

second suit under Order 9 Rule 9 of the Code and the principles of recurring cause of action will be inapplicable.

(13) It is unfortunate that the plaintiff has to suffer because of wrong advice given to him. If correct advice had been given to him, he would have moved for restoration of his earlier suit dismissed under Order 9 Rule 8 of the Code instead of resorting to a fresh suit on the same cause of action, which is obviously barred under Order 9 Rule 9 of the Code.

(14) For the reasons stated above, the appeal fails and is dismissed, but with no orders as to costs.

J.S.T.

Before : I. S. Tiwana & G. R. Majithia, JJ.

ROHTASH SINGH KHARAB AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 9385 of 1987.*

31st May, 1991.

*Punjab Civil Service (Executive Branch) Rules, 1930—Rls. 5, 6, 9 & 17—Filling up of vacancies—State Government sending requisition to H.P.S.C. for filling up of 8 vacancies to service for year 1982—Posts advertised and written test held in 1984—Final result declared in September, 1985—Further vacancies arising for year 1985—Requisition sent to Commission in October, 1985—Claim to such posts by candidates who appeared for 1984 batch—Held, no judicially enforceable right accrues to them to claim for posts advertised for subsequent year—Purpose of such rules—Defined.*

*Held, that a candidate who is placed on the merit list prepared as a result of the competitive examination held by the Commission for filling up the vacancies for a particular year will not ipso facto be entitled to be considered for appointment against the vacancies which were to be filled up as a result of the competitive examination held in a subsequent year. The purpose for which these Rules were framed is to select the best out of the meritorious candidates for recruitment to the Service. The competitive examination is to be held every year. A candidate who was ineligible for any reason in a particular year may become eligible to appear in the competitive*

examination to be held in the subsequent year for making selection of suitable candidates to the Service. The net result will be that the eligibility of a candidate for appearing in the competitive examination is to be determined in the year in which the examination is held. Any other interpretation of these Rules will be illogical, improper, unjust and illegal.

(Para 7)

*Held further*, that the petitioner must show embleance of a legal right to claim a writ of *mandamus*. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a *mandamus*. A person can be said to be aggrieved only when a person is denied a legal right by someone, who has a legal duty to do something or to abstain from doing something. In the instant case, the petitioners have not been able to establish that they have got a judicially enforceable right. The writ petition is, therefore, devoid of any merit and is accordingly dismissed but with no order as to costs.

(Paras 22 & 23)

*Civil Writ Petition under Articles 226 & 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any appropriate writ, order or direction:—*

- (i) directing the respondents to appoint the petitioners against the remaining vacancies of H.C.S. (Executive Branch), be issued;
- (ii) any other appropriate writ, order or direction granting relief to the petitioners which this Hon'ble Court may deem fit be also issued;
- (iii) entire record of the respondents regarding vacancies and requisition for the kind perusal of this Hon'ble Court.
- (iv) filing of certified copies of Annexures and issuance of above notices to the respondents may kindly be dispensed with.
- (v) directing the respondents not to fill up these 20 vacancies pending the final decision of the writ petition or alternatively the vacancies be reserved for the petitioner pending the final decision of the writ petition.
- (vi) costs of the petition be awarded to the petitioners.

H. L. Sibal, Sr. Advocate with Jagdish Singh Kehar, Advocate, for petitioner No. 3, for the Appellant.

S. N. Singla, Advocate, for petitioner Nos. 2, 4 & 5.

S. C. Mohunta, A.G. Hy. with L. P. Sood, D.A.G., for the State.

J. L. Gupta, Sr. Advocate with Ajai Lamba, Advocate, for Respondent No. 2 at the time of arguments.

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**JUDGMENT**

*G. R. Majithia, J.*

This judgment disposes of C.W.P. No. 9385 of 1987 and the connected writ petitions (i.e. C.W.P. Nos. 1750, 9258 & 9567 of 1987 and 227, 1736, 3446 and 6161 of 1988). At the time of hearing, learned counsel for the parties stated at the Bar that the decision in C.W.P. No. 9385 of 1987 will decide the fate of the connected writ petitions.

(2) In C.W.P. No. 9385 of 1987 the petitioners have sought a mandate to the respondents to appoint them against the posts of Haryana Civil Service (Executive Branch) on the basis of the merit list of the combined competitive examination held in the year 1984.

(3) Reference to the relevant facts has been made from the pleadings in C.W.P. No. 9385 of 1987:—

(4) The Government of Haryana (for short, the State) decided to make recruitment to the Haryana Civil Service (Executive Branch) (for short the 'Service') to fill up twelve vacancies for the year 1982, out of which eight vacancies were to be filled up by direct recruitment through a competitive examination and four vacancies from the other sources of recruitment as per provisions contained in Rule 17 of the Punjab Civil Service (Executive Branch) Rules, 1930 (for short, the Rules). The State sent requisition to the Haryana Public Service Commission (for short, the Commission) on January 18, 1983 to select suitable candidates for filling up the vacancies. The Commission published the following advertisement dated February 13, 1984:—

"Advertisement No. 9  
Instructions and Information for candidates

**COMPETTIVE**

1. A combined competitive examination for recruitment to the following services/posts will be held by the Haryana Public Service Commission at Chandigarh and any where in Haryana in June, 1984 in accordance with the rules contained in the Punjab Civil Service (Executive Branch) Rules, 1930 (as amended from time to time). The syllabus of the examination as contained in Appendix 1 to these

Rules is appended and the examination will be held in accordance with this syllabus.

<i>Name of post/service</i>	<i>Scale of pay</i>
(i) Haryana Civil Service (Executive Branch).	Rs. 980—40—1,100—50—1,400— EB—60—1,700—75—1,850.
(ii) Excise and Taxation Officer.	} Please see note I and II below. }
(iii) Assistant Registrar, Co-operative Societies.	
(iv) 'A' Class Tehsildar (Apprentices). During candidature (Apprentices) the candidates will be allowed such pay as may be allowed by Government.	Rs. 800—30—890/940—40— 1,100—50—1,600.
(v) Assistant Excise and Taxation Officer.	Please see Note I & II below.
(vi) Assistant Employment Officer.	Rs. 750—30—900/40—1,100— 50—1,450.

**NOTE :** The pay scale for each post will be such as may be revised by the Government from time to time. Candidates accepted for admission to the examination will be informed at what place, at what time and on what dates, they should present themselves.

"The decision of the Commission as to the eligibility or otherwise of candidates for admission to the examination shall be final.

No candidate shall be admitted to the examination unless he holds a certificate of admission from the Commission.

2. The number of vacancies that are likely to be filled on the result of the examination is as shown below:—

Category No.	General	S.C. of Hr.	B.C. of Hr.	Military Personnel.
(i) Haryana Civil Service (Executive Branch).	6	1	1	1
(ii) Excise and Taxation Officer.	} Please see note I & II below	}	}	}
(iii) Asst. Registrar, Co-operative Societies.				
(iv) 'A' Class Tehsildar (Apprentices)				
(v) Asst. Excise and Taxation Officer.	4	1	1	Nil
(vi) Asstt. Employment Officer.	1	..	..	1

**NOTE—1 :** The vacancies of Assistant Registrar, Co-operative Societies and Excise and Taxation Officer/Assistant Excise and Taxation Officer are likely to become available and for that reason candidates can give option for these posts.

**NOTE—2 :** For reserved categories where posts are not being advertised for them presently, there is every likelihood of requisition of posts from the Government. Therefore, candidates from reserved categories can also exercise their option for those posts also in anticipation.

The number of posts for each category is liable to variation to any extent either way.

Success in the Examination confers no right to appointment unless Government are satisfied after such enquiry as may be considered necessary that the candidate is suitable in all respects for appointment."

The Commission conducted the written examination on July 9, 1984. The result of the candidates who had passed the written test and were eligible to be called for *viva voce* test was published in The Tribune dated July 20, 1985. Final merit list was declared on September 19, 1985. The Commission recommended the names of 9 candidates, out of which 3 were for reserved category candidates for appointment to the Service, 6 candidates out of which 2 belonged to reserved category for 'A' Class Tehsildars and 27 candidates for appointment to the posts of Assistant Employment Officer. The

**State:** Government reviewed the vacancy position in the Service during 1984 and decided that 16 vacancies anticipated upto December, 1985 be filled up through recruitment for the year 1985, out of which 11 vacancies were to be filled up by direct recruitment. The State Government sent requisition to the Commission in October, 1985 for making selection of suitable candidates for appointment against 11 vacancies in the Service for the year 1985. The Commission advertised these vacancies in August, 1986. The sole claim of the petitioners is that these 11 vacancies in the Service be filled up from the merit list of the combined competitive examination held in 1984.

(5) Separate written statements have been filed on behalf of the State and the Commission. The Commission maintained that in accordance with Rule 9 of the Rules, the competitive examination is to be held each year in or about the month of January for the purpose of selection by competition of as many candidates for the Service as the Governor of Haryana may determine. The age and other conditions of eligibility are to be determined on 1st of January of the year in which the vacancies are to be advertised. Sometimes the vacancies are not communicated by the Government each year due to administrative constraints and the competitive examination in that case is held accordingly on receipt of the requisition from the Government. The vacancies communicated relate to a particular year or the year preceding the year in which the examination is conducted. Rule 9 of the Rules does not envisage conducting of competitive examination for the vacancies occurring prospectively because a candidate eligible on 1st of January of the year in which posts are advertised is likely to become over-age for the vacancies yet to occur in a subsequent year and will not be eligible for recruitment. It is stated that the petitioners were eligible for the vacancies of 1982 and their eligibility was determined on January 1, 1984, that is, the year in which the posts were advertised. The 11 vacancies in the Service advertised in 1986 related to the year 1985. The petitioners applied for the vacancies of the year 1982 which were advertised in 1984. They have, therefore, no claim to the vacancies of the year 1985 advertised in 1986. The Commission had originally advertised two vacancies of Assistant Employment Officers. Before the declaration of the result of the written examination on July 8, 1985, the Government,—*vide* letter No. 2/20/83-I ROJ, dated March 16, 1985 intimated to the Commission that the number of vacant posts of Assistant Employment Officers in the Department of Employment had arisen to 27, out of which 19 posts were for General Category, 3 for Scheduled Castes, 4 for Backward Classes and one post for Ex-servicemen

and that these vacancies be filled up on the basis of Haryana Civil Service (Executive Branch) and Allied Services Examination, 1982-83. The petitioners could not be recommended for selection and appointment to the Service because their merit was low.

(6) The State in its reply and the additional affidavit stated that 11 vacancies of the Service which came into existence prior to the declaration of the result related to the year 1985 and not for the year 1984. The Commission rightly recommended 9 candidates against those vacancies. The State gave the details of the vacancies in the Service in its affidavit dated February 13, 1991. It was admitted that there were 8 vacancies in the Service for the year 1982 to be filled up by direct recruitment. The State intimated the Commission on January 18, 1983 to select suitable candidates for filling up the vacancies. The Commission, however, advertised 9 vacancies in February, 1984 by carrying forward one vacancy meant for Ex-servicemen candidates, which had remained unfilled in the earlier recruitment for the year 1980. 16 vacancies in the Service were anticipated upto December, 1985, out of which 11 vacancies were to be filled by direct recruitment and requisition was sent to the Commission in October, 1985 for selecting suitable candidates for filling up the vacancies. The candidates recommended by the Commission for recruitment to the Service for the year 1985 were issued appointment orders in March, 1989. In June, 1989, the State Government sent requisition to the Commission for filling up 12 vacancies in the Service for the year 1989 by direct recruitment.

(7) In the Rules, 'Service' means the Haryana Civil Service (Executive Branch). Rule 5 of the Rules says that members of the Service shall be appointed by the Governor of Haryana from time to time as required from amongst the accepted candidates whose names have been duly entered in accordance with these Rules in one or other of the Registers of Accepted Candidates to be maintained under the Rules. Rule 6 deals with the Registers to be maintained. Clause (c) of Rule 6 provides for maintenance of Register 'B' and the names of persons accepted as candidates on the result of a competitive examination are entered therein. Rule 9 of the Rules provides that a competitive examination shall be held each year in or about the month of January for the purpose of selection by competition of as many candidates for the Service as the Governor of Haryana may determine. In Rule 9 the essential eligibility qualifications for taking the competitive examination are mentioned. Rule 11 provides that the names of such number of candidates from amongst those

who have been declared as qualified in the examination by the Commission shall be entered in Register 'B' in order of merit. Rule 5 says that the Governor shall ordinarily make appointment to the Service from amongst the candidates whose names are entered in the various registers. We are only concerned in this case with Register 'B' in which the names of the persons accepted as candidates on the result of a competitive examination held by the Commission are entered. A reading of these Rules indicates that the State will intimate the number of vacancies in the Service for each year to the Commission. The Commission shall hold competitive examination for selection of candidates for Register 'B' (meant for direct recruitment to the Service) and shall forward the names of the candidates selected after the competitive examination in order of merit to the State for inclusion in Register 'B'. The State will make appointments to the Service from Register 'B'. The candidate who is placed on the merit list prepared as a result of the competitive examination held by the Commission for filling up the vacancies for a particular year will not *ipso facto* be entitled to be considered for appointment against the vacancies which were to be filled up as a result of the competitive examination held in a subsequent year. The purpose for which these Rules were framed is to select the best out of the meritorious candidates for recruitment to the Service. The competitive examination is to be held every year. A candidate who was ineligible for any reason in a particular year may become eligible to appear in the competitive examination to be held in the subsequent year for making selection of suitable candidates to the Service. The net result will be that the eligibility of a candidate for appearing in the competitive examination is to be determined in the year in which the examination is held. Any other interpretation of these Rules will be illogical, improper, unjust and illegal.

(8) Now stage is set to deal with the submissions made at the Bar by the learned counsel for the petitioners and these are:—

- (i) The Commission did not comply with Rules 5, 9 and 11 of the Rules;
- (ii) The Commission acted arbitrarily in making recommendations to the State for filling up 9 vacancies in the Service only;
- (iii) The directions issued by the Supreme Court that all the available vacancies in the Service be filled up were not complied with;



- (iv) The instructions contained in the Chief Secretary to Government, Punjab's letter dated March 11, 1960 and the letter dated May 26, 1972 from the Chief Secretary to Government Haryana only fill in the lacunae in the Rules and ought to have been followed;
- (v) The Commission ought to have forwarded the names of the persons who had qualified in the examination along with their respective choices; and
- (vi) The Commission and the State cannot take up different stands for the same examination in the Court.

and in support of these submissions relied on the following judgments:—

- (1) *Jagjit Singh v. The State of Punjab* (1).
- (2) *Neelima Shangla v. State of Haryana* (2).
- (3) *Shri Durgacharan Misra v. State of Orissa and others* (3).
- (4) *Prem Chand, Naib Tehsildar and others v. The State of Haryana and others* (4).
- (9) We shall deal with the submission in seriatim.

(10) *Submission (i)* : A brief resume of the Rules has been given in the earlier part of the judgment. Rule 5 provides for appointment of persons from amongst the accepted candidates whose names are entered in Register 'B' maintained under rule 6. Register 'B' contains the names of the persons accepted as candidates on the result of a competitive examination. Rule 9 says that competitive examination is to be held yearly for selecting candidates for Register 'B'. The eligibility qualifications for sitting in the competitive examination are mentioned in sub-rule (2) of Rule 9 of the Rules. The Commission forwards the names of the selected candidates in order of merit to the State Government for appointment to the Service. The

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- (1) A.I.R. 1978 S.C. 988.
  - (2) 1986(3) S.L.R. 389.
  - (3) A.I.R. 1987 S.C. 2287.
  - (4) 1989(2) S.L.R. 556.

Governor makes appointment to the Service from the Register keeping in view the number of vacancies in the Service. The petitioners could not point out in what manner the respondents have infringed the Rules.

(11) *Submission (ii)* : The State Government sent requisition to the Commission on January 18, 1983 for selecting suitable candidates for filling up 3 vacancies to the Service for the year 1982. The Commission advertised the posts in the newspapers on February 13, 1984 for holding competitive examination and the written test was held on July 9, 1984. The result was declared on July 20, 1985. The Commission had advertised the vacancies pertaining to the year 1982 only. Though the advertisement for filling up the posts appeared in the Government Gazette and the Press on February 13, 1984, but it was only confined for filling up the vacancies pertaining to the year 1982. The candidates who were successful in the examination were only eligible for consideration for appointment to the Service against the vacancies for the year 1982. They cannot urge that they ought to be considered for the vacancies pertaining to the year 1985. Requisition for filling up the posts for the year 1985 was sent to the Commission in October 1985, after declaration of the result of the written examination held on July 9, 1984 for filling up the vacancies for the year 1982. Final result was declared on September 19, 1985 after the *viva voce* test. It cannot even be remotely suggested that the Commission did not act fairly.

(12) *Submission No. (iii)* : The directions of the apex Court in Petition No. 11736 and W.P. No. 11737 of 1985 decided on August 18, 1985 read thus:—

“We direct that the candidates to be called for the interview shall be thrice the number of actual vacancies in existence at the time when the candidates are called for interview.”

The apex Court only enjoined that the candidates to be called for interview shall be thrice the number of annual vacancies in existence at the time when the candidates are called for interview. The Commission has taken a categorical stand that in the final list prepared by the Commission as a result of written test, 123 candidates were called for interview. The vacancies in the Service were only 9. Calling more candidates for the *viva voce* test does not render the selection invalid, more particularly when it is not even remotely suggested that the Commission which was responsible for making the selection

was not acting fairly. The circumstances indicate that the Commission selected the meritorious candidates as a result of written and *viva voce* tests. There was no such direction by the apex Court as is suggested. Even otherwise, recommendation of the selected candidates for appointment in the Service has to be made in the light of the requisition from the State Government.

(13) *Submission (iv)* : The Government instructions contained in letter dated March 11, 1960 issued by the Chief Secretary to Government, Punjab, to all Heads of Department only envisages that the Commission while forwarding the names of the competitors in the order of merit shall indicate the choice made by the candidate in regard to the preference of the Service and the Commission shall also forward the names of five extra candidates in each case to cover up any additional vacancy. The letter dated May 26, 1972 from the Chief Secretary to Government, Haryana to the Secretary of the Commission envisages that the vacancies arising within six months of the receipt of the recommendation of the Commission ought to be filled up from the waiting list prepared by the Commission. A combined reading of these letters and instructions indicates that the Commission has to forward the names of five extra candidates, which will be treated as waiting list for filling up the vacancies arising within six months of the receipt of the recommendation of the selected candidates from the Commission. The vacancies mentioned in these letters will only refer to the unforeseen vacancies not anticipated when the requisition was sent by the State Government. These vacancies do not pertain to the subsequent years in which these will arise. The instructions and the Rules have to be harmoniously read. The instructions provide for forwarding of five extra names of the candidates for filling up the unforeseen vacancy not anticipated when the requisition was sent or for filling up the vacancy arising when a selected candidate on the merit list does not join the service. The instructions do not run counter to the Rules. These are only explanatory.

(14) *Submission No. (v)* : The Commission did send the names of the selected candidates who were duly selected as a result of the competitive examination held on July 9, 1984 for filling up the vacancies in the Service for the year 1982.

(15) *Submission (vi)* : This submission, on scrutiny, appears to be substanceless. The Stated in para 5 of the written statement on merits, stated thus:—

“That in reply to para 5 of the petition, it is submitted that 11 vacancies of HCS (Executive Branch) which came into

existence prior to declaration of the result belong to the year 1985 and not for the year 1984. There were only nine vacancies of HCS (Executive Branch) for the year 1984. The Haryana Public Service Commission, therefore, rightly recommended 9 candidates against these vacancies.”

The Commission in reply to the averment in the petition stated as under:—

“It is, however, clarified that the petitioners applied for the posts of 1982 advertised in 1984 and were considered accordingly. The composite examination of H.C.S. (Executive Branch) and the other allied services was held in 1984. The previous examination has no relevancy with the examination of 1984. Their merit was low and, therefore, they could not be recommended for the post of H.C.S. (Executive Branch) and were rightly recommended for the post of ‘A’ Class Tehsildar in accordance with their merit in the composite examination. The petitioners also could not be recommended for the post of H.C.S. (Executive Branch) and because of their low merit. It is totally irrelevant to compare the result and the percentage of marks of the examination 1984-85 with the previous examinations. Each examination has its own characteristics and the result depends upon the various factors like number of candidates, setting of the question papers, the quality and standard of the examinees and vacancies available at that time.”

On behalf of the State, affidavit dated February 13, 1991 was filed and in para 2 thereof it was stated thus:—

“In reply to para 2, it is stated that the State Government had decided to make recruitment to the H.C.S. (Ex. Br.) to fill up 12 vacancies for the year 1982, out of which 8 vacancies were to be filled up from Register-B (direct recruitment through competitive examination) and 4 vacancies from the other sources of recruitment as per provisions contained in rule 17 of the P.C.S. (Ex. Br.) Rules. 1930. Accordingly, 8 vacancies of Register ‘B’ (direct recruitment) for the year 1982 were communicated to the Haryana Public Service Commission on 18th January, 1983. The Commission, however, advertised 9 vacancies in February, 1984 by carrying forward one vacancy meant for ex-servicemen candidates, which had remained unfilled in the earlier recruitment for the year 1980.”

A careful examination of these averments indicates that the State by mistake stated in the written statement that the 9 vacancies for which requisition was sent to the Commission on January 18, 1983 pertained to the year 1984. The mistake appears to be *bona fide*. The State by mistake stated in the written statement that 9 vacancies pertained to the year 1984, but in fact these pertained to the year 1982 for which requisition was sent to the Commission on January 18, 1983 and the Commission advertised these posts in February, 1984. The Commission correctly stated in its written statement dated March 22, 1988 that the 9 vacancies in the Service pertained to the year 1982. The petitioners cannot make much capital out of the inadvertent error made by the State in its written statement. The mistake has been duly explained in the subsequent affidavit dated February 13, 1991 filed by Shri Chatar Singh, I.A.S., Joint Secretary to Government Haryana, Political and Services Department, on behalf of the State.

(16) In *Jagjit Singh's case* (supra), the facts were that six vacancies in the Punjab Civil Service (Executive Branch) having occurred in the year 1971, the State Government requested the Punjab Public Service Commission to select and recommend six candidates to fill up the said vacancies. As longer time than anticipated was taken in holding the examination and completing the selection and in the meanwhile six more vacancies in the Punjab Civil Service (Executive Branch) occurred in 1972, the State Government requested the Commission to recommend the names of six more candidates on the basis of the result of the competitive examination for filling up the additional six vacancies. The Commission recommended 12 persons including the aforesaid three persons who belonged to Scheduled Castes for recruitment to the Punjab Civil Service (Executive Branch). The appellant before the apex Court, who was a member of the Scheduled Caste, was placed at serial No. 3 in the order of merit amongst the candidates belonging to Scheduled Castes and the other two candidates above him were Harinder Singh Khalsa and Hans Raj Megh. Only two posts—one each for the year 1971 and 1972 in the Service were available for members of the Scheduled Castes on the basis of 20 per cent quota reserved for them against which Harinder Singh Khalsa and Hans Raj Megh were appointed. The appellant before the apex Court could not be recruited to the Service. He was, however, appointed as 'A' Class Tehsildar in one of the Allied Services as per the second preference indicated by him in his application. Harinder Singh Khalsa, who had joined the post of Extra Assistant

Commissioner in the Punjab Civil Service (Executive Branch) on or about June 21, 1974, consequent upon his selection for appointment in the Indian Administrative Service resigned his office and was relieved therefrom on August 11, 1974. Jagjit Singh, appellant before the apex Court, being the next candidate in order of merit amongst the Scheduled Caste candidates in the select list, made a representation to the State Government and claimed on *ad hoc* basis the vacancy caused by the resignation of Harinder Singh Khalsa in accordance with the State Government's instructions contained Circular Letter No. WG-13(29)-61/5598, dated March 6, 1961, interpreting these instructions, the apex Court observed that if the services of a Government servant belonging to Scheduled Castes/Tribes or Backward Classes are terminated, the resultant vacancy should not be included in the normal pool of vacancies to be filled up in accordance with block system but should be filled up on *ad hoc* basis from the candidates belonging to these castes and classes. The instructions put the matter beyond the pale of controversy by emphatically declaring that the intention of the Government was that the posts vacated by members of Scheduled Castes/Tribes and backward classes should remain earmarked and be filled up by the members belonging to the Scheduled Castes/Tribes and backward classes. This authority has no bearing to the facts of the instant case.

(7) In *Neelima Shangla's case* (supra), the petitioner ranked at serial No. 24 as a result of the competitive test for selection and appointment to the Haryana Civil Service (Judicial Branch) to fill up the 54 vacancies in the Service. The Haryana Public Service Commission, however, chose to recommend 26 candidates only, and these included 17 from the general category to which the petitioner belonged. The claim of the petitioner before the Court was that 32 candidates in order of merit from the general category should have been selected for appointment and that the Service Commission had illegally withheld the names of all the successful candidates from the Government and the High Court. She contended that had rules 8 and 10 of the above-noted Rules been adhered to by the Commission she would have been selected for appointment. The relevant parts of these rules are as follows:—

- “8. (Part C) No candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers including the *viva voce* test.

(Part D) There is no limit to the number of names borne on the High Court Register but ordinarily no more names will be included than are estimated to be sufficient for the filling of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of an examination.

“10(i) (Part C) The result of the Examination will be published in the Haryana Government Gazette.”

The stand of the Government of Haryana before the Court only was that “they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the Public Service Commission”. It was not their case that they did not want to appoint more than 17 candidates from the general category or did not intend to fill in all the vacancies which had been advertised. As a matter of fact, what transpired from the records was that even before the Public Service Commission had sent its truncated list to the Government, the High Court had already informed the Government that there were more vacancies which were required to be filled in. The Government not knowing the fact that the names of several candidates who were qualified had been withheld from the government by the Commission wrote to the latter to hold a fresh competitive examination. It was in the light of these facts, and after examining the scheme of the Rules that their Lordships observed :

“It appears that the duty of the Public Service Commission is confined to holding the written examination, holding the *viva voce* test and arranging the order of merit according to marks among the candidates who have qualified as a result of the written and the *viva voce* tests. Thereafter the Public Service Commission is required to publish the result in the Gazette and, apparently, to make the result available to the Government. The Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the names of any qualified candidates. The duty of the Public Service Commission is to make available to the Government a complete list of qualified candidates, arranged in order of merit. Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are

then to be entered in the Register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55 per cent is the minimum qualifying marks, in the interests of higher standards, they would not appoint any one who has obtained less than 60 per cent of the marks. Some thing of that nature happened in the *State of Haryana v. Subash Chander Marwah*.”

It was in view of this conclusion and the stand of the State Government that it was unable to select and appoint the petitioner, as only a few names had been sent to them by the Public Service Commission that the apex Court directed the Government to include the name of the petitioner in the 1984 list of candidates selected for appointment as Subordinate Judges in the Haryana Judicial Service and forward the same to this Court for inclusion in the High Court Register maintained under rule 1—Part D of the Rules. It is, thus, patent that the petitioner was granted the relief in the light of the violation of the rules, more particularly Rules 8 and 10, by the Haryana Public Service Commission. Otherwise, the Court opined that “it is open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that though 55 per cent is the minimum qualifying marks in the interest of higher standards, they would not appoint anyone who has obtained less than 60 per cent marks.” This is precisely what had happened in *Subhash Chander Marwaha's case* (supra). In that case, no violation of any rule was involved. In the instant case also, no violation of any rule has been pointed out. This authority has also no bearing to the facts of the present case.

(18) In *Shri Durgacharan Misra case* (supra), the validity of the select list of candidates prepared by the Orissa Public Service Commission for appointment as Probationary Munsifs in the State Judiciary was challenged. The selection of candidates for subordinate judicial service is governed by the Orissa Judicial Service Rules, 1964. The State Public Service Commission is the selecting authority. The candidates are required to be selected by written test followed by *viva voce* test. The written examination carries the maximum marks of 950 and the *viva voce* test 200. The Commission while preparing the select list for the posts of Probationary Munsif prescribed minimum qualifying marks of 30 per cent in the *viva voce* test and did not



select the candidates not securing the minimum qualifying marks so prescribed and selected the candidates who secured less marks in the written examination. The apex Court held that the exclusion was not justified when the rule did not prescribe minimum qualifying marks for *viva voce* test. The rule only provided that the Commission shall add the marks secured at the written and *viva voce* tests no matter what those marks were at *viva voce* test and on the basis of the aggregate marks in both the tests, the names of the candidates have to be arranged in order of merit. This judgment has no bearing to the facts of the instant case.

(19) In *Prem Chand's case* (supra), this Court did not quash the appointments but directed that the Commission will not make more recommendations of candidates than the number of vacancies. The ratio of this judgment does not help the petitioners.

(20) Learned counsel for the State placed strong reliance on a Full Bench judgment of this Court in *Harjit Singh Sidhu, Deputy Superintendent (Under Training), District Jail Nabha and others v. The State of Punjab through Secretary to Government, Punjab, Home Department, Chandigarh and others* (5), in support of the submission that this Court cannot direct the Commission for recommending any candidate for appointment to a public service post as it would amount to interference in its working as an independent institution having peculiar and distinct status. This judgment has no relevancy to the facts of the instant case.

(21) None of the submissions made by the learned counsel for the petitioners has substance and these have to be rejected. The petitioners could only be considered for selection and appointment to the Service for which the competitive examination was held by the Commission and they competed. They cannot legitimately urge that their claim should also be considered for the vacancies pertaining to the year 1985, for which requisition was sent to the Commission by the State Government after declaration of the result of the competitive examination held in the year 1984 for filling up the vacancies in the Service for the year 1982. As observed earlier, Rule 9 of the Rules says that the Commission has to hold competitive examination annually for filling up the vacancies in the Service by direct appointment. The Commission may not be able to hold the competitive examination in the year in which the vacancies arose, but subsequently

thereafter. The vacancies will relate back to the year for which those were determined and requisition was sent by the State Government to the Commission.

(22) The petitioner must show semblance of a legal right to claim a writ of *mandamus*. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a *mandamus*. A person can be said to be aggrieved only when a person is denied a legal right by someone, who has a legal duty to do something or to abstain from doing something. In the instant case, the petitioners have not been able to establish that they have got a judicially enforceable right.

(32) For the reasons aforesaid, the writ petitions are devoid of any merit and are accordingly dismissed but with no order as to costs.

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J.S.T.

Before :—S. S. Sodhi and G. C. Garg, JJ.

KHARAITI RAM AND OTHERS,—Appellants.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Letters Patent Appeal No. 895 of 1991.

4th February, 1992.

*Constitution of India, 1950—Art. 226—Punjab Government Instructions dated 30th August, 1988/19th September, 1990—House Rent Allowance earlier payable to employees posted at places within 16 kms. belt of the International Border—1988 instructions making house rent admissible on classification of cities into A, B, C, D made on the basis of population—In view of instructions of 1988 and 1990 H.R.A. being paid for Border area postings is not protected.*

*Held, that a plain reading of clauses 2, 3 and 5 of Punjab Government Instructions, 1988 would show that the protection afforded thereby is in respect of the house rent allowance being drawn by employees at rates higher than those specified in these instructions. It is pertinent to note that house rent allowance payable in the 16 kms. border belt does not figure in such categorization of cities in these instructions.*

(Para 4)

*Held further, that the amount of house rent allowance of first class cities admissible before 1st August, 1988 to the employees*