

Before G.S.Sandhawalia & Vikas Suri, JJ.

MANAV GUPTA AND ANOTHER—Appellant

versus

STATE OF PUNJAB AND OTHERS— Respondents

LPA No.786 of 2018

July 06, 2022

Letters Patent— Clause X — Tainted selection process— Common tests for various posts like Executive Officers Class I, II and III; for Senior Assistants and Inspectors; for Junior Engineers (Civil) and Junior Engineers (Civil); and for Assistant Corporation Engineers (Civil), Assistant Municipal Engineers (Civil) and SubDivision Engineers (Civil) in Department of Local Government. Complaints received –Recruitment halted— Appointment letters not issued— Single Judge dismissed 32 writ petitions.—Directions to State Government – to re-conduct examination of the cancelled posts, writ petitioners and other candidates who had earlier applied - not to be charged further fees and permission be given to appear in examination after due verification and identification — Admit cards to be uploaded on website. Vigilance Bureau directed to conclude investigation in the meantime. Scope of judicial review — decision of authority —Not to be lightly interfered with, unless vitiated on grounds of unreasonableness or proportionality— State Government’s decision upheld by Single Bench and Division Bench— Appeals dismissed.

Held, that the short question which arises as such for consideration is that once a finding has been record that there was a taint to the examination, whether under judicial review this Court would substitute the view of the Committee as to for which of the posts advertised the examination had to be cancelled.

(Para 6)

Further held, that in such circumstances, we are of the view that the decision as such of the State Government was rightly upheld by the learned Single Judge and does not warrant interference by this Court in the present letters patent appeals, as there is no illegality or infirmity in the said decision. It is for the experts to take a decision on the cancellation and not for this Court to substitute its view over the view of the experts. Resultantly, there is no merit in the present appeals and

the same are dismissed.

(Para 20)

Rajiv Atma Ram, Senior Advocate with Arjun Pratap Atma Ram, Advocate, *for the appellant (s)* in LPA No.786 of 2018.

Lovepreet Singh Sidhu, Advocate for PPS Tung, Advocate, *for the appellant (s)* in LPA No.407 of 2021.

Neel Kamal, Advocate, for Ritam Aggarwal, Advocate, *for the appellant (s)* in LPA No.1162 of 2018.

Gurpreet Jayia, Advocate, *for the appellant (s)* in LPA Nos.868, 874, 875, 885, 887, 916 and 920 of 2018.

Sapan Dhir, Advocate, *for the appellant (s)* in LPA Nos.927 and 928 of 2018.

Aditya Yadav, Advocate, *for the appellant (s)* in LPA No.114 of 2019.

Ankur Mittal, Advocate, Kushaldeep Kaur, Advocate and Sugam Arora, Advocate, *for the appellant (s)* in LPA Nos.987, 988, 1187 of 2018.

Gopal Singh Nahel, Advocate, for the appellant (s) in LPA Nos.1303, 1308 of 2018.

Amit Goyal, Advocate, *for the appellant(s)* in LPA No.1039 of 2018.

TPS Makkar, Advocate, *for the appellant(s)* in LPA No.1099 of 2018.

Monica Chhibber Sharma, Sr. DAG, Punjab.

Subhash Ahuja, Advocate, for the respondent-University.

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of 27 appeals i.e. LPA Nos. 786, **819, 868, 874, 875, 885, 887, 916, 920, 927, 928, 987, 988, 1039, 1063, 1099, 1138, 1157, 1162, 1163, 1187, 1237, 1303, 1308 & 1522 of 2018**, LPA No.114 of 2019 and LPA No.407 of 2021, wherein challenge has been made to the order dated 19.03.2018 passed by the learned Single Judge in CWP No.14623 of 2016 *Harpreet Singh and others versus State of Punjab and others* and other connected cases.

(2) Vide the said judgment the learned Single Judge had

dismissed 32 writ petitions. The directions were issued to the State Government to re-conduct the examination of the cancelled posts and the writ petitioners and other candidates who had earlier applied for the posts were not to be charged further fees and permission would be given to them to appear in the examination after due verification and identification and thereafter admit cards were to be uploaded on the website. The Vigilance Bureau was directed to conclude the investigation in the meantime.

(3) Being unsatisfied the writ petitioners have filed the present appeals, as the prayer made in the writ petitions was that the Public Notice dated 28.11.2016 (Annexure P-8) be quashed, vide which the recruitment process (written test) of the writ petitioners which had been conducted in pursuance of the Advertisement dated 01.07.2015 (Annexure P-1) had been cancelled. Their claim was that it was unfair, illegal and on mere suspicion and without any verification and adhering to the principles of natural justice.

(4) The case of the writ petitioners primarily is based on the ground that the selection process should have been taken to its logical end and the cancellation of 456 posts out of the 670 posts which had been finally notified was wrong and the State should make an effort as such to only cancel those ones' for which there was a specific finding that the question papers had been leaked.

(5) Reliance in this regard was placed by counsel for the appellants Mr. Ankur Mittal, Advocate upon the judgments of the Apex Court passed in *Union of India versus Rajesh P.U. Puthuvalnikathu*¹, *Inderpreet Singh Kahlon & others versus State of Punjab and others*², *Joginder Pal & others versus State of Punjab & others*³ and Division Bench judgment of this Court passed in *Chandigarh Administration & another versus Satwinder Singh and another*⁴, to submit that the action of the State is arbitrary.

(6) The short question which arises as such for consideration is that once a finding has been record that there was a taint to the examination, whether under judicial review this Court would substitute the view of the Committee as to for which of the posts advertised the examination had to be cancelled.

¹ 2003 (3) SCT 840

² 2006 (3) SCT 25

³ 2014 (3) SCT 431

⁴ 2021 (1) SCT 592

(7) A perusal of the paper-book would go on to show that vide Advertisement dated 01.07.2015 (Annexure P-1) various posts were advertised by the Department of Local Government for filling up the same in Municipal Corporations, Municipal Councils-Nagar Panchayats and Improvement Trusts alongwith the Water Supply & Sewerage Board in the State of Punjab. The grand total of the posts advertised was 670. Vide advertisement dated 20.10.2015 (Annexure P-2) the schedule of exams was notified which were to be held. The same would go on to show that there was a common test for various posts like Executive Officers Class-I, II & III and similarly for disputed ones i.e. Senior Assistants and Inspectors the test was common. Even for the posts of Junior Engineers (Civil) and Junior Engineers (O&M) (Civil) there was a common test and for Assistant Corporation Engineers (Civil)/Assistant Municipal Engineers (Civil)/Sub Divisional Engineers (Civil) there was to be a common test. The written tests were to be conducted from 07.11.2015 to 15.11.2015 as per the said schedule and the result was declared on 17.12.2015 (Annexure P-3).

(8) However, on account of complaints received the recruitment was put to a halt and appointment letters were directed not to be issued without thorough verification of complaints received by the Government, as per the communication dated 15.02.2016 (Annexure P-4). FIR No.4 dated 06.04.2016 was lodged on account of the preliminary inquiry which had started on 04.02.2016, wherein it had come to the notice that 19 candidates out of 50 candidates, who had applied for the posts of Junior Engineers (Civil) and Assistant Corporation Engineers (Civil), had not appeared in the exam of Junior Engineers (Civil), which was held in the morning. They had, however, appeared in the exam for the posts of Assistant Corporation Engineers (Civil) which was conducted in the afternoon on the same day. They had scored very high ranks and their names figured in the merit list and the answers of these 19 candidates were on similar pattern in their attempt while answering multiple choice questions. The wrong questions were also similar and accordingly a finding was recorded that the said candidates had prior access to the question paper and answer keys. They were sure of their selection on the post of Assistant Corporation Engineers (Civil), for which scale and grade of pay was higher than Junior Engineers (Civil) and they willfully abstained from appearing in the said paper in the morning being sure of their selection. It was also noticed that some of them were present in Lucknow, Uttar Pradesh prior to the examination and had been provided question papers and answer keys. Therefore, proceedings under Section 409,

420, 120-B IPC and under Section 13 (1) (D) read with 13 (2) of the Prevention of Corruption Act, 1988 was initiated.

(9) On 17.05.2016 (Annexure P-6) the recruitment process qua Assistant Corporation Engineers (Civil), Assistant Municipal Engineers (Civil) and Sub Divisional Engineers (Civil) were directed to be cancelled. Vide letter dated 28.11.2016 (Annexure P-8) on account of the meeting carried out by the High Level Committee in addition to the said posts, which were 61 in number, the exam of Junior Engineers (Civil) and Junior Engineers (Civil) (O&M) which was for 211 posts was cancelled alongwith the exam for the post of Senior Assistants/Inspectors, which were 184. Thus, effectively 456 total cancellations were done of the posts which had been notified out of 670, which is subject matter of challenge.

(10) The report of the High Level Committee which included the Additional Chief Secretary, Department of Local Government, Punjab as such which was held on 27.09.2016 {Annexure R-1/3 (T)} would go on to show that the Committee had come to the conclusion that due to the leakage of question papers concerned recruitment process had completely been vitiated. Complaints had not been received qua certain number of posts and, therefore, a decision was taken that against 140 posts there was no complaint and, accordingly, they were saved as such from cancellation. Accordingly, recommendation was made that four complaints had already been received against the posts of SDO/Junior Engineers (Civil), Executive Officers, Inspectors, Junior Draftsman and Senior Assistants/Inspectors and the same had been sent to the Vigilance Bureau, so that the same can be considered during investigation. The same reads as under:-

“The Additional Chief Secretary, Department of Local Government, Punjab brought to the notice of the members present in the meeting that a Public Notice dated 01.7.2015 was issued for filling up 670 posts in different cadres by this Department. For filling up these posts, the Panjab University, Chandigarh has conducted the written test of the candidates in the month of 11/2015 and the result of written test was declared on 17.12.2015.

3. Thereafter the Department of General Administration (General Coordination Branch) vide its letter No. 12/52/2016/G.C.1/6824 dated 17.5.2016 has informed that the Vigilance Bureau, Punjab has registered FIR No. 4/16 in Police Station Vigilance Bureau, Flying Squard-1, Punjab at

Mohali regarding irregularities/leakage of question papers for the written test for recruitment of above 670 posts. On the basis of the inquiry report of Vigilance Bureau, written test of 61 posts in 3 cases of Assistant Corporation Engineer (Civil), Assistant Municipal Engineer (Civil) & Sub Divisional Engineer (Civil) and action taken thereafter has been cancelled. The decision has also been taken to transfer to the applications received by the Panjab University, Chandigarh to take re-conduct written test by any other nominated Organization/University. In spite of this, a High Level Committee consisting 4 members was constituted for taking a decision to complaints regarding the remaining of posts.

4. In the meeting, the report of Chief Director Vigilance Bureau, Punjab, which was sent vide its letter dated 08.9.2016 was considered. In the report of Vigilance Bureau, it has been submitted that there are solid proof of leakage of question papers of the following recruitment process of the posts.

The posts in which paper leaked before the examination:-

Department/ Cadre	Assistant Corporation Engineer (Civil) (Code No.01), Assistant Municipal Engineer (Civil) (Code No.17) Sub Divisional Engineer (Civil) (Code No.27) (Common Test)	Junior Engineer (Civil) & Junior Engineer (Civil) (O&M) (Code No.06, 07, 20, 25 & 28- (Common Test)	Senior Assistant/ Inspector (Code No.09 & 22)- (Common Test)	Total

Municipal Corporations	32 ACE	94	136	262
Municipal Councils- Nagar Panchayats	19 AME	39	48	106
Improvement Trusts	-	28	-	28
Punjab Water Supply & Sewerage Board	10 SDE	50	-	60
Total	61	211	184	456

5. In this regard, the Vigilance Bureau has registered an FIR No.4/16 under PC Act, Thanna Vigilance Bureau, Phase-1, Punjab at Mohali. After considering the above report, the Committee came to the conclusion that due to leakage of question papers concerned recruitment process has completely been vitiated. Accordingly the Committee recommended the cancellation of recruitment process (written test) of the above mentioned posts.

6. During the period of the meeting, the representatives of the Vigilance Bureau has informed that the complaints of recruitment process of following 74 posts are under investigation:-

Sr. No.	Post Code	Name of Post	No. of Posts	Total No. of Posts	Written Test
1	13	Draftsman	02	28	Common Test
	26	Draftsman	01		
	30	Junior Draftsman	25		
2	14	Executive Officer Class 1	11	46	Common Test

	15	Executive Officer Class2	21		
	16	Executive Officer Class3	14		
Total			74	74	

7. The Officers of Vigilance Bureau who came in the meeting has requested that after completion of the investigation of the above said posts, the complete report would be sent to you. During the meeting, Vigilance Bureau was requested to complete the investigation of the inquiry as early as possible so that appropriate decision could be taken. Committee has kept decision pending of recruitment process of the above said posts.

8. The Vigilance Bureau and Administrative Department has intimate that no complaint of the following posts has been received as on date:-

Sr. No.	Pos Code	Name of Post	No. of Posts Cadre Wise	Total No.of Posts	Written Test
1	02	Assistant Corporation Engineer (Electrical)- M. Corporation	05	05	Separate Test
2	03	Accountant Grade-1	01	23	Common Test
	18	Accountant Grade-1	06		
	19	Accountant Grade-2	02		
	29	Divisional Accountant-PWSSB	14		
3	04	Legal Assistant-M. Corporations	02	02	Separate Test

4	05	Assistant Town Planner- Municipal Corporations	07	07	Separate Test
5	08	Building Inspector (Tech.)- Municipal Corporations	27	44	Common Test
	21	Building Inspector (Tech.)-M. Councils-N. Panchayats	17		
6	10	Sub Fire Officer Municipal Corporations	23	46	Common Test
	24	Sub Fire officer-	23		
7	11	Chief Sanitary Inspector Municipal Corporations	01	13	Common Test
	12	Sanitary Inspector Municipal Corporations	01		
	23	Sanitary Inspector-	11		
Total				140	

9. The Administrative Department has also informed that there is no complaint of against above 140 posts has been received. In these circumstances, the Committee has not taken any decision of these posts as instructions mentioned in para 3 above. For these posts, the Administrative Department may take further necessary action at its own level as per rules.

10. The Administrative Department has brought to the notice of the Committee that they have received 4

complaints, the details of which are as under:-

Sr. No.	Name of Complainant and date of complaint	Name of posts, against which complaint is made
1	Sh. Gagandeep Garg Dated 22.12.2015	(1) S.D.O. (2) Junior Engineer (Civil) (3) Executive Officer (4) Inspector
2	Sh. P.B. Kahlon Email dated 19.02.2016	Junior Engineer (Civil) and S.D.E (Civil)
3	Sh. Gurdeep Brar Malkana, Vicky Nagpal, Kartik Sharma and Sapars Goyal	Junior Draftsman and Senior Assistant/Inspector
4	Sh. Gurdeep Brar Malkana, Sh. Harpreet Singh and Gurpreet Singh	Junior Draftsman and Senior Assistant/Inspector

The above complaints have already been sent to the Vigilance Bureau by the Administrative Department. Despite this, if any complaint be received with the Administrative Department regarding 74 posts as mentioned in para-6 above, it should also be sent to the Vigilance Bureau so that the same may be considered by the Vigilance Bureau during the investigation.

Meeting ended with thanks.

Sd/-
(Vivek Partap, IAS)
Secretary to Government of
Punjab Department of
Vigilance

Sd/-
(Satish Chandra, IAS)
Additional Chief
Secretary, Government of
Punjab, Department of
Local Government

Sd/-
(Gurpreet Kaur Sapra, IAS)
Special Secretary,
Department of Personnel
Punjab

Sd/-
(A.S Rai, IPS)
Inspector General
Vigilance Bureau, Punjab

Sd/- (Surjeet Singh, IPS) Assistant Inspector General, Vigilance Bureau, Punjab	Sd/- (Parveen Kumar Thind, IAS) Director Department of Local Government of Punjab
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(11) The learned Single Judge, thus, came to the conclusion that investigation process had showed that the sanctity of the examination had been breached and, therefore, it needs to be unearthed by conducting a deep probe in the matter, but in the interest of justice and fair play, re-examination be conducted, as decided by the High Level Committee.

(12) The status report filed by Shri Ajay Kumar, PPS, Deputy Superintendent of Police, Vigilance Bureau, Mohali, in compliance of the order dated 21.01.2019 passed by the coordinate Bench would go on to show that 54 persons stood nominated as accused. The accused persons were working as a gang and they have indulged into various other cases of similar nature regarding leakage of the official examination papers including in the State of Telangana, Uttar Pradesh and U.T. of Chandigarh. The weight age was given to the 19 candidates who had shown a similar pattern pertaining to the exam for Junior Engineer (Civil) and Sub Divisional Engineer (Civil) and had not appeared in the said examination, but had appeared in the other examination of Assistant Corporation Engineer (Civil) and the fact that they had visited to Uttar Pradesh and earlier had been provided question papers and answer keys. Details as such were also given regarding their travel and the places of stay etc. It was further stated that three accused could not traced in the course of investigation due to non-availability of the correct particulars.

(13) The fact, thus, remains that the writ petitioners apparently have no legal vested right to claim that they have a right for the recruitment process to be carried out to its logical end in the absence of appointment letters having been issued in their favour. They had only a right of consideration, if the selection process had been taken to its logical end and there was no justifiable reasons for the State to cancel the examination.

(14) The Apex Court in the case of *Shankarsan Dash versus Union of India*⁵ and *B. Ramanjini versus State of Andhra Pradesh*⁶

⁵ (1991) 3 SCC 47

has held that the candidates from the waiting list also have no right for appointment, if the State has justifiable reasons not to operate the same and in the present case as noticed no appointment letters were issued at all.

(15) As noticed above, the State has constituted a committee to cancel the examination on account of the complaints having been received and on account of the fact that there was a leakage of answer keys and the accused are being prosecuted. It had rightly decided to go ahead and cancel the examination, after taking a decision by the Committee. In pursuance of the same, apart from 61 posts initially cancelled, another 211 posts for Junior Engineers (Civil) and Junior Engineers (O&M) (Civil) were cancelled alongwith 184 posts of Senior Assistants/Inspectors, taking the total to 456. No fault as such can be said to the decision of the State and it cannot be said to be illegal and arbitrary in any manner.

(16) Reliance can be placed upon *Chairman, All Railway Recruitment Board and another versus K. Shyam Kumar and others*⁷, wherein the decision of the High Court directing the Railway Board to go ahead for the recruitment process based on the written test was set aside by the Apex Court. It was held that the High Court was perpetuating the illegality and there were serious allegations of leakage of question papers. The question of principle of natural justice was also repelled by holding that the report of the vigilance is not to be made available to the candidates.

The argument raised on that account is liable to be repelled. The relevant portion of the said judgment reads as under:-

“39. We are of the view that the decision maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in **Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti and Others, (1998) 9 SCC 236** found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill's case is not applicable where larger public interest is involved and in such situations, additional grounds can be

⁶ (2002) 5 SCC 533

⁷ (2010) 6 SCC 614

looked into to examine the validity of an order. Finding recorded by the High Court that the report of the CBI cannot be looked into to examine the validity of order dated 04.06.2004, cannot be sustained.

40. We also find it difficult to accept the reasoning of the High Court that the copy of the Vigilance report should have been made available to the candidates at least when the matters came up for hearing. Copy of the report, if at all to be served, need be served only if any action is proposed against the individual candidates in connection with the malpractices alleged. Question here lies on a larger canvas as to whether the written test conducted was vitiated by serious irregularities like mass copying, impersonation and leakage of question paper, etc not against the conduct of few candidates. In this connection reference may be made to the judgment of this Court in **Bihar School Examination Board v. Subhas Chandra Sinha and others, 1970(1) SCC 648**. That was a case where 36 students of S.S.H.E. School, Jagdishpur and H.E. School Malaur, District Shahbad, moved a Writ Petition before the Patna High Court against the order of the Board canceling annual Secondary School Examination of 1969 in relation to Hanswadih Centre in Shahbad District. The High Court quashed the order of cancellation and directed the Board to publish the results. Against the judgment and order of the High Court the Board filed an appeal by way of special leave petition to this Court. This Court allowed the appeal and upheld the order of the Board cancelling the examination. On the complaint that no opportunity was given to the candidates to represent their case before cancellation, this Court observed as follows:-

“This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the

examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.”

40. Applying the above principle, we are of the view that the finding recorded by the High Court that non supply of the copy of the Vigilance report to the candidates was a legal infirmity, cannot be sustained.

(17) The judgments relied upon by Mr. Ankur Mittal in *Inderpreet Singh Kahlon* (*supra*) and *Joginder Pal* (*supra*) are not applicable in the facts and circumstances as they pertained to cases where the appointment orders had been issued and the cancellation was subsequent. The judgment in the case of *Rajesh P.U. Puthuvalnikathu* (*supra*) would also not be applicable, since it was a case where posts of Constables were being filled up and it was found that there were 31 candidates who were otherwise ineligible, but had got selected in the process. It was, accordingly, held that the cancellation of the entire selection process was not justified, which was upheld. It was not a case of leakage of paper and, therefore, observations made there would not be of any relevance to the facts of the present case.

(18) The judgments in *Inderpreet Singh Kahlon* (*supra*) and *Joginder Pal* (*supra*) were also considered by the Apex Court in *Sachin Kumar & Ors. versus Delhi Subordinate Service Selection Board*⁸. Resultantly, it was held that where there are serious allegations of leakage of question papers, large scale impersonation of candidates and the selection process is tainted, it may be possible to segregate tainted from untainted candidates. The decision of the authority should not be lightly interfered in the exercise of the powers of judicial review unless it is vitiated on the ground of unreasonableness or proportionality. The said observations as such would be directly applicable to the facts and circumstances of the present case. The Apex Court in the said case had set aside the order of the Division Bench of the High Court of Delhi, which had interfered in the cancellation of

⁸ (2021) 4 SCC 631

examinations.

(19) Similarly, the judgment of the coordinate Bench passed in *Satwinder Singh's case (supra)* would also not be applicable, as it was a case where appointment had been made and it was on that account the right of candidates was kept in mind to come to the conclusion that complete process should not be scrapped.

(20) In such circumstances, we are of the view that the decision as such of the State Government was rightly upheld by the learned Single Judge and does not warrant interference by this Court in the present letters patent appeals, as there is no illegality or infirmity in the said decision. It is for the experts to take a decision on the cancellation and not for this Court to substitute its view over the view of the experts. Resultantly, there is no merit in the present appeals and the same are dismissed.

Shubreet Kaur