Chahal and Anil Doon is without any basis. It is not the case of the said appellants the abovesaid persons had been appointed at their cost. Even otherwise the State has rightly justified in its stand that no action was being contemplated against Dheeraj Chahal and Anil Doon and that is why their names were sent and which was under the provisions of the rule itself. The said persons have neither been impleaded as party and, therefore, no relief can be granted against them. The declaration of the result also shows that two seats are vacant, but in the facts and circumstances since the writ petitioners have a legal bar as such against them as per the provisions of the rule, no fault can be found in the action of the State qua the three writ petitioners.

50. The argument that similarly situated persons names had been recommended and, therefore, the writ petitioners should have also been recommended, has already been examined under issue no.1, wherein it has been noticed that as per the provisions of the rule and factual matrix, charge-sheets were not contemplated against

the two persons. Therefore, the argument of violation of Article 14 had rightly been rejected by the learned Single Judge and thus, the claim for parity as such is not sustainable. Even otherwise it is the settled principle that Article 14 is a positive concept and not a negative concept and it has been time and again observed as such. Reliance can be placed upon the judgment passed in **Shanti Sports Club (supra)**, wherein in para no.71 it was held as under:-

“Article 14 of the Constitution declares that:

14. Equality before law.— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities. In *Chandigarh Administration v. Jagjit Singh* (1995) 1 SCC 745, this Court made a lucid exposition of law on this subject. The facts of that case were that the respondents, who had given the highest bid for 338 sq. yds. Plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of

allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court, which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, the Administrator had restored the plot despite dismissal of the writ petition filed by her. While reversing the order of the High Court, this Court observed as under:-

"8.....We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of

discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and

convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course—barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

51. The latest judgment of the Apex Court passed in **R. Muthukumar (supra)** also expounds the same principle. Relevant portion of the said judgment reads as under:-

"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In *Basawaraj & Anr. v. Special Land Acquisition Officer*, (2013) 14 SCC 81, this court ruled that:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in

other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

52. Resultantly , the said issue is decided against the three appellants.

53. Smt. Meetu Dhankhar is though apparently ineligible since proceedings were pending against her as per the office noting itself and the fact that there was a report of the inquiry officer which only came on 26.07.2019, but in the absence of any relief being claimed against her in the present writ petitions she had not been impleaded as a party. Thus, it could not be for us to comment upon her name which was sent *prima facie* in violation of the provisions of the rule, which would be clear from the office note itself and which also could not be justified by the counsel for the State.

54. However, this Court cannot shut its eyes to the ineligibility of Smt. Meetu Dhankhar on the face of the record and though no relief has been claimed against her, but the final result is subject to the decision of the litigation. It has been argued on behalf of the State that the nomination from the DROs/ Tehsildars is to the post of HCS(EB) which is a prestigious assignment and the purpose of amendment of the rules is that no departmental proceedings should be pending or action should not be contemplated. Therefore,

even the Learned Single Judge has held that it is for the purpose of nominating persons who have a clean slate. Thus, on the one hand argument raised is that persons with a clean slate should only be nominated but apparently, on the face of the record, it seems that the said officer has been nominated though she was facing a charge-sheet which had been issued under Rule 7 of the 2016 Rules on 14.01.2019, wherein the charge was of registering sale deeds after passing of the orders by the Apex Court in Civil Appeals, which would be clear from the record. A perusal of the record produced would go on to show that on 10.05.2018, the Deputy Commissioner had appointed Sub-Divisional Officer, Karnal as Enquiry Officer regarding the sale deeds executed in violation of the orders of the Apex Court and as per the preliminary enquiry and major penalty had been proposed by the SDO. On 21.08.2018, the Deputy Commissioner had written regarding the issuance of registration of sale deeds done in contravention of the orders of the Apex Court in CA-8788-2015 titled *Rameshwar Vs. State of Haryana & others*, dated 12.03.2018.

55. It is, thus, apparent that action had already been contemplated against her prior to 01.11.2018 which is the cut-off date since the Deputy Commissioner on 21.08.2018, agreed with the observations of the SDO and recommended that strict disciplinary action should be taken against the concerned officer and forwarded

the same to the Addl.Chief Secretary (Financial Commissioner-Revenue). The enquiry report dated 26.07.2019 was forwarded to the Deputy Commissioner on 20.08.2019 and only on 22.08.2019, the charge-sheet was filed. Rather a perusal of the file would go on to show that on 21.08.2019 when the order was passed by the Division Bench, Ms.Meetu Dhankhar had filed an application to the Addl.Chief Secretary for finalization of the disciplinary proceedings pending against her and for forwarding her name for the purpose of Register A-1. In such circumstances, it is for the Government to take action on the said issue and after following due procedure and issuing show cause notice to the concerned officer(s), especially since the final result is subject to the final decision of the litigation.

Relief:

56. Keeping in view the above discussion LPA Nos.564, 571 and 655 of 2021 are dismissed and LPA No.737 of 2021 filed by Dinesh Singh is allowed. All pending applications are also disposed of as such. The State shall take steps to consider the case of the said appellant for appointment from Register A-1 against two vacancies which are available as per the result dated 17.11.2019. The necessary exercise be completed within a period of two months from today.

57. Copy of this order be sent to the Chief Secretary, Haryana for necessary compliance regarding action to be taken

regarding Smt. Meetu Dhankhar. Original record be returned to Mr. Pandit after obtaining proper receipt.

(G.S. SANDHAWALIA)
JUDGE

MARCH 08, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No