

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24966 of 2021 (O&M)

Date of Decision:16.08.2023

Inder Jeet and others ...Petitioners

Vs

State of Haryana and others ...Respondents

2. CWP No. 25824 of 2021 (O&M)

Dr. Gurnam Saini ...Petitioner

Vs

The State of Haryana and others ...Respondents

3. CWP No. 25490 of 2021 (O&M)

Vijay Singh ...Petitioner

Vs

State of Haryana and others ...Respondents

4. CWP No. 25821 of 2021 (O&M)

Ashok Kumar ...Petitioner

Vs

State of Haryana and others ...Respondents

5. CWP No. 25876 of 2021 (O&M)

Suman Rani ...Petitioner

Vs

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. B.S. Patwalia, Advocate and
Mr. Akshit Pathania, Advocate
for the petitioners in CWP No.24966 of 2021.

Mr. B.S. Saroha, Advocate
for the petitioners in CWP Nos. 25824-2021 and 25821-2021.

Mr. Karanvir Singh Khehar, Advocate
for the petitioner in CWP-25490-2021.

Mr. Naveen Kumar, Advocate for
Mr. Vivek Khatri, Advocate
for the petitioner in CWP-25876-2021.

Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. Kanwal Goyal, Advocate,
Ms. Harpriya Khaneka, Advocate for the respondent-HPSC.

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HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, five writ petitions, details of which have been given in the heading are being decided as, all these petitions involve same question of law on similar facts.
2. For the sake of convenience, the facts are being taken from CWP No. 24966 of 2021.
3. The Haryana Public Service Commission-respondent No.3 issued an advertisement No.12 dated 24.01.2004, advertising 102 posts of Haryana Civil Services (Executive Branch) and Other Allied Services, out of which, 58 posts were for HCS (Executive Branch) and the remaining were for Other Allied Services. The candidates applied and competed for the said posts. On 30.12.2004, the respondent-Commission after finalizing the selection process, recommended 102 candidates for appointment against the said advertised posts.
4. Despite recommendations made by the respondent-Commission, appointments were not made by the Government and ultimately, candidates, who

were recommended for appointment by the respondent-Commission, filed writ petitions being CWP No. 3768 of 2005 and CWP No. 5437 of 2005 before this Court seeking appointment in pursuance to recommendation of the Commission. It may be noticed that candidates, who could not find their names in the list of recommended candidates, challenged the recruitment process itself by filing CWP No.3327 of 2005.

5. During the pendency of the aforementioned writ petitions, the respondent-State reduced the cadre strength of the HCS (Executive Branch) from 300 to 230.

6. During the pendency of the said writ petitions, the respondent-State keeping in view the number of complaints received, constituted a Vigilance Committee to find out as to whether, the selection process undertaken was in accordance with law or not, so that, an appropriate decision could be taken with regard to the claim being made by the selected candidates for their appointment as well as upon the complaints qua irregularities committed during the selection process. Keeping in view the stand taken by the Government that the matter was under consideration of the Vigilance Department, the writ petitions filed seeking appointment in pursuance to the recommendation as well as those challenging the selection process itself were dismissed by this Court on the ground that the Government itself is considering the said issue.

7. Order passed by this Court dismissing the writ petitions on the ground that the Government is seized of the matter, was challenged before the Hon'ble Supreme Court of India, which Special Leave Petition came to be dismissed on 11.12.2007 with the observation that the State Government should expedite the enquiry and conclude the same at the earliest.

8. While the matter with regard to selection against 102 posts advertised was pending consideration with the respondent-State, another advertisement was

issued in the year 2009 by the respondent-State. The said advertisement of 2009 was then challenged vide CWP No. 2130 of 2009 before this Hon'ble Court wherein the issue raised was that while on one hand, the Government is not accepting the recommendations made by the respondent-Commission in pursuance to the earlier advertisement issued in the year 2004 on the ground that the issue qua the appointment of re-commended candidates is under consideration and without finalizing the said issue, a fresh advertisement has been issued by the respondent-State. The said writ petition was ultimately disposed of on 20.08.2010 with the observation that the vigilance enquiry, which has been initiated in pursuance to the allegation of irregularities while making recommendations in pursuance to the initial advertisement of the year 2004, shall be concluded within a period of six months.

9. Upon the expiry of the said period of six months when the enquiry initiated by the respondent-State did not attain finality, contempt petitions were filed and during the pendency of the said contempt petitions, respondent-State was directed to conclude the enquiry entrusted to the Vigilance Department within a period of three months, so that, the claim of the selected candidates in pursuance to the advertisement of the year 2004 could be decided.

10. The report of the said enquiry by the State Vigilance Bureau was submitted to the Chief Secretary, Government of Haryana on 09.11.2011 for consideration wherein it was mentioned that out of 102 selected candidates in pursuance to the advertisement issued in the year 2004, irregularities qua 64 candidates were noticed, which were detailed in the said report. The said report pointing out irregularities only qua 64 candidates was sent to the Government for its consideration.

11. Along with the report, a chart giving details of all the recommended candidates was also appended by the Vigilance Department depicting the status of each candidate as to whether, recommendation qua particular candidate was free of any discrepancy or not. As per the said chart, against 38 candidates, no discrepancy was found qua their recommendation.

12. Despite receipt of the said vigilance report dated 09.11.2011, when no action was taken by the respondent-State qua the recommendations, the recommended candidates again filed a bunch of writ petitions seeking direction to the respondent-State to make appointments in pursuance to the recommendation of their names in respect of the Advertisement issued in the year 2004. The ground taken by the recommended candidates was that qua their recommendations by the Commission, no discrepancy was found by the Vigilance Department, hence, they were entitled for appointment, keeping in view the recommendations made by the respondent-Commission coupled with the report of the Vigilance Department, a copy of the said vigilance report dated 09.11.2011 has been appended with the present petition as Annexure P-8. The said writ petitions came to be decided by a Coordinate Bench vide order dated 29.05.2015 in CWP No. 108 of 2012, wherein, all the said writ petitions were dismissed by recording certain observations qua the selection process.

13. The said order passed by the Coordinate Bench dated 29.05.2015 was assailed in LPA No.1168 of 2015. During the pendency of the said Letters Patent Appeal, the Division Bench passed an order dated 12.08.2015 whereby the respondent-State was directed to apprise the Court, as to whether any decision has been taken on the basis of the vigilance report keeping in view the order passed by the Hon'ble Supreme Court of India in respect of the same selection process/advertisement, wherein it was mentioned that State will be competent to

take appropriate action after getting report from the Vigilance Department qua the recommendation made by the Commission in pursuance to the Advertisement issued in the year 2004.

14. Keeping in view the order dated 12.08.2015, the respondent-State, despite receiving the vigilance report dated 09.11.2011, decided to re-look into the selection process once again by forming a Committee under the chairmanship of the Director General, Vigilance Bureau, which Committee was requested to submit a report within a period of one month after looking into all aspects of the selection process.

15. It may be noticed that in the first vigilance report, which was given in the year 2011, out of 102 candidates, discrepancies were found only against 64 candidates and against remaining 38 candidates, no discrepancy was found. The purpose of setting up of the Committee was again to find out if the candidates recommended by the Commission were tainted.

16. The said Committee formed by the Government looked into the selection process undertaken by the respondent-Commission qua the selection and recommendation of 102 candidates once again and gave a detailed report dated 29.01.2016 to the respondent-State. It may be noticed that members of the Committee, which was formed by the respondent-State was the then Additional Director General, State Vigilance Bureau, Panchkula, Inspector General of Police, State Vigilance Bureau, Panchkula, Superintendent of Police, State Vigilance Bureau, Hisar and Deputy District Attorney, State Vigilance Bureau, Panchkula. Vide the said report dated 29.01.2016, the Committee again reiterated the findings of the Vigilance Bureau qua the 38 candidates against whom no discrepancy/irregularity was found in the first vigilance report dated 09.11.2011 and the names of untainted candidates were also mentioned in the said report.

17. The said report of the specially formed Committee by the respondent-State on the asking of the Hon'ble Bench in LPA No.1168 of 2015 was considered by the respondent-State and a decision was taken at the highest level and the same was conveyed through a letter written by the Chief Secretary, Government of Haryana to the Advocate General, Haryana dated 26.02.2016 wherein, it was mentioned that the enquiry report submitted by the State Vigilance Bureau, has been accepted in principal by the Government after due consideration of the matter and it has been decided by the Government to offer appointments to the 38 candidates, who have been found untainted in the report dated 29.01.2016 of the Committee, however, it was mentioned that the said appointments were to be made on certain conditions, which were also made part of the said letter.

18. The said letter was presented before the Division Bench on the very next date when LPA No.1168 of 2015 was taken up for consideration on 27.02.2016 and the said letter dated 26.02.2016 was taken on record. On 27.02.2016, the Division Bench after noticing all the facts passed the following order:-

“By way of this order, we shall dispose of LPA-1168- 2015, LPA-1198-2015, LPA-1266-2015 and LPA-1291-2015. For the sake of convenience, facts are being taken from LPA-1168-2015.

The appellants challenge order dated 29.05.2015, dismissing their writ petitions.

The appellants sat for an examination conducted by the Haryana Public Service Commission for HCS Executive and Allied Branch, and were declared successful but as a cloud was cast on the examination, the matter was investigated by the State Vigilance Bureau. A Special Leave Petition was filed by the appellants and certain other candidates, seeking appointment, which was decided by directing the vigilance bureau and the State of Haryana to take an independent decision in the matter so as to ascertain the fairness of the selection. The writ petitions filed by the appellants were eventually dismissed by holding that as it is not possible to distinguish between tainted and non-tainted candidates. The entire process of selection was, therefore, held to be a nullity. The appellants

thereafter filed appeals wherein after considering the entire matter, the following order was passed on 12.08.2015:-

“We have heard counsel for the appellants and perused the impugned order. A perusal of the findings recorded by the learned Single Judge, appear to prima-facie suggest that irregularities/ illegalities detected by the Vigilance Bureau, vitiate the entire selection process and, therefore, do not entitle the petitioners to urge that as nothing is alleged against them, they should be offered appointment. A perusal of the order passed by the Supreme Court in a Special Leave Petition, pertaining to this very selection reveals that the State of Haryana was required to take an independent decision either by holding an inquiry or based upon the report received from the Vigilance Bureau. A perusal of the record as well as the impugned order reveals that there is no reference to any independent decision taken by the State of Haryana. Thus before proceeding any further in the matter, we call upon the State of Haryana to apprise the Court whether any decision was taken by the authority concerned based upon the inquiry submitted by the Vigilance Bureau or any other material that the entire selection stands vitiated.”

We need not refer to the other interim orders at this stage as the State of Haryana admitted that after receipt of the vigilance report (which does not allege any wrong doing on the part of the appellants and other non-tainted candidates) it had not taken any independent decision. The State of Haryana after examining the record, constituted a committee of senior officers to taken a decision in the matter. The committee apparently with the object of ensuring that there is no factual or legal error, requested that the matter be once again examined by the vigilance bureau. The Chief Secretary to Government of Haryana, therefore, made a reference to the vigilance bureau, which reads as follows: -

“Reference to your office memo No. 61362, dated 9th December, 2015 on the subject mentioned above. The matter has been considered by the Government and it has been observed that it needs to be decided who is tainted and who is untainted in the HCS (Ex. Br.) and other Allied Service Examination, 2004. This can be best done by the State Vigilance Bureau which has thoroughly investigated all relevant records. Thus the Government has directed the DG/SVB to do the needful and if, deemed necessary, may set up a Committee under his Chairmanship for the purpose. The Director General, State Vigilance Bureau has further been requested to submit report in this matter within one month positively vide this office letter No. 66/13/2012-2SIII dated 17.12.2015 (copy enclosed).” The State of Haryana, having taken a decision to consider separation of tainted and untainted candidates, is granted one month time from today, to take a final decision in the matter.”

The vigilance bureau thereafter submitted a fresh report to the government. The committee after examining the entire record including the recommendations made by the vigilance bureau, took a conscious decision and segregated the tainted from the non-tainted candidates and forwarded its report to the Government.

Counsel for the State of Haryana submits that the State has accepted the report and passed an order dated 26.02.2016 and for that purpose refers to a letter received from the Chief Secretary to Government of Haryana addressed to the Advocate General, Haryana, which reads as follows: -

“Kindly refer to the order dated 12.08.2015 passed by Hon'ble High Court in the said case vide which the Hon'ble High Court was pleased to call upon the respondent State of Haryana to apprise the Court whether any decision was taken by the authority concerned based upon the inquiry submitted by the State Vigilance Bureau or any other material that the entire selection stands vitiated. In this regard it is submitted that the matter has been got examined by the Government. Keeping in view the inquiry report submitted by the State Vigilance Bureau after the consideration of matter 'in-principle' decision has been taken to offer appointment to the candidates who found innocent in this report. It is also submitted that since the vacancies for the year 2004 have already been withdrawn as such they cannot be given appointment against these vacancies. These candidates can be considered against the present vacancies as fresh candidates. It is also made clear that those accepting the offer of appointment would not be entitled to backwages or any other benefits, what so ever. The decision of the competent authority of offering appointment is also subject to the revised recommendation of Haryana Public Service Commission for the HCS (Ex. Br.) & Other Allied Services Examination-2004. It is therefore, requested to apprise the Hon'ble High Court accordingly.”

The letter is taken on record.

Counsel for the State of Haryana states that he has instructions to make a positive statement that in view of the decision taken by the Government of Haryana, duly reflected in letter dated 26.02.2016, candidates who have been found innocent in the report shall be offered appointment in terms of the decision taken by the government but the impugned order may only be set aside as regards the non-tainted candidates.

Counsel for the appellants state that they have no objection if the appeals are disposed of in terms of the decision taken by the State of

Haryana. In view of what has been recorded hereinabove, particularly the order passed by the State of Haryana and the statement made by counsel for the State of Haryana, the appeals are partly allowed in terms of decision taken by the State of Haryana vide letter dated 26.02.2016 and the impugned order is set aside insofar as it concern the candidates who have been found to be innocent. The consequential orders be processed and passed expeditiously.”

19. A bare perusal of the above order would show that decision of the Government as conveyed vide letter dated 26.02.2016 was accepted by the Court, which was a conscious decision taken by the respondent-State after due consideration of all the aspects and by accepting the report of the special Committee constituted by the respondent-State. The decision of the respondent-State, which was conveyed to the Advocate General, Haryana vide letter dated 26.02.2016, was made part of the order dated 27.02.2016 and LPA No.1168 of 2015 was allowed in terms of the said decision of the Government. It may be noticed that though 102 recommended candidates were before the Court in the Letter Patent Appeal against the order of the Co-ordinate Bench dated 29.05.2015 but said appeal was allowed only qua 38 candidates, who were found untainted.

20. It may be noticed that the respondent-State conceded to give appointment to only 38 candidates, who were found untainted keeping in view various vigilance reports, which had come in their favour and the remaining 64 candidates against whom discrepancies were cited were declined appointment by the respondent-State, which decision of the Government was not interfered with by the Division Bench and direction of the Division Bench was only to grant appointment to 38 candidates as per the decision of the respondent-State, which was recorded while deciding LPA No.1168 of 2015.

21. The said judgment in LPA No.1168 of 2015 was challenged before the Hon'ble Supreme Court of India in SLP No.6181 of 2016 by the candidates, who

were described as tainted by respondent-State and to whom no relief was granted by the Division Bench but the said Special Leave Petition was ultimately withdrawn with liberty to approach the High Court.

22. Keeping in view the decision taken by the respondent-State qua granting appointments, which decision was made part of the order by Division Bench while passing order in LPA No. 1168 of 2015 as noted hereinbefore, candidates who were found untainted, were given appointments on the terms and conditions mentioned in the letter dated 26.02.2016.

23. It may be noticed that after the dismissal of the writ petition bearing CWP No.108 of 2012 through which the bunch of petitions filed by the recommended candidates were dismissed by the Coordinate Bench vide order dated 29.05.2015, some candidates out of those 64 recommended candidates, who were termed as 'tainted' had also approached the Division Bench through LPAs and one of the LPA bearing No.1292 of 2015 filed by one such tainted candidate was disposed of by the Division Bench with liberty to the appellant therein to file representation with the Government to re-consider the decision taken qua him and the same representation was directed to be decided within three months of its receipt.

24. Representations were filed for re-consideration by the candidates, who were termed as tainted and were declined appointment with the Government, which representations were rejected by this Court vide order dated 26.02.2015. The said action of the respondent-State was then challenged by filing writ petitions by the candidates, who were being termed as tainted candidates. In one of the said writ petitions i.e. CWP No. 7888 of 2017 the argument raised was that there was no difference between the candidates, who have been declared as 'untainted' as against who were termed as 'tainted' by the Vigilance Bureau as,

the irregularities being pointed out against tainted candidates also existed in the case of candidates, who have been declared as untainted, in light of which fact it was prayed that the Government was liable to reconsider the claim of candidates termed as tainted for the purpose of appointment.

25. In the said petition vide order dated 17.12.2018, Co-ordinate Bench of this Court, in order to find out actual facts qua the averments raised in CWP No. 7888 of 2017 directed the respondent-State to apprise this Court qua the aspects pointed out in the said order.

26. In the said case, an affidavit dated 06.03.2019 was filed on behalf of the Vigilance Bureau by an officer of the rank of Deputy Superintendent of Police wherein it was mentioned that in the fresh scrutiny of the answer sheets of 38 candidates, who were appointed in pursuance to the earlier decision of the respondent-State, certain discrepancies were found in 27 cases, which need to be looked into afresh.

27. Thereafter, without there being any order from the Court accepting the said affidavit, the Government in its wisdom unilaterally decided to reopen the entire issue of selection so as to declare all the candidates as tainted and to take appropriate action against those candidates who have been declared untainted earlier and have already been appointed in pursuance to the decision dated 26.02.2016 taken by the Government. Show cause notices were issued to all the candidates, who were appointed after the decision of the Division Bench in LPA No. 1168 of 2015 after they were termed as 'tainted' in the affidavit filed in CWP No. 7888 of 2017. These show cause notices issued to the petitioners herein to the effect as to why their services be not dispensed with as their selection/recommendation by the Commission is also tainted in the light of the decision of the Government now finding the entire selection process in pursuance

of which the appointments were made as vitiated with irregularities. Through the present writ petitions, the said show cause notices have been challenged.

28. Learned senior counsels, who have argued on behalf of the petitioners in light of the sequence of events, which have been noticed hereinbefore, submit that the candidates-petitioners were appointed after having been declared untainted more than once and that too by the same Vigilance Bureau. It is submitted that the fact of them being untainted was accepted by the government after due consideration and a conscious decision was taken by the respondent-State to appoint them, which decision has already been brought into operation and was also made part of the order dated 27.02.2016 passed by the Division Bench in LPA No.1168 of 2015. Therefore, now without there being any order from this Court allowing the respondent-State to reconsider the issue, issuance of impugned show cause notices amounts to backtracking from the decision as conveyed to the Hon'ble Division Bench in LPA No.1168 of 2025 vide letter dated 26.02.2016, even more as the said decision has been made part of order of the Court, a fresh action on the same subject without the permission of the Court will amount to contravention of the directions given by this Court while passing order in LPA No.1168 of 2015, which is not permissible.

29. Learned senior counsel for petitioners further argues that before the decision to appoint the petitioners, enquiry/scrutiny of their recommendation has been held twice. It is submitted that in the enquiry by the Vigilance Bureau, recommendation of 38 candidates was termed as untainted and the petitioners happen to be amongst the list of these untainted candidates in both the recommendation of Vigilance Department, hence, without there being any fresh fact, on the basis of same record, State cannot be allowed to term the petitioners as tainted.

30. It is further submitted that in LPA No. 1168 of 2015 when the Court asked the respondent-State to apprise it qua the decision taken in pursuance of the report of the Vigilance Bureau of the year 2011, a special Committee was formed by the respondent-State to again look into the aspect as to whether there is any irregularity in the selection and the report of the Committee dated 29.01.2016 again described the petitioners as untainted by mentioning their names in the report, which report was duly accepted by the Government and presented before this Court for acceptance along with the letter vide which submission was made qua granting appointment to the said untainted candidates, which decision of the Government was accepted by this Court, hence, no action could have been taken and in the present case, especially when report of the Committee dated 29.01.2016 has not been overruled and even the letter written by the Government dated 26.02.2016 still holds field, as the same has never been withdrawn at any given point of time, hence, issuing show cause notices to the petitioners only on the basis that a DSP of the Vigilance Bureau in his affidavit filed before this Court has recommended that there are irregularities qua 27 of 38 candidates, who were treated untainted, the said affidavit cannot be treated to have an overriding effect on the report of the special Committee and the proceedings of this Hon'ble Court.

31. Learned senior counsel for petitioners further submit that once a decision taken by the Government, which was presented before the Court and the same has been accepted by the Court and made part of the final order, while deciding LPA No. 1168 of 2015, a successor in office unilaterally cannot take decision contrary to the said decision dated 26.02.2016 so as to treat the petitioners now as tainted ones and issue show cause notices.

32. Learned senior counsel further submit that once the petitioners have been declared tainted upon unilateral review by the said Vigilance Officer, the present show cause notices are not mere show cause notices but are in fact, termination orders, as decision to terminate services of petitioners has already been taken by the Government in light of the said fresh scrutiny by terming them as tainted, which is clear from the plain reading of the show cause notice.

33. Learned State counsel, on the other hand, conceded certain facts, which have been noticed hereinbefore. It is conceded that scrutiny of the recommended candidates was done twice by the Vigilance Department and it was only after accepting the response arising out of the said scrutiny by Vigilance Bureau vide report dated 09.11.2011 as well as the special Committee report dated 29.01.2016 that the government took the decision to appointment the candidates, who were found untainted out of the total 102 recommended candidates and the letter dated 26.02.2016 was issued for communicating the said decision to the Hon'ble Division Bench during the proceeding in LPA No.1168 of 2015, which decision was made part of the Court order whereafter the said untainted candidates were given appointment in the year 2016.

34. Learned State counsel further conceded the factum that LPA No.1168 of 2015 was decided and decision of the Government as communicated vide letter dated 26.02.2016 was made part of the order, so as to appoint candidates who were found untainted in the enquiry reports. The only argument raised by the learned State counsel to support the show cause notices issued to the petitioners is that after appointment of petitioners in pursuance to order passed by the Division Bench in LPA No.1168 of 2015, this Court passed an order on 17.12.2018 in CWP No. 7888 of 2017, in pursuance to which a report was received from the Vigilance Bureau, which report was presented to the Government and on the

basis of the said subsequent report of the Vigilance Department, it was decided to issue show cause notice to the petitioner so as to treat them as tainted candidates.

35. Learned State counsel further submits that though, prima facie, certain decisions have been taken by the Government based on fresh scrutiny of the Vigilance Department but the ultimate decision of the Government will depend upon the reply which the petitioners will submit to show cause notices, which have been issued to them, hence, the Government is still open to consider all the objections of the petitioners qua the show cause notices and no decision has been taken so far in respect of show cause notices issued to the petitioners, hence, the present petitions may kindly be dismissed on this ground itself.

36. I have heard learned counsel for the parties and have perused the record with their able assistance.

37. It may be noticed that while issuing notice of motion by a Coordinate Bench on 09.12.2021, the State Government was restrained from taking any action qua the show cause notices, which have been impugned in the present petitions and as of now, no final decision has been taken by the respondent-State qua the show cause notices impugned in these petitions.

38. From the facts, which have been mentioned hereinbefore, it is clear that from the inception, the selection qua 102 posts of HCS (Executive Branch) and Other Allied Services has remained either under investigation of the Vigilance Department of the respondent-State or before Courts in one respect or the other. Initially, the Government despite recommendations from the respondent-Commission did not make appointments, which action of the respondent-State was made subject matter of litigation before this Court, wherein, the Government was asked to take appropriate decision independently on the basis of any inputs by the Department of Vigilance qua the selection process adopted by the

Commission for making selection to the HCS (Executive Branch) and Other Allied Services for the year 2004. The State Government in its wisdom referred the matter to the Vigilance Bureau for its view to be given after scrutiny of the entire record of the selection and it is a conceded position that the Director of the Vigilance Bureau filed a detailed report before the Government on 09.11.2011. The said report was considered by the Government wherein allegations of selection being tainted were found only against 64 candidates and not against all 102 recommended candidates. The said report also gave details of each candidate as to whether the said candidate was tainted or not, however, no action was taken at the relevant time on the said report.

39. Despite the said report, a Coordinate Bench of this Court when approached by the candidates, recommendations of whom were found to be without any discrepancy to get appointment as per the said report, dismissed their claim vide order dated 29.05.2005. The said judgment dismissing their claim was then taken in intra-court appeal before the Division Bench in LPA No. 1168 of 2015 wherein the Hon'ble Division Bench directed the respondent-State keeping in view the order passed by the Hon'ble Supreme Court as per which Government was to decide and take appropriate decision being the competent authority with respect to the selection, to inform the Court as to what decision was taken by the respondent-State with regard to the recommended candidates. In response to the said, the respondent-State in its wisdom formed a Committee of the high ranking officials of the Vigilance Bureau to once again go through the record of the selection process and make recommendation to the Government as to whether, any of the candidates is untainted or not. It is a conceded fact that the Committee so formed by the Government again gave its report on 29.01.2016 wherein names of the same 38 candidates were given, who according to the said Committee,

were untainted. The Government considered the said report and accepted the same and the said acceptance was at the highest level in the Government as posts of HCS (Executive Branch) were to be filled up and a letter was written by the Chief Secretary of the Government of Haryana to the Advocate General, Haryana on 26.02.2016 conveying their decision of accepting the report of the Committee dated 29.01.2016, so as to appoint the untainted candidates mentioned therein but with certain terms and conditions. The said decision of the Government was placed before the Division Bench of this Court in LPA No. 1168 of 2015 and the decision of the Government was made part of the order of the Court and the Letters Patent Appeal filed by the candidates, who were declared as non-tainted was allowed in terms of the decision of the Government that the untainted candidates, whose names find mention in the report of the Committee dated 29.01.2016 will be offered appointment on the conditions mentioned in the said letter.

40. Ultimately, these candidates were appointed and are continuing in service. Once the candidates have been appointed on the basis of the decision of the Government of Haryana, which decision was conveyed to the Hon'ble Division Bench of this Court in LPA No. 1168 of 2015 and the said decision was not only accepted by this Court but also made part of the order.

41. Once, a decision taken by the Government to appoint the petitioners after declaring them untainted candidates was accepted by the Court and the said decision was made part of the Court order, the said Court order along with the decision of the Government to treat the petitioners as untainted candidates becomes binding upon the parties to the said litigation. As the order passed by the LPA Bench is binding upon the respondent-State, no contrary decision can be taken by the Government so as to violate the judgment of the competent court of

law. Even if it is assumed for the sake of argument that the respondents wanted to re-consider the issue, the same can only be done with the permission of the Court and no unilateral decision can be taken by the Government, which is contrary to the ultimate order passed by the competent court of law i.e. the order of the Division Bench dated 26.02.2016, especially when the said order already stands complied with and is in operation for the last more than 5 years, therefore, the show cause notices, which have been issued by the respondent-State by taking a decision to term the petitioners as tainted candidates, which is in direct conflict with their earlier decision dated 26.02.2016 as well as the judgment of this Court in LPA No. 1168 of 2015, cannot be allowed to be sustained. It is only with the permission of the Court, the respondents could have proceeded further in case, they felt that they are entitled to re-consider the issue in light of any new fact, which has come to their knowledge, hence, the decision, which has been taken now by the respondents to treat the petitioners as tainted, which is in direct conflict with the earlier decision of the Government, which decision still continues to operate and has never been withdrawn, which has led to the issuance of the show cause notice, is liable to be set-aside and is accordingly set-aside.

42. Not only this, in case the respondents are allowed to take a somersault so as to now declare the petitioners as tainted candidates in order to cancel their appointment, the same will amount to override the judgment of the Division Bench of this Court in LPA No. 1168 of 2015. Once, the judgment of the Division Bench is binding upon the parties as the same has already attained finality and the said judgment has also been implemented by the respondents themselves, taking a contrary decision to the judgment of this Court will amount to override the order passed by the competent court of law, which otherwise is impermissible and cannot be allowed to be done.

43. Even otherwise, the decision of the Government to treat the petitioners as tainted candidates, which has led to issuance of the impugned show cause notice is on the basis of the same material, which was already considered by the Government while arriving at decision that the selection of the petitioners is not a tainted one. A contrary decision on the same fact cannot be taken subsequently. Without there being any fresh material on record, the earlier decision taken by the Government cannot be rescinded so as to cause prejudice to the petitioners, hence, issuance of show cause notice to the petitioners so as to term their selection as tainted, cannot be sustained.

44. Without there being and that too without there being any fresh material on record and without withdrawing the earlier decision of the Government as conveyed to the Court vide letter dated 26.02.2016, cannot be allowed and, therefore, the decision which has led to the issuance of the show cause notice cannot be allowed to operate in the facts and circumstances of the present case and the show cause notice is liable to be set-aside on this ground also.

45. Not only this, the State has to cross another hurdle so as to declare the petitioners tainted as, it is a settled principle of law that once a decision has been taken by a competent authority and the same has already been implemented, the successor in office has no jurisdiction to review the said decision unilaterally so as to cause prejudice to the beneficiary of the decision already taken. Even a successor Government has no jurisdiction to overturn a valid decision taken by the previous Government. As per the settled principle of law settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal Nos. 3492-3494 of 2005 titled as ***State of Karnataka and another Vs. All India Manufacturers Organisation & Others***, decided on 20.04.2006, the successor in office cannot overturn a valid decision taken and already implemented, hence, on

this score also, once the Government had already taken a conscious decision on 26.02.2016 and conveyed the same to the Court, which decision was accepted by the Court and made part of the order, now unilaterally, the successor in office cannot take a decision, which is contrary to the earlier decision so as to withdraw the benefits extended in pursuance to the initial decision taken, being contrary to the settled principle of law, hence, even on this score, the show cause notices issued to the petitioners cannot be sustained and are liable to be set-aside. The relevant paragraphs of the said judgment is as under :-

“31. *Res Judicata*

Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim nemo debet bis vexari pro una et eadem causa ("No one ought to be twice vexed for one and the same cause") and second, public policy that there ought to be an end to the same litigation . It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 of the CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both 'cause of action estoppel' and 'issue estoppel'. There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to Public Interest Litigations and second, whether the issues and findings in Somashekar Reddy (supra) constitute res judicata for the present litigation.

xxx xxx xxx xxx xxx

57. *Taking an overall view of the matter, it appears that there could hardly be a dispute that the Project is a mega project which is in the larger public interest of the State of Karnataka and merely*

because there was a change in the Government, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government has been clearly laid down in State of U.P. and Anr. v. Johri Mal and in State of Haryana v. State of Punjab and Anr. where this court observed thus:

"....in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same."

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46. Further in the present case, the argument of the respondent is that the decision to issue show cause notices to the petitioners is based upon the direction given by this Court vide order dated 17.12.2018 passed in CWP No.7888 of 2017.

The said order is reproduced as under:-

"Mr. Gurminder Singh, Senior Advocate, has argued (in CWP8044-2017) that after the report of Vigilance Enquiry was given, nothing was found against 38 candidates and those 38 candidates have already been appointed. With respect to the other 26 candidates, the objections are as under:-

(i) Inside the answer sheets of Agriculture subject, 02 marks with red pen have been given and on the front page, total has been done with blue pen. He further states that as per FSL report, both the writings with red and blue pens have been made by the same person.

(ii) In case, titled as Dr. Kuldeep Singh V/S State of Haryana and another (CWP-12378-2017), the allegation is that the Examiner has reduced one mark. Petitioner cannot get any benefit of reduction of marks, which can be made ground to deny him appointment.

(iii) Mr. Anurag Goyal, Advocate, has argued that the allegations against his client namely, Ms. Manisha Nar (CWP-24865-2017) is that initially, after making cutting, she has been awarded 08 more marks. Even if, these marks are reduced, she is a topper in SC category.

On the next date of hearing, after comparing the answer sheets of the selected candidates with the answer sheets of the candidates, who have been found to be 'unusual', learned State counsel will filed reply. He will also assist, whether in the answer sheets of selected candidates, there was writing with two pens (Red and Blue) and whether in those cases, initially, the examiner had used pencil and after erasing the same, has given marks by using red and blue pens. He will also state, whether in any answer sheet of the selected candidates, there was reduction/increase in the marks.

Summary of the allegations made in each of the petitions has been handed over to the learned State counsel.

Adjourned to 18.01.2019 for arguments.

A photocopy of this order be placed on the files of connected cases.

Copy of this order be given to learned State counsel under the signatures of the Court Secretary/Reader.”

47. A bare perusal of the above order would show that the order in question was passed by the Coordinate Bench only to find out the veracity behind the allegations being alleged by the candidates, who were being treated as tainted candidates. A bare perusal of the order would show that there is no direction given to the State to re-open the issue so as to decide the question whether, any candidate, who has already been declared untainted, his/her status is liable to be reviewed. By wrongly interpreting the order dated 17.12.2018 by which, the Coordinate Bench of this Court only directed the respondent-State to place on record certain facts so as to adjudicate the claim of certain tainted candidates, by misinterpreting the same, the respondent-State re-opened the entire issue of

selection, which is not at all permissible, hence, the reason being given by the respondent-State that there was a permission given by the Co-ordinate Bench to re-open the issue vide order dated 17.12.2018, is totally incorrect and cannot be accepted.

48. Further, learned State counsel submits that keeping in view the material, which has come on record after appointment of the petitioners in the form of the report of DSP of the Vigilance Bureau, the Government needs to take action. It may be noticed that no such fresh report of any officer of Vigilance Bureau has been brought on record by the respondents. Only an affidavit given by an officer of the rank of DSP of Vigilance Bureau is being relied upon to hold that as per the fresh view of the Vigilance Bureau not only 64 candidates are tainted but even majority of the earlier candidates appointed being untainted are also now tainted. The question, which arises for consideration is whether affidavit of an officer of a rank of DSP will override two reports of the Vigilance Bureau, one given by the Director in the year 2011 and other given by a Committee formed by the Government in the year 2016. It may be noticed that once a report on the basis of same record has been given by an officer highest in rank in the Vigilance Department, said report cannot be overridden by an officer, who is subordinate, by taking a contradictory view especially when the record remains the same on the basis of which the reports have been given by the Vigilance Department and the affidavit has been filed by a DSP rank officer in CWP No. 7888 of 2017.

49. That at this stage, the learned State counsel has raised an argument that there is a change in the circumstances as compare to what existed at the time when the selection of the petitioners was termed as untainted. Learned State counsel submits that keeping in view the fact that the selection process is a subject matter of criminal proceedings, charges have been framed against the

petitioners, which fact is good enough to take a decision contrary to the initial decision qua the selection of the petitioners being termed as untainted. On being asked, as to whether, the charges in the criminal proceedings have been framed against all the candidates, who were initially termed as untainted and appointed thereafter, the learned State counsel submits that charges have been framed only against three persons and not all the petitioners. That being so, the argument raised that there is a change in the circumstances, which permits the State Government to issue show cause notices to the petitioners so as to term their selection as tainted is incorrect and cannot be accepted.

50. Even otherwise, as per the settled principle of law, merely the framing of the charges in a criminal proceeding does not mean that the accused is guilty of the allegations/charges being alleged against him/her. It is only in case, an employee is convicted in a criminal case, which conviction reflects upon the moral of the said employee, action can be taken at that stage. Hence, the framing of a charge against any employee will not give entitlement to the respondents to treat that the allegations stand substantiated against the said employee so as to give jurisdiction to the State to take action. Hence, in the present case, the argument being pressed that the charges have been framed against three of the petitioners in the criminal case will give jurisdiction to the State to term the selection of all the petitioners as tainted, cannot be accepted and is accordingly rejected.

51. Further the argument of the learned State counsel that the Government is still open and only show cause notices issued to the petitioners have been impugned, cannot be believed for the reason that in the affidavit filed by the Chief Secretary in paragraph 12, it has already been mentioned that now the Government thinks that there are 102 tainted candidates instead of 64 candidates.

The same fact is also part of the show cause notice. Once the Government has already decided that the petitioners are tainted, the show cause notices are not for seeking explanation but for informing the petitioners about the decision of the Government and consequential termination of their services, which cannot be allowed in the facts and circumstances of the present case. Fact of this case show that decision has already been taken by the Government and show cause notice is only a formality to be completed, which act of the Government is against rules of natural justice and cannot be allowed as show cause notice has been issued after taken a decision, which is impermissible.

52. Keeping in view the above facts and circumstances, show cause notices dated 27.11.2021, which have been issued to the petitioners cannot be held to be valid one and cannot be allowed to operate and are consequently set aside. It may be noticed that this order will not preclude the Government to seek review of the order passed by the Division Bench in LPA No. 1168 of 2015 dated 27.02.2016 in case they intend to reopen the issue as to whether petitioners are tainted or not.

53. All writ petitions are allowed in above terms.

54. Civil Misc. Applications, if any, also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

August 16, 2023
Pankaj*/kanchan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No