

2025:PHHC:015347



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

CRM M-36189-2023

Date of Decision: 29.01.2025

Jaiveer Yadav and others

... Petitioners

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Puneet Bali, Sr. Advocate with
Mr. P.K. Chugh, Advocate and
Ms. Niharika Mittal, Advocate
for the petitioners.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 20 dated 18.10.2005 under Sections 13(1)(D) read with Section 13(2) of Prevention of Corruption Act 1988 (hereinafter to be referred as '**the PC Act**') and Sections 420, 467, 468, 471 and 120-B IPC, Anti Corruption Bureau, Hisar (Annexure P-2), charge sheet dated 05.07.2023 (Annexure P-20), the summoning order dated 05.07.2023 (Annexure P-21) passed by the Court of the Sessions Judge, Hisar,

whereby, the petitioners have been summoned and all consequential proceedings arising therefrom.

2. Learned senior counsel vehemently argued that the petitioners are the Haryana Civil Services (HCS) Officers, who were selected in the year 2004, offered appointment in the year 2016 in LPA No. 1168 of 2015 and are working on their respective posts since then. In fact, the Haryana Public Service Commission (hereinafter to be referred as '**the HPSC**') issued Advertisement No. 12 on 24.01.2004 and invited applications for recruitment to Haryana Civil Services (Executive Branch) and the allied services by way of direct recruitment. After holding the selection process, a final list of 102 candidates (which included the petitioners) was recommended for appointment to HCS (Executive Branch) and allied services. However, the formal appointment orders of the petitioners could not be issued to the petitioners due to the on going election process in the State of Haryana. Even after conclusion of the election process, no steps were taken by the State Government to issue the appointment letters to the petitioners. Ultimately, the petitioners and other similarly situated selected candidates approached this Court by way of CWP 3768 of 2005 and CWP 5437 of 2005 and prayed for issuance of directions to the State of Haryana to issue appointment letters to the petitioners and others. However, the said writ petitions were ultimately adjourned *sine die* in view of the statement given by the

respondent-State that they had constituted a Committee to conduct a vigilance enquiry in the entire selection process. At this state, the FIR No. 20 dated 18.10.2005 under Section 13(1)(D) read with Section 13(2) of the PC Act and Sections 420, 467, 468, 471 and 120-B of IPC, Anti Corruption Bureau, Hisar was also registered to look into the allegations of favoritism and corruption by the Chairman and Members of the HPSC in various selections from the year 2001 to 2004. Thereafter, the respondent issued an order dated 13.05.2005 under Rule 3 of the Punjab Civil Service (Executive Branch) Rules vide which the total cadre strength of HCS (Executive Branch) was reduced from 300 to 230 posts. Again the petitioners and other selected persons approached this Court by way of civil writ petitions, challenging the order dated 13.05.2005, whereby, the cadre strength was reduced and a further prayer was made to appoint the petitioners to HCS (Executive Branch) and allied services. However, the bunch of the aforesaid petitions was dismissed on 12.10.2006. The judgment dated 12.10.2006 passed by this Court was challenged by the petitioners and others by way of SLP (Civil) No. 21418 of 2006). However, the Hon'ble Supreme Court also dismissed the SLP vide judgment dated 11.02.2007. Learned senior counsel also referred to the paragraphs numbers 53, 63, 67 and 68 of the said judgment (Annexure P-3) passed by the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court made the following observations:-

"..... but there cannot be any doubt whatsoever that there existed a cloud which is required to be cleared. Unsuccessful candidates have leveled serious allegations against the members of the Commission. They may or may not be correct. The Vigilance Bureau has initiated an enquiry into the whole matter. Such an enquiry should, in our considered opinion, be allowed to be continued unless the State in terms of the report made by the Vigilance Bureau and upon making an enquiry of its own satisfies that the selection process was not tainted. Its disinclination to make an appointment till then cannot be found fault with....." (para 53).

"..... if the State is right in its contention that the selection process being in cloud, no appointment can be made, the court by invoking any doctrine cannot ask the State to do so unless it arrives of a positive and definite finding that the State's stand is fraught with arbitrariness. We do not find any arbitrariness in its act...." (Para 63)

".... We although as at present advised do not intend to make any observations in regard to the allegations and counter-allegations made by the Commission and State against each other, we only hope and trust that a constitutional authority like the Commission should neither withhold any document nor refuse to cooperate with the State Vigilance Bureau in the matter of conduct of an enquiry." (Para 67)

"If the statement made by the Commission are correct, they have nothing to hide. It would be in the interest of all concerned including the appellants herein to see that

the enquiry should be completed at any early date."
(Para 67)

"We direct the State Government to take all steps in this behalf. We would also request the Commission to render all cooperation to the authorities of the State Vigilance Bureau" (Para 68)

3. Learned senior counsel further submitted that from a perusal of the paras 67 and 68 of the judgments, it was observed by the Hon'ble Supreme Court that the vigilance enquiry might be completed at an early date by the State Government. However, instead of completing the vigilance enquiry, as observed by the Hon'ble Supreme Court, the respondent-State issued a fresh advertisement on 04.01.2009 to fill up the fresh posts, which included the posts on which the petitioners were also recommended for appointment from the previous recruitment. The petitioners and others again filed CWP 2130 of 2009 before this Court with a prayer to direct respondent/State for early completion of vigilance enquiry and also prayed for stay on the selection process qua the posts on which the earlier selected candidates, i.e., the petitioners were to be appointed. The said writ petition was ultimately disposed off by this Court vide order dated 20.08.2010 (Annexure P-5). However, while disposing off the writ petition, this Court has made the following observations:-

The Prayer made by the petitioners for restraining the respondents from filling up the post was negated by this

Court vide its order dated 21.4.2009 by observing as under:-

"In my opinion no case has been made out for stalling the selection. It must be kept in mind that in a controversy regarding a public appointment it is not only the interests of the candidates or the employer but also the interests of the public which have to be kept in mind. It is not in public interest that essential public posts should be kept vacant while the question regarding a particular selection is still under probe. Having said that it also cannot be gainsaid that in case ultimately the applicants are exonerated, their non-appointment would cause them great prejudice. However, I have no doubt in mind that in that eventuality this Court or the Government would make some arrangement to vindicate the interests of such applicants who are exonerated in the case."

The only prayer, thus, which would now survive in the petition is for completing the vigilance enquiry. Though the State had initially not come up with any firm stand in this regard but ultimately when directed to have instructions, an affidavit has been filed that the enquiry would be completed within a period of six months. That being the position, nothing would survive in the petition. The counsel for the petitioners still insisted on making submission in regard to the right of the petitioners for appointment to the posts, for which they were selected. Needless to observe that the selection being under clout, the appointment would depend upon the outcome of the enquiry. It may also need a notice that the petitioners

had earlier approached the Supreme Court and the action of the State in directing enquiry to go into the appointment was upheld. The Hon'ble Supreme Court clearly observed that the vigilance enquiry initiated to go into the whole matter be allowed to continue and the disinclination on the part of the State to make appointment was not found with any fault. The Supreme Court has also observed that the petitioners may take recourse to other remedies available to them under law if there was any subsequent event, while disposing of the application seeking clarification of the order. Obviously, any change in position can possibly be after conclusion of Vigilance enquiry.

Nothing, thus, would survive in this writ petition and the same is accordingly dismissed. The rights of the petitioners to have their remedy in case selection is not found with fault during the vigilance enquiry has already been protected while rejecting the prayer for interim order”.

4. Learned senior counsel further argued that despite specific orders and the stand taken by the State that they would conclude the enquiry within 06 months, the State Government did not complete the enquiry. Feeling aggrieved, the petitioners had filed COCP 1224 of 2011 before this Court and this Court directed the respondent to conclude the investigation within a period of 03 months vide order dated 01.06.2011 (Annexure P-6) so that necessary orders in respect of the appointment of the petitioners may be passed, in accordance with law. In the meantime, one of the successful

candidates moved an application under the Right to Information Act seeking the status of the enquiry. In response to the application, a copy of the final report recorded by the Director, Vigilance, which was forwarded to the Chief Secretary, Vigilance Bureau of the Government was supplied. In the said report, it was mentioned that the enquiry proceedings in which the selection of 2004 batch in pursuance to FIR No. 20 of 2005 had been concluded and it was pointed out that out of total 102 selected candidates, certain irregularities regarding cutting and using of different inks or certain candidates had been given marks in certain manner in cases of 64 candidates were found. However, 38 candidates, which included the petitioners were given a clean chit by the Director of State Vigilance Bureau, Haryana in his reports (Annexures P-7 and P-8), which were received as an information under the RTI Act. Thus, it was clear that no discrepancy was found in the answer sheets of the present petitioners and the selection of the petitioners was untainted. In spite of the fact that no taint was found in record of the selection of the petitioners, the respondent-State again did not offer appointment to the petitioners, despite repeated representations to the Government officials.

5. Again, when the selection was not offered to the non tainted candidates, some of the selected candidates approached this Court by way of CWP No. 108 of 2012 titled as ***“Apurv and others***

Vs. State of Haryana and others” seeking directions against the State for issuance of appointment to them, being non-tainted candidates and being cleared by the Director of State Vigilance Bureau, Haryana. However, the said batch of writ petitions was dismissed vide judgment dated 29.05.2015 (Annexure P-9) passed by this Court. The selected candidates filed LPA No. 1168 of 2015 before this Court against the judgment (Annexure P-9) passed by this Court and this Court had passed the following order 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.

At the asking of the Court, Ms. Shruti Jain Goyal, AAG, Haryana accepts notice on behalf of the State and prays for time to seek instructions/ file an appropriate short affidavit.

A copy of the letters patent be supplied to counsel by the State of Haryana during the course of the day.

Adjourned to 10.9.2015.

Copy of the order be provided to the State of Haryana under the signatures of the Special Secretary”.

6. Learned senior counsel further submitted that a Division Bench of this Court categorically asked the State of Haryana to apprise the Court about any decision, which was taken by the competent authority based on the enquiry report submitted by the Vigilance Bureau. In pursuance of the order dated 12.08.2015, the respondent-State again constituted another Independent Committee with the object of ensuring that there was no factual or illegal error and the matter was again examined by a Committee of following three senior officers of the State Vigilance Bureau:-

(i) The Additional Director General, State Vigilance Bureau, Panchkula.

(ii) The Inspector General of Police, State Vigilance Bureau, Panchkula.

(iii) The Superintendent of Police, State Vigilance Bureau, Hisar

(v) Deputy District Attorney, State Vigilance Bureau, Panchkula”.

7. In fact, the State Government had directed the above said Committee to submit a report within a period of one month with regard to tainted/untainted selected candidates of HCS (Executive Branch) and other allied services. Again, Independent Committee examined the entire record including the recommendations made by the State Vigilance Bureau and segregated the tainted candidates from non-tainted candidates and prepared a detailed report dated 29.01.2016 (Annexure P-10). It was categorically stated that 38 candidates did not have irregularities in their answer sheets and said fact has been re-verified from the answer sheets regarding irregularities of 38 candidates and did not found any irregularities in the answer sheets of 38 candidates, which included the present petitioner. Ultimately, LPA No. 1168 of 2015 came up for hearing before this Court on 27.02.2016 and this Court passed the following order:-

“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”.

8. Learned senior counsel further submitted that even the respondent-State had admitted before this Court on the basis of the report of the Independent Committee dated 29.01.2016 (Annexure P-10) that there was no irregularity in the selection process of the present petitioners. Thereafter, the petitioners were offered appointment by the respondent-State in compliance of the decision rendered in LPA 1168 of 2015 and the said order has attained finality. Even, a SLP was filed against the order dated 27.02.2016 passed by this Court in LPA No. 1168 of 2015, however, the same was dismissed as withdrawn vide order dated 05.04.2016 (Annexure P-13) passed by the Hon'ble Supreme Court. Learned senior counsel also highlighted the profile of the petitioners and submitted that all the petitioners had brilliant academic record and had cleared various

competitive exams conducted by various selection boards/commissions.

9. Learned senior counsel further argued that after serving mandatory probation period, the services of the petitioners were confirmed by the respondent. However, again on 27.11.2021, the show cause notices were served on the petitioners, seeking the reply as to why their services may not be terminated/dispensed with. In fact, the show cause notices revealed that a CWP 12378 of 2017 titled as ***“Kuldeep Singh Vs. State of Haryana and another”*** and other connected petitions was pending before this Court and the DSP, Vigilance Bureau had filed an affidavit before this Court pointing out some discrepancies in the answer sheets of the selected/untainted candidates and on the basis of that, the State Government had taken a decision, which led to the issuance of the show cause notices to the petitioners. Even, the petitioners were not party in the said CWP 12378 of 2017 and other connected petitions. Still further, the petitioners had already been offered appointment in LPA No. 1168 of 2015, which had already attained finality upto the Hon’ble Supreme Court.

10. Learned senior counsel further submitted that against the issuance of show cause notices dated 27.11.2021, the petitioners had filed different writ petitions before this Court and this Court had stayed further proceedings in pursuance to show cause notices on

09.12.2021. However, in the meantime, contrary to the earlier reports (Annexures P-8 and P-10), prepared by very senior officers of State Vigilance Bureau, Independent Committee, State Vigilance Bureau, the respondent-State filed a final report under Section 173 Cr.P.C. in the Court of Sessions Judge, Hisar and the petitioners were also arrayed as accused alongwith members of HPSE, examiners and few others. It was stated that some discrepancies were found in the answer sheets of the present petitioners. On the basis of the challan, vide order dated 05.07.2023 (Annexure P-21), the Court of Sessions Judge, Hisar, summoned the petitioners to appear in the Court on 10.08.2023. Learned senior counsel further submitted that against the impugned show cause notices dated 27.11.2021, the petitioner had filed different writ petitions including CWP No. 24966 of 2021 before this Court and vide order dated 09.12.2021, this Court had stayed further proceedings in pursuance of the show cause notices. The writ petitions finally came up for hearing before this Court on 16.08.2023 and this Court clearly held that once the Government had found the petitioners to be untainted, the Government could not be allowed to reopen the issue as to decide the question whether any candidate, who has already been declared as untainted, his status is liable to be reviewed. Still further, the proceedings have been reopened only on the basis of an affidavit given by an officer of the rank of DSP, Vigilance Bureau, which was impermissible in law. The affidavit of

an officer of rank of DSP cannot be permitted to override the two reports of Vigilance Bureau, one given by the Director, State Vigilance Bureau in the year 2011 and another given by the High Level Committee formed by the Government in the year 2016. Still further, such a subordinate officer could not be permitted to take a contrary view and the affidavit was wrongly filed in CWP 7888 of 2017, in which, the petitioners were not even the parties. Consequently, the argument raised by the State to term the selections of the petitioners as tainted was rejected by this Court. Learned senior counsel further argued that the respondent-State had filed a report under Section 173 Cr.P.C., in the Court of Sessions Judge, Hisar and the petitioners were also arrayed as accused alongwith members of the HPSE, examiners and few other officials. It was wrongly stated that some discrepancies were found in the answer sheets of the present petitioners, which had already been examined by the senior officers of the Vigilance Bureau and the petitioners were found to be non-tainted and clean. On the basis of the challan, vide order dated 05.07.2023 (Annexure P-21), the Court of Sessions Judge, Hisar summoned the petitioners to appear in the Court on 10.08.2023.

11. On the other hand, learned State counsel vehemently opposed the submissions made by the learned counsel for the petitioners by submitting that the petitioners are the main beneficiaries of the fabrication, manipulation and wrong doings in the

selection process of the HCS (Executive Branch) and other Allied Services Examination 2004, carried out by the then Chairman, Members and Secretary of the HPSE alongwith the examiners of all different subjects. She further argued that the petitioners were never given any clean chit in the report dated 09.11.2011 (Annexure P-8) and the report dated 29.01.2016 (Annexure P-10). In fact, the answer sheets of 38 candidates were checked properly by the Committee and later on other manipulations in the awarded marks in the interview as well as taking the answer sheets to the examiners by the Secretary HPSE in person clearly highlighted the wrong doings. Even, the challan has been preferred against the then Secretary of the HPSE, Hardeep Singh also. In fact, the answer sheets of the petitioners were again inspected thoroughly and it was found that there was overwriting and increasing of marks in the answer sheets. Accordingly, an affidavit dated 05.03.2019 was submitted in a writ petition pending before this Court and the discrepancies in the answer sheets of the petitioners were also highlighted. She further contended that after detailed investigation, the challan has already been presented before the competent Court and the petitioners have been summoned. Thus, the petitioners had the efficacious remedy of raising all their contentions before the trial Court at an appropriate stage and the petition deserves to be dismissed by this Court.

12. I have heard the rival contentions raised by the learned counsel for the parties and perused the record:-

(a) Declaration of petitioners as non-tainted candidates, vide detailed reports prepared by the Director, Vigilance Bureau, Haryana (Annexure P-8) and a High Level Committee of the State Government, headed by the Additional Director General, State Vigilance Bureau, Panchkula (Annexure P-10), after registration of the FIR (Annexure P-2):-

The FIR in the present case was registered by the State Vigilance Bureau, Haryana (now Anti Corruption Bureau) and the investigation was started normally. Thereafter, while taking up CWP 2130 of 2009, this Court had observed in the order dated 21.04.2009 that the inquiry in the present case would be completed within a period of 06 months. Thereafter, despite orders of this Court and the stand taken by the State that they would conclude the investigation within 06 months, the State Government did not complete the investigation. Some of the candidates filed COCP No. 1224 of 2011 and this Court again directed the respondent-State to conclude the investigation within a period of 03 months. In spite of that, investigation was not completed. However, one of the successful candidate moved an application under the Right to Information Act, seeking

the status of investigation and it was found that 38 candidates, which included the petitioners, were such, who had been given clean chit by the Director, State Vigilance Bureau. The report prepared by the State Vigilance Bureau, which was forwarded to the Chief Secretary, Vigilance Department, Government of Haryana, Chandigarh on 09.11.2011 has been annexed as annexure P-8 and it was clearly mentioned that no discrepancy was found during the inspection of answer sheets of the present petitioners and few other candidates. It requires mention that the said report, which was prepared by the Head of State Vigilance Bureau, clearly spelled that no discrepancy had been found in the answer sheets of the petitioners and there was no taint so far as the selection of the petitioners was concerned. Thereafter, the selected candidates filed LPA 1168 of 2015 titled as “**Apurv and others Vs. State of Haryana and others**” before this Court and vide order dated 12.08.2015, this Court had called upon the State of Haryana to apprise the Court as to whether any decision was taken by the authority concerned based upon the inquiry report submitted by the Vigilance Bureau or any other material that the entire selection stood vitiated. In

the compliance of the order dated 12.08.2015 passed by this Court, the State constituted another Independent Committee with the sole object of ensuring that there was no factual or illegal error and the matter was again examined by the Vigilance Bureau. The said Independent Committee of the State Government again comprised of the highest officers of the State which included (i) The Additional Director General, State Vigilance Bureau, Panchkula, (ii) The Inspector General of Police, State Vigilance Bureau, Panchkula, (iii) The Superintendent of Police, State Vigilance Bureau, Hisar and (iv) Deputy District Attorney, State Vigilance Bureau, Panchkula. The Independent Committee of the State Government again examined the entire record, in compliance of the orders passed by this Court and forwarded a report (Annexure P-10) to the State Government and clearly stated that the present petitioners were untainted candidates and the State Government to take a decision to offer appointments to the petitioners. Thus, after the registration of the FIR, the matter was examined twice by the highest officers of the State Vigilance Bureau, who had prepared detailed reports twice, i.e., (Annexure P-8 and P10) respectively, whereby, a clean chit was

given to the petitioners before this Court and they were declared as non-tainted candidates, after examining their answer sheets.

(b) Categorical stand taken before this Court vide reports (Annexures P-8 and P-10) prepared by the senior most officers of the State Vigilance Bureau of the State Government, and the offer of appointment to the petitioners:-

The two reports, i.e., Annexure P-8 prepared by the Director of State Vigilance Bureau and Annexure P-10 prepared by Independent Committee headed by the Additional Director General, State Vigilance Bureau, Panchkula, were considered by the State Government. The Chief Secretary, Government of Haryana forwarded a letter dated 26.02.2016 (Annexure P-11) to the learned Advocate General, Haryana and it was submitted that the matter has been got examined by the Government, keeping in view the inquiry report submitted by the State Vigilance Bureau and after consideration of the matter, **“in principle”** decision had been taken to offer appointment to the candidates, who were found innocent in the report. It was requested that this Court may be apprised accordingly. This clearly shows that the Government had already consciously decided to proceed on the basis of the report (Annexure P-10) and the

petitioners were considered as non-tainted candidates and the State Government had conveyed to this Court that being non-tainted candidates, they could be offered selections by this Court. Thus, when the State Government had earlier decided and declared the petitioners as non-tainted candidates, the respondent-State cannot be allowed to take a somersault and order the prosecution of the petitioners, which is contrary to the two reports submitted by the senior most officers of the State Vigilance Bureau.

(c) Appointment vide order dated 27.02.2016, passed by a Division Bench of this Court in LPA No. 1168 of 2015 after taking into consideration the reports (Annexures P-8 and P-10) and the letter (Annexure P-11). SLP preferred and withdrawn vide order dated 05.04.2016 (Annexure P-13) from the Hon'ble Supreme Court:-

After the report (Annexure P-10) exonerating the petitioners was prepared by an Independent Committee, headed by the Additional Director General, State Vigilance Bureau, Haryana, the matter was placed before this Court and the learned State counsel made a statement before a Division Bench of this Court that a decision has been taken by the State Government, vide letter dated 26.02.2016 (Annexure P-11) and the candidates, who had been found untainted in the report

would be offered appointment in terms of the decision taken by the government. Consequently, vide order dated 27.02.2016, a Division Bench of this Court had partly allowed the LPA filed by the candidates and the petitioners were offered selection in compliance of the order dated 27.02.2016 passed by this Court in the said LPA. It requires mention that the SLP (CC No. 6181 of 2016) was filed before the Hon'ble Supreme Court, however, the same was dismissed as withdrawn on 05.04.2016. Thus, the decision of the Division Bench of this Court, whereby, the petitioners were declared as innocent and were offered appointment by the State Government, had attained finality and admittedly, the said decision of this Court has not been set-aside so far. Thus, when the reports of the Independent Committee of the State Vigilance Bureau (Annexures P-10 and P-11) have been accepted by this Court and the selection has already been offered in LPA 1168 of 2015 titled as **“Apurv and others Vs. State of Haryana and others”**, any prosecution based on the report of a DSP level officer cannot be allowed to continue and the same is gross misuse of the process of law.

Even, the challan is based on the same set of allegations, which were subject matter of enquiry, by the Independent Committee headed by the Additional Director General, State Vigilance Bureau, Haryana and the challan has been wrongly presented against the petitioners.

(d) No fresh material/evidence against the petitioners to order prosecution, except an affidavit dated 06.03.2019, filed by a DSP rank officer before this Court, which has already been rejected by this Court vide order dated 16.08.2023 in CWP No. 24966 of 2021:-

As observed above, two reports (Annexures P-8 and P-10) prepared by the official of the rank of Director, State Vigilance Bureau and the Additional Director General, State Vigilance Bureau, Haryana were prepared and accepted by this Court. However, an affidavit dated 06.03.2019 prepared by an officer of the rank of DSP was filed in CWP No. 7888 of 2017, in which, the petitioners were not even parties. First of all, the affidavit dated 06.03.2019, which was filed by an official of the rank of DSP, State Vigilance Bureau, could not override the two detailed reports (Anexures P-8 and P-10), which were prepared by the senior most officers of State Vigilance Bureau as well as the Independent Committee

of the State Government headed by the Additional Director General, level officer. Consequently, the said affidavit, which is the main basis of prosecution now, was considered by this Court in CWP 24966 of 2021 titled as **“Inder Jeet Singh and others Vs. State of Haryana and others”** and connected writ petitions and this Court had rejected the said affidavit and had adversely commented against him. While rejecting the said affidavit, this Court had observed as under:-

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”.

Thus, vide the above referred order dated 16.08.2023 passed in CWP 24966 of 2021 titled as **“Inder Jeet Singh and others Vs. State of Haryana and others”** and **connected writ petitions**, this Court has not permitted the State Government to reopen the entire issue with regard to selection and appointment of the present petitioners and has clearly rejected the report, on the basis of which, the petitioners are sought to be prosecuted at this belated stage. Even otherwise, the charge, which is now sought to be established against the present petitioners was subject matter of earlier investigation reports and the petitioners were clearly exonerated. However, after a period of about

18 years, the final report of investigation under Section 173 Cr.P.C. (Annexure P-20) has been presented before the Court, which violates the constitutional security of a speedy investigation and trial under Article 21 of the Constitution of India and the initiation of the proceedings in pursuance of the final report (Annexure P-20) are nothing but an abuse of the process of the Court.

(e) Show cause notices issued to the petitioners on 27.11.2021 on the basis of affidavit dated 06.03.2019 of DSP rank officer submitted in CWP 7888 of 2017 challenged by them in CWP 24996 of 2021:-

This Court clearly observed that the Department of Vigilance had conducted the scrutiny of the entire record of selection and it was a conceded position in the detailed report (Annexure P-10) submitted by the Additional Director General, State Vigilance Bureau, Haryana that the present petitioners were held to be not tainted. Even, the State Government had accepted the recommendations of the Independent Committee's report (Annexure P-10) and the petitioners were offered appointment by the State Government, by treating the petitioners as non-tainted. Thus, once a decision has been taken by the Government to appoint the petitioners after declaring them untainted candidates, and such decision was accepted by a Division

Bench of this Court and decision was also made part of the Court order, now the decision of the State to treat the petitioners as tainted candidates is bad in the eyes of law. Later, it was only with the permission of the Court, the respondent could have proceeded further in case they felt that they were entitled to reconsider the issue in the light of any new fact, which had come to their knowledge. Hence, the decision taken by the respondent to treat the petitioners as tainted was a direct conflict with the earlier decision of the Government, which was considered and accepted by this Court in COCP 1168 of 2015. It requires mention that the judgment of the Division Bench is binding on the State Vigilance Bureau, as the said judgment has been upheld upto the Hon'ble Supreme Court of India as SLP against the said decision has been withdrawn. Thus, the investigation, which continued qua the petitioners after the decision of LPA 1168 of 2015 was illegal and invalid and rather this amounted to overriding the order passed by a competent Court of law and such proceedings cannot be allowed to happen or continue. Thus, the prosecution based on any such affidavit is liable to be quashed by this Court.

13. Still further, similar issues arise for consideration before the High of Bombay in the matter of ***Keshav Vs. State of Maharashtra, through Police Station Officer and another***, 2 AIR ***Bom R (Crl) 816*** and it was held as follows:-

7. The reason why do we say so is to be found in the observations of Hon'ble Apex Court in the case of Ashoo Tewari (supra) wherein, following the decision in the case of [P. S. Rajya Vs. State of Bihar](#) (1996) 9 SCC 1, the Hon'ble Apex Court has held that since the standard of proof required for proving a criminal offence is much higher, no criminal case can be allowed to be continued, if it is founded upon same allegations which formed the basis of departmental enquiry proceedings, wherein the delinquent Officer has been exonerated. The Hon'ble Supreme Court held that when upon a given set of facts, an officer is exonerated in departmental enquiry, which requires much lower standard of proof for proving the charge, the criminal proceedings based upon same set of facts must result in the failure as the standard of proof required in a criminal proceeding is much higher. The Hon'ble Supreme Court has also held that what is required to be examined in such a case is whether or not the allegations made in departmental enquiry and the allegations in the criminal complaint are similar and identical and it is found that they are similar, the criminal proceedings must not be allowed to be proceeded further or otherwise, it would be an abuse of the process of the Court.

8. In the present case, we find that allegations made in the criminal complaint are similar and identical to the allegations made against this applicant in the departmental enquiry proceedings. In other words, the foundation of the criminal complaint made against the present applicant is a same set of allegations which constituted charge no.1 levelled against the applicant in the departmental enquiry proceedings. The departmental enquiry proceedings insofar as charge no.1 is concerned has gone in favour of the applicant and it has, in our view, wiped out the very basis of the criminal complaint filed against this applicant. It then does not appeal to reason to say that while the officer has committed no misconduct on the basis of one set of allegations, the officer has prima- facie committed criminal offence on the basis of the same set of allegations. It is pertinent to mention here that the criminal complaint filed against the applicant by informant-Shri Milind Totare does not contain any more allegations than what formed the basis of charge no.1 levelled against the applicant in the department enquiry proceedings held against him in which the applicant has been exonerated of charge no.1. It then follows that the criminal investigation being carried out against the applicant in its present form cannot continue. But, at the same time, if any other enquiry is made by the Investigating Officer and some new material constituting new offence is discovered, the Enquiry Officer would always be at liberty to book the applicant for the new offence prima-facie found against him. But till that time, the complaint in the present form and the investigation based on it cannot be allowed to

continue or otherwise it would be nothing but abuse of process of law.

14. Still further, the Hon'ble Supreme Court has held in the matter of ***Ashoo Surenderanath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and another, (2020) 9 Supreme Court Cases 636*** as follows:-

"A reading of this report shows that, at the highest, the appellant may be negligent without any criminal culpability. In fact, the positive finding of the CVC that the appellant appears to be a victim of Muthukumar's plot is of some importance.

8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In P.S. Rajya v. State of Bihar², the question before the Court was posed as follows:- (SCC pp. 2-3, para 3)

"3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission."

9. This Court then went on to state: (P.S. Rajya case 2, SCC p. 5, para 17)

"17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it."

10. This being the case, the Court then held: (P.S. Rajya case2, SCC p. 9, para 23)

"23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view³ that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."

11. In Radheshyam Kejriwal v. State of W.B.4, this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)

"26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, In our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In *B.N. Kashyap* the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27)

‘... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined."

29. We do not have the slightest hesitation in accepting the broad submission of Mr. Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree

whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case."

15. As an upshot of the above discussion, this Court holds that the continuation of proceedings arising out of the FIR No. 20 dated 18.10.2005 under Sections 13(1)(D) read with Section 13(2) of the PC Act and Sections 420, 467, 468, 471 and 120-B IPC, Anti Corruption Bureau, Hisar (Annexure P-2), charge sheet dated 05.07.2023 (Annexure P-20) and summoning order dated 05.07.2023 (Annexure P-21) passed by the Court of the Sessions Judge, Hisar would amount to abuse of the process of the Court and are liable to be quashed alongwith all consequential proceedings arising therefrom qua the petitioners only.

16. Ordered accordingly.

29.01.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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