

Before J.S. Narang & Baldev Singh, JJ.

HARDEV SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 12304 of 2002

8th November, 2005

Constitution of India, 1950—Art. 226—Punjab Development and Panchayat (Class-II) Service Rules, 1973—Rl.12—Appointment of petitioner along with 2 others to the post of B.D. & P.O. against the handicapped quota—Petitioner put on probation for 2 years—Government while invoking Rule 12 dispensing with services of petitioner before completion the period of probation—No adverse report or any complaint against the petitioner during the period of probation— Government taking the stand that though orders of cancellation of appointment indicate exercise of power under rule 12 but orders of termination were not passed simplicitor and were issued on finding mass irregularities and violation of statutory rules—Condition of qualifying written test—Exempted/relaxed by the Minister concerned— Whether the Minister was competent to grant relaxation/exemption— Held, yes—Under Rule 21 the Government has authority to grant relaxation—Rule 6 of the Rules of Business indicates that Minister Incharge would be well within his rights to take decision wherever the same have to be taken under the rules—Government taking a categoric stand in reply to petitions earlier filed challenging the order of appointment of petitioner that the selections had been made as per the rules and the procedure provided under law—Petition allowed directing the respondents to take back the petitioner into service with all consequential benefits.

Held, the stand of the Government is that though the order of cancellation of appointment indicates the exercise of power under rule 12 of the Rules, but in fact the stand taken is that the compliance of holding of written examination having not been made, the appointment of the petitioners is not sustainable. It is further the stand that the then Minister of Rural Development and Panchayats was not competent to grant exemption of holding or written examination and that the matter was never put up before the Cabinet and, therefore, the exemption granted on 16th December, 2000 cannot be of any help to the petitioners.

(Para 44)

Further held, that from the perusal of the dates of both the files, we are convinced beyond any doubt that the noting of the officer, which is dated 18th December, 2000, does not inspire confidence at all because in one file, which is continuously dealing with filling up of the vacancies relating to the disabled persons pursuant to 1995 Act, does not make a mention of holding of written examination. This file indicates the constitution of the committee for holding the interview and further these very officials identified the date of holding the interview i.e. 4th January, 2001 onwards and this order is passed on 16th December, 2000. If that be so where was the necessity to make a note on 18th December, 2000 and further this file did not reach the Financial Commissioner, Rural Development and Panchayats, as is indicative from the aforesaid note that the file had been put on before him on 4th February, 2002. It is not understandable which file is speaking the truth and which official is acting truthfully to his job.

(Para 45)

Further held, that the manner in which the written statement has been filed in this case and so also in the petitions by which the appointments of the petitioners had been challenged, less said the better it is. This act on the part of the officials, who filed the written statement is quite clear from the order passed by a Division Bench of this Court dated 10th December, 2002. Apart from this, the manner and the method in which the record has been produced pursuant to the orders, is itself indicative of the fact that there was an act of concealment on the part of the concerned officials. It is certainly not in good taste. If a mistake has been committed, the same should be owned by the concerned quarters honestly and fairly. It is apparent from the stand which has been taken by the government, virtually conceding that the order has not been passed pursuant to rule 12 of the Rules. This in itself would be sufficient to quash the order.

(Para 46)

Further held, that so far as the power of the Minister to grant exemption from holding the written examination is concerned, we are of the considered opinion that it is indicative from the Rules of Business as to in what manner and what power can be exercised by a Minister

in-charge. We have perused rule 6 of the Rules of Business, which is indicative that Minister In-charge would be well within his rights to take decisions wherever the same have to be taken under the rules. Apart from this, pursuant to Allocation of Business Rules 1994, under Rule 3, the Minister Incharge is allotted the business of the Government by assigning one or more departments to the charge of a Minister, on the advice of the Chief Minister by the Governor. This would mean that the Minister In-charge exercises the power of the Government while disposing of the business relating to that department. The power which has to be exercised by the Council would relate only to the matter which would effect the revenue of the State unless otherwise defined specifically. The case at hand is not a case of creation of posts which might have financial effect and which may fall within the ambit of "Council" or "the Finance Minister". Thus, we are of the considered opinion that the Minister in-charge is well within his rights in exercising the power under rule 21 of the Rules, which had been exercised by him, as is evident from the order dated 16th December, 2000.

(Para 48)

Further held, that in the civil writ petitions which had been filed challenging the order of appointment of the petitioners, no such stand had been taken nor the Government had given any indication while submitting the written statement to the said petitions. In fact, the Government has taken a categorical stand that the selections had been made as per the rules and the procedure provided under law. It may also be noticed that the then official, who filed the written statement, has also submitted an affidavit dated 10th December, 2002 wherein he has stated that the action has been taken as per the "changing circumstances". Would it mean that whenever there is a change in the Government i.e. a new Minister comes in, the appointments made would have to undergo the change accordingly? What would be the sanctity of the orders passed by a Government? There would be no stability ascribable to an act of the Government.

(Para 48)

A.K. Chopra, Senior Advocate, with N.D. Kalra, Advocate, for
the petitioner.

Ashok Aggarwal, Addl. Advocate General, with B.S. Chahal,
Asstt. Advocate General, Punjab for the State.

P.S. Patwalia, Senior Advocate, with Sanjeev Tamak, Advocate,
for the added respondent No. 3.

JUDGMENT

J. S. NARANG, J.

(1) This judgment would dispose of CWP Nos. 12304, 12360 and 12604 of 2002, as the common question of law as also somewhat similar facts are involved. For brevity, the facts are being taken from CWP No. 12304 of 2002.

(2) The petitioner was appointed as Junior Assistant in the Department of Transport, Punjab, with effect from 1st April, 1974. An advertisement dated 16th September, 2000, was issued by the Government of Punjab for filling three posts of Block Development and Panchayat Officers (hereinafter referred to as "B.D & P.O"), from amongst handicapped persons. The petitioner being handicapped person (his right arm has been amputated above the elbow) applied for one of the three posts through proper channel. The interview was held from 6th January to 8th January, 2001 and that the petitioner, along with others, was interviewed. Pursuant thereto, the petitioner along with other persons i.e. Gurpreet Singh and Gajjan Singh were duly selected. The individual appointment orders were issued and that the order of the petitioner is dated 31st May, 2001, which has been appended as Annexure P1. It may also be noticed that the aforesaid letter of appointment had been issued by Shri J.S. Kesar, Financial Commissioner and Secretary to Government of Punjab, Rural Development and Panchayats Department. The order is indicative of the terms, as spelt out therein. It has also been mentioned that the service of the petitioner would be governed under the relevant department service Rules as amended from time to time and that such rules are called Punjab Development and Panchayat (Class-II) Service Rules, 1974 (hereinafter referred to as "the Rules").

(3) Upon the appointment, the petitioner was posted as B.D. & P.O. at Narpur Bedi District Ropar. He was transferred to Banga District Nawanshahar and thereafter to Ludhiana. During this entire period, no adverse report had ever been given by the controlling authority nor any complaint had been received against the petitioner, as none had ever been communicated. In fact, the work and conduct of the petitioner had been appreciated by the Deputy Commissioner, Nawanshahar.

(4) It has been very fairly stated that the appointment of the petitioner as also Sarvshri. Gurpreet Singh and Gajjan Singh had been challenged by way of two writ petitions filed before this Court which had been registered as CWPs No. 15755 and 15773 of 2001. The stand of the State of Punjab in those petitions is that the selections had been made correctly and in accordance with law. However, to the utter surprise of the petitioner and others, the services of the petitioner and others have been dispensed with,—*vide* order dated 2nd August, 2002, copy Annexure P3, P4 and P5, which are the subject matter of challenge in the present petition. The Government is shown to have exercised its powers under Rule 12 of the rules and it is indicative from the order of appointment that the petitioner had been put on probation for two years. The aforestated rule reads as under :—

“Probation of persons appointed to service :—

12 (i) : Persons appointed to a post in the Service shall remain on probation for a period of two years, if recruited by direct appointment and one year if recruited otherwise :

Provided that ;

- (a) any period, after such appointment, spent on deputation on a corresponding or higher post shall count towards the period of probation fixed under this rule :
- (b) in the case of an appointment by transfer, any period of work in equivalent or higher rank prior to the appointment to the service may, in the discretion of the appointing authority, be allowed to count towards the period of probation fixed under this rule ; and
- (c) any period of officiating appointment to the Service shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed, unless he is appointed against a permanent vacancy.

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- (2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may—
- (a) If such person is recruited by direct appointment, dispense with his services; and
 - (b) if such person is recruited otherwise—
 - (i) revert him to his former post; or
 - (ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.
- (3) On the completion of the period of probation of a person, the appointing authority may :—
- (a) if his work or conduct has, in its opinion, been satisfactory—
 - (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or
 - (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or
 - (iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy; and
 - (b) if his work and conduct has not been, in its opinion, satisfactory—
 - (i) dispense with his services, if appointed by direct recruitment, or if appointed otherwise, revert him to his former post, or deal with him in such manner as the terms and conditions of his previous appointment permit; or
 - (ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation”.

(5) It is obvious that the period of probation of two years had not been completed by the petitioners and in fact was to expire on 31st May, 2003, whereas the impugned orders have been passed just after one year and two months. It has been averred that the impugned order is not indicative of any reason vis-a-vis work and conduct of the petitioner as no complaint against the petitioner had ever been received and in fact the work and conduct of the petitioner had been appreciated by the controlling authority, as has been stated above.

(6) It has also been averred that the State does not seem to have applied its mind vis-a-vis the work and conduct of the three individuals, who had been appointed against the handicapped quota as the perusal of the orders passed in respect of the three appointees is verbatim. It cannot be ascribed and accepted that the work and conduct of the three was not found good as nothing is indicative from the individual orders passed against the appointees. It is also the plea that perhaps the petitioner along with others have been edged out as they were appointed during the Akali Government and by way of removing them from the service, an effort was made to make room for the persons who are more akin to the present Congress Government. Such approach of the Government is not at all sustainable under the provisions of law, therefore, the impugned order is not sustainable.

(7) Notice of motion was issued,—*vide* order dated 8th August, 2002 and that notice regarding stay had also been issued. The petitioners by way of CM No. 28221 of 2002, had sought the indulgence for production of the record by the respondents and that the learned Additional Advocate General, Punjab, had undertaken to produce the record accordingly.

(8) The State filed written statements to the respective petitions of the petitioners and the petitioners have also filed replications. During the course of hearing, the record had been perused by a Division Bench and a *prima facie* opinion had been formed that the stand taken by the Government is not only factually incorrect but is contrary to the record of the Government. The official concerned, who had submitted the written statement under his signatures, had been directed to be present personally to explain as to which of the pleadings are in conformity with the Government records. Resultantly, Mr. Charan Singh the then Deputy Secretary, had been called to

explain the aforesaid ambiguity. In regard to the above, an order dated 10th December, 2002, had been passed by the Division Bench, which reads as under :—

“It has been argued vehemently by the learned counsel appearing for the petitioner that the written statement filed originally by the department (signed by Mr. Charan Singh, Deputy Secretary), is not only factually incorrect but is contrary to the records of the Government. The affidavit is stated to be verified as per the records of the Government. Another affidavit filed today in Court is also in contradiction to the earlier pleadings of the department before the Court. In the circumstances aforesaid, it is necessary for us to require the said officer to be present personally before this Court with complete record to show which of the pleadings are in conformity with the Government records. Let him be present with complete records now on 12th December, 2002.

The Registry is directed to page mark the file in continuation. Assistant Registrar concerned to ensure compliance.

(Sd.) . . .

(SWATANTER KUMAR),
Judge.

(Sd.) .

10th December, 2002.

(VINEY MITTAL),
Judge”.

(9) Subsequently, during the course of hearing on 13th December, 2002, the Government had taken the stand that though the orders of termination of the services of the petitioners are indicative that such termination was made when the petitioners were on probation but in fact these are not the termination orders simpliciter but had been issued on the premises that there were mass irregularities and violation of statutory rules had been committed, therefore, it was considered necessary to terminate the services of the petitioners. This

stand was duly noticed by a Division Bench in its order dated 13th December, 2002, which reads as under :—

“During the course of arguments, learned counsel appearing for the State contended that the orders terminating the services of the petitioners dated 22nd August, 2002, Annexures P/3, P/4 and P/5 to the writ petition, though are orders terminating the services of the petitioners on probation and are simplicitor termination but in fact, they are issued on the premises that there were mass irregularities and violation of the statutory recruitment rules in appointment of the petitioners and as such it was necessary to issue orders, Annexures P/3, P/4 and P/5 without even disclosing the same to the petitioners.

We have made it clear to the learned counsel for the State that the Court shall take note of the above statement while deciding the matter on merit and strictly in light of the statement, dehors the pleadings of the parties.

(Sd.) .

(SWATANTER KUMAR)
JUDGE

13th December, 2002.

(Sd.) .

(VINEY MITTAL)
JUDGE”.

(10) In view of the facts divulged in the petition as also the stand of the government, as has been noticed above, the case was admitted to D.B.—*vide* order dated 3rd February, 2004. However, C.M. No. 25131 of 2003,—*vide* which the interim relief had been asked for along with the alternative prayer for preponement, was dismissed,—*vide* order dated 6th November, 2003. Against this order, the petitioner had filed Special Leave to Appeal (Civil) No. 5785 of 2004, which was disposed of,—*vide* order dated 2nd April, 2004, with the following observations :

“Perused the impugned order refusing the interim relief, alternatively for preponement of the hearing. The application has been rejected with an observation that the

prayers were only misconceived. It is a different matter that the case for granting of interim relief may or may not be made out. Hence, the question as to whether interim relief is to be granted or not is to be decided keeping in mind the *prima facie* merits of the matter. Since we are not inclined to entertain this petition for consideration of the prayer for interim relief we dismiss the special leave petition with the observation that the petitioner shall be at liberty to move a fresh application for interim relief before the High Court, which shall be considered on merits and disposed of according to law.”

(11) The stand of the government,—*vide* written statement dated 16th September, 2002, is that the candidates who had not been selected, had made representation/served legal notice and had also filed writ petitions in this Court, challenging the selection. The government reconsidered the matter thoroughly and after seeing that the selection had been made by ignoring the rules and regulations for the selection of B.D. & P.O. and there are certain shortcomings in the selections, further the condition of qualifying written examination having not been relaxed, passed the order of cancellation of appointment of the petitioners. It is also the stand that as per the rules, before a candidate could take part in the interview for selection, the candidate is bound to qualify the written examination and those who would qualify the written examination, would be called for interview. After counting the marks of written examination and viva-voce the candidates who would get highest marks would be selected. In the instant case, no written examination was held and that the Departmental Selection Committee, only on the basis of interview, selected the petitioner and two other persons. The requisite condition for qualifying the written examination had never ever been relaxed, therefore, the selection was cancelled.

(12) The aforesaid facts have been controverted by the petitioners by way of filing replications by taking a specific stand that the backlog of vacancies of handicapped quota, in various departments, had been ordered to be filled upon the directions of this court while disposing of number of writ petitions, by prescribing the time limit. Of course, the government was to act expeditiously in this regard. Thus, to complete the process expeditiously, the government had decided to dispense with the written examination and proceeded with the selection on the basis of interview only. In the case at hand, the matter was considered/discussed at the highest level and then necessary

approval regarding exemption of condition of written test was taken up and the Minister concerned granted the relaxation. The noting, as per the petitioners, which appears in the record of the respondents reads as under :

“Discussed. Because of shortage of time exemption from holding written test for the post of Block Development and Panchayat Officers meant for physically handicapped persons is hereby granted and these posts be filled up only on the basis of interview and appointment orders be issued. Otherwise also, in my view it is necessary because in some cases the hands of some may not work efficiently and others may suffer different handicaps.”

(13) In this regard a pointed reference has been made to rule 21 of the Rules whereby the power to relax has been conferred upon the Government, which reads as under.”

“Power to relax :

21. Where the Government is of the opinion that it is necessary of expedient so to do, it may be order, for reasons to be recorded in writing relax any of the provision of these rules with respect to any class or category of persons.”

(14) Upon relaxation having been granted by the Minister concerned, the advertisement issued for filling the post ascribed for handicapped quota, did not prescribe the written test. Pursuant to the applications received, the Departmental Selection Committee (hereinafter referred to as the “DPC”) was constituted consisting of the following members :

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|--|-------------------------|
| “1. Chariman,
Director, Rural Development
and Panchayats, Punjab. | Mr R. Venkatratnam, IAS |
| 2. Chief Engineer,
Department of Rural
Development and Panchayats. | Mr. Baldev Singh |
| 3. District Development and
Panchayat Officer, Ropar. | Mr. Kuldeep Singh |
| 4. Deputy Director Department
of Social and Security Punjab. | Mrs. Kiran Mehta”. |

(15) The DPC formulated a specific criteria for interview, which reads as under :

Total number of marks	:	80
(1) Marks for qualifications	:	50
(a) 1st Division	:	50
(b) 2nd Division	:	47
(c) 3rd Division	:	45
(2) Marks for interview :	:	20
(3) Marks for experience :	:	10".

(16) Pursuant to the above criteria, the applicants, against the handicapped quota, were duly interviewed and the petitioner along with two others had been selected. Along with the replication, a copy of the written statement filed in CWPs No. 15755 and 15773 of 2001,—*vide* which the selection of the petitioners had been challenged, has been appended as Annexure P6. This written statement has been filed by the same official i.e. Shri Charan Singh, Deputy Secretary to Government of Punjab, Rural Development and Panchayats Department by taking the stand that the respondent- petitioners had been duly selected in accordance with the rules and that no arbitrary selection was made. A pointed reference has been made to the reply submitted to para 2, 9, 10,11, 12 and 13, of those petitions which read as under :

- “2. That para No. 1 of the writ petition is admitted to the extent that Department Selection Committee was constituted with the approval of Government for the selection of handicapped and Deaf persons. The Chairman of this Committee was Director, Rural Development and Panchayat Department, Punjab, Chandigarh. After taking interview by the Departmental Selection Committee, the Chairman recommended the names of three candidates i.e. Shri Gurpreet Singh, Shri Gajjan Singh and Shri Hardev Singh Sodhi respectively. On this recommendation, the above three candidates were appointed as B.D. & P.O. After getting them medically examined by the respondent No. 1. The above mentioned candidates were selected purely on merit basis by the Departmental Selection Committee, whose Chairman was Director, Rural Development and Panchayats, Punjab,

Chandigarh and other members of the committee were Chief Engineer, Panchayati Raj, Punjab, Chandigarh, District Development and Panchayats, Punjab, Chandigarh and other members of the committee were Chief Engineer, Panchayati Raj, Punjab, Chandigarh, District Development and Panchayat Officer, Ropar, Smt. Kiran Mehta, Deputy Director, Department of Social Security, Punjab, Chandigarh. Therefore, no arbitrary selection was made. Allegations levelled in this para are false and baseless. Petitioner cannot stand in the merit. Hence could not be selected.

“XXX XXX XXX

- “9. Admitted to the extent that Advertisement for the post of B.D. & P.O. was given according to the Punjab Rural Development and Panchayat (Class-II) Service Rules, 1974,—*vide* which it was also mentioned that preference will be given to the candidates, who possess the qualification of B.Sc. (Agri. Science). These rules were made in 1974. It is wrongs that the petitioner was only highly qualified. There were more than 10 candidates who possessed the high qualification but the Selection Committee selected the suitable candidates on merit according to the nature of job of the B.D. & P.O. which is tedious one as he had to look after all the development works in the villages in the Block.
10. That the allegations levelled in this para are wrong. The interview was not taken by Respondent No. 1. It was taken by the Departmental Selection Committee, whose Chairman was Respondent No. 2. The criteria was made by the Departmental Selection Committee as under :—

	Total number of Marks	:	80
(1)	Number for qualification	:	50
	(a) 1st Division	:	50
	(b) 2nd Division	:	47
	(c) 3rd Division	:	45
(2)	Number for interview	:	20
(3)	Number for experience	:	10

According to above criteria, candidates were selected on merit and selected candidates were informed about their selection respectively.

11. That the contents of this para are admitted to the extent that the orders of this Hon'ble Court in CWP No. 7314 of 2001 have been complied with. Petitioner was supplied the photo copies of the appointment letter of those who were selected by the Departmental Selection Committee and they possessed the qualification as under :—

- (1) Shri Gajjan Singh : B.A.B.Ed., M.A. History
(2) Shri Gurpreet Singh : B.A.M.A. Economics, LL.B
(3) Hardev Singh : B.A.

The abovesaid candidates were selected by the Departmental Selection Committee according to the criteria fixed. Claim of the petitioner for automatic selection, on the basis of higher qualification is wrong. Higher qualification does not make him entitle to selection. According to the criteria fixed by the Departmental Selection Committee, Petitioner could not be selected.

12. That this para is admitted to the extent of Annexure P-1 and that selection was made on the basis of interview by the Departmental Selection Committee as per criteria fixed for the selection of B.D. & P.O. who had the following members :—

- Chairman : Shri R. Venkatratnam, Chairman and Director, Rural Development and Panchayat Department, Punjab, Chandigarh
Member : Shri Kuldeep Singh, District Development and Panchayat Officer, Ropar
Member : Smt. Kiran Dhawan, Deputy Director, Department of Social Security, Punjab, Chandigarh
Member : Shri Baldev Singh, Superintending Engineer, Panchayati Raj, Punjab, Chandigarh

The Department had appointed the recommended candidates, who were selected by the abovesaid Departmental Selection Committee.

13. The contents of this para are wrong and denied. Selection was made by the Departmental Selection Committee and Respondent No. 1 was not the member of the same. Respondent No. 2 was the Chairman of the Departmental Selection Committee, who selected the B.D. & P.O. from amongst the candidates purely on merit basis as per the criteria fixed for selection and no discrimination was made with any candidate during the selection and keeping in view the nature of service and field duties of B.D. & P.Os. *right candidates were selected on merit. Allegations levelled in this para are false and baseless.*"

(17) A rejoinder to the replication had been filed by Shri Charan Singh, the aforesaid official,—*vide* rejoinder dated 30th September, 2002. The stand taken by the Government is that in view of the Government instructions dated 15th February, 1999, for the purpose of implementation of the "Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995", three posts of B.D. & P.O. for deaf and handicapped categories were advertised on 16th September, 2000, by the Department of Rural Development and Panchayats, Chandigarh. The Director had submitted the proposal to Financial Commissioner for fixing the day and time for the written test as per the rules. The Financial Commissioner was bye-passed by the then Minister and recorded a note on 16th December, 2000 exempting the holding of the test. No order pursuant to the aforesaid noting had been issued. The Financial Commissioner and the Director did not agree with the note and there was divergence of opinion, therefore, the appointment of the petitioners made, is in violation of the statutory rules and that the same have been accordingly cancelled. It is also the stand that pursuant to Section 33 of the 1995 Act, one post was advertised for deaf and dumb category but the same had been given to another handicapped person without obtaining any exemption from the Government as envisaged under the aforesaid provisions. An averment has been made that once the statutory rule provide for holding of the test, the rule has to be followed and any appointment made in violation of the rule would not be legal and valid in the eye of law. Thus, the Government has correctly cancelled the appointment of the petitioners.

(18) The petitioner filed an additional affidavit dated 3rd October, 2002, for explaining the new plea, allegedly, set up by way of submitting rejoinder by the Government, as aforesaid. It is the contention that the proposal had been put up in view of the time bound directions of this Court for filling up the backlog of handicapped quota along with other details. It had been categorically suggested that although written examination has been prescribed under the rules for filling up the posts of B.D. & P.Os. but this whole process would take time and that the Department of Social Security is pressurizing time and again to fill the posts as early as possible, therefore, the appropriate instructions/directions had been asked in this regard in the proposal. The proposal initiated by the dealing Assistant had been forwarded to Superintendent of RDEI Branch, who, after signing it, forwarded to the Under Secretary, Department of Rural Development and Panchayats, since he was away, the file/proposal was sent to the Special Secretary, Department of Rural Development and Panchayats, who after signing it forwarded it to the Minister concerned and it is thereafter the Minister exempted the written test by making the categorical observation. The Minister concerned forwarded the same to the Director-cum-Chairman of the Selection Committee, who was to take further action regarding the whole selection process. All concerned were aware of the entire process as is evident from the fact that the Financial Commissioner and Secretary to Government of Punjab, Rural Development and Panchayats, issued the letter of appointment and posting orders dated 4th January, 2001. Since the Director, who was the Chairman of the DPC, had accepted and agreed with the note of the Minister, the selection process was undertaken and the candidates had been duly interviewed. The government while submitted the written statement to CWP No. 15755 of 2001, has categorically stated that the proper procedure was followed and the selection had taken place in the right and correct perspective. It does not lie in the mouth of the State now to take the sifting stand. The petitioner has time and again made an averment that the original file be summoned for eliciting the truth. Further, it has been submitted that the three posts of handicapped quota have been provided pursuant to under Sections 33 and 36 of the Disabilities Act and that various instructions had been issued from time to time regarding inter-change-policy of the vacancies in three categories of physically handicapped persons. The latest instructions

dated 2nd May, 1997, have been appended as Annexure "C" in the aforestated additional affidavit of the petitioner. Thus, in view of the instructions, no violation has taken place whatsoever. It has also been averred that the Government had taken a categoric stand in the aforestated petitions,—*vide* which the the selection of the petitioners had been challenged that the selection had taken place in accordance with the procedure, now it does not lie in the mouth of the government to take the stand that the selection was not made as per the rules. It is the Selection Committee constituted by the Government, which had initiated the process and that the Government cannot take this plea that the selection was not made as per the rules. It has not been indicated as to whether any action had been taken against the DPC for having initiated the process of selection in violation of the rules, if at all the same is to be accepted for argument sake.

(19) Mr. Charan Singh, the aforestated officer has also filed a Counter to the aforestated affidavit by way of additional affidavit by way of additional affidavit dated 10th December, 2002. The stand taken is that no proposal had been put up by the office for relaxation of the rule i.e. the exemption of the written examination. The matter had been put up to fix the date for written examination as well as date for interview. The proposal was marked to Financial Commissioner but the same was directly obtained by the Minister, who passeded the said order for relaxation and again the case was marked to Chairman, Departmental Selection Committee, by the then Minister. It is also the stand that the relaxation could only be granted by the Council of Ministers (Cabinet). However, it has been submitted that it is not clear how the file was directly obtained by the Minister, bye passing the Financial Commissioner, Rural Development and Panchayats, which was against the rules. It has also been averred that the then Minister constituted the DPC separately and the file was sent to the Director, Rural Development and Panchayats through the Financial Commissioner for starting the process of interview. It has also been averred that the main case, which had been put up for taking the date for written test and interview, was received back from the Chief Secretary, Punjab after one year from the date of submission of the case with the remarks that it was a case of difference of opinion between the Minister and the Director, Rural Development and Panchayats,

therefore, the case may be referred to the Chief Secretary, Punjab. It shall be apposite to notice the averments made in the additional affidavit which read as under :—

- “1. Contents of Para No. 1 of the replication are denied. No proposal was put up by the office for relaxation of rule i.e. the exemption of written examination. It was put up only to fix the date for written examination as well as date for interview. The same proposal after signing by Superintendent R.D.E.I. Branch/Special Secretary to Government Punjab was marked to Financial Commissioner, Rural Development and Panchayat but the same directly obtained by the Rural Development and Panchayat Minister, who passed the said order for relaxation and again the case was marked to Chairman, Departmental Selection Committee (DRDP) by then Rural Development and Panchayat Minister, which was not proper because the Rural Development and Panchayat Minister was not competent to relax the condition of written examination, which was the competency of Council of Ministers (Cabinet). However, it is not clear how this file was directly obtained by Minister by passing the Financial Commissioner, Rural Development and Panchayat and which was also against the Rules. But the Chairman, Departmental Selection Committee (DRDP) cleared the position on the file and the case was resubmitted to Financial Commissioner, Rural Development and Panchayats. However, on the other hand, the date of interview for different categories of the Development Department had been fixed separately by the then Rural Development and Panchayat Minister. It is also pointed out that the then Rural Development and Panchayat Minister constituted the Departmental Selection Committee separately and the file was sent to the Director, Rural Development and Panchayat through Financial Commissioner for starting the process of interview. So the interview of the candidates for the post of Block Development and Panchayat Officers was taken accordingly by the Selection Committee and as per the recommendation of Departmental Selection Committee,

three candidates including the petitioner Shri Hardev Singh Sodhi was appointed as B.D. & P.O. But the main case, which was put up for taking the date for written test and interview received back from Chief Secretary, Punjab after one year from the date of submission of the case with the remarks that it was a case of difference of opinion between the Minister Rural Development and Panchayat and Director, Rural Development and Panchayats, therefore, the case may be referred to the Chief Secretary, Punjab. So it is wrong to say that relaxation from written test was given by the competent authority”.

(20) However, it has been stated in the affidavit that the selection of B.D. & P.O. was made by the Departmental Selection Committee, whose Chairman was Director, Rural Development and Panchayats but the appointment was made under the orders of the Financial Commissioner, Rural Development and Panchayats. It has also been stated that selection and termination of the petitioner was made according to the changed circumstances. It shall be apposite to refer to the changes in para 3 of the reply which reads as under :—

“3. That the contents of para No. 3 are denied. The selection of B.D. & P.O. was made by the Departmental Selection Committee, whose Chairman was Director, Rural Development and Panchayats, but the appointment was made under the orders of the Financial Commissioner, Rural Development and Panchayat. It is further stated that selection and termination of the petitioner was made according to the changing circumstances.”

(21) During the course of hearing, the respondents had been directed to produce the record,—*vide* our order dated 27th July, 2005, pursuant to the earlier directions dated 10th December, 2002. The State had taken a very evasive stand despite the communication sent by Shri B.S. Chahal, Assistant Advocate General, Punjab, and on the date fixed i.e. 3rd August, 2005, the record was not produced as Mr. Lakhmir Singh, Senior Assistant from the office of Director, Rural Development and Panchayats, Punjab, informed that the record is not available/traceable. Consequently, the Director Rural Development and Panchayats had been ordered to be present in person to explain the reason for taking such plea at the instance of Senior Assistant.

However, we had observed that if the record is traced out before the date fixed, the Director need not be present in person. The record was brought containing two files which contained the note of the Minister dated 16th December, 2000 and that no further noting upto 2nd February, 2002 was discernible and that this noting is that of the Financial Commissioner, Rural Development and Panchayats, Punjab. We had directed that the proceedings which had taken place pursuant to the note made by the Minister, be also produced. The second file which had been produced, the noting commenced from 12th April, 2001, which did not disclose as to what communication had been sent by the Secretariat/Department on the basis of the noting of the Minister. A direction had been issued for producing the files which would be indicative of the fact as to what had transpired from 18th December, 2000 to 11th April, 2001. However, the record brought was retained in a sealed cover pursuant to the directions dated 24th August, 2005, issued by this Bench. On 31st August, 2005, two more files had been brought, which contain the proceedings, allegedly from December, 2000 to 11th April, 2001 and also thereafter. The record was ordered to be kept in the sealed cover pursuant to the directions dated 31st August, 2005. The Director, Rural Development and Panchayats had been requested to be present on the date fixed for rendering the explanation pursuant to the noting in the file. The then Director, Mr. R. Venkatratnam, had also been requested to be present. Upon perusal of the written statement filed by the Government and also upon the perusal of the record, no further clarification was offered or was thought to be over and above, what has been stated in the written statement, as is indicative from the order dated 28th September, 2005.

(22) Mr. Rajiv Atma Ram and Mr. Ashwani Kumar Chopra, learned Senior Advocates, appearing on behalf of the petitioners have submitted that the petitioners had been appointed by the respondents by following the procedure meticulously while being considered for the post falling to the lot of handicapped category. It is the admitted case of the respondents that the exemption of passing the written test was granted but the stand taken is that the exemption was never communicated nor became the basis for making selection by the DPC. The only ground taken is that the then Minister was not competent to grant the exemption. It has nowhere been canvassed or is the stand of the respondents that the power to grant relaxation did not vest in the authority. It is evident from rule 21 of the rules that the Government

has the authority to grant the relaxation. Is the Minister, the Government under the rule for granting exemption ? In this regard, reference has been made to rule 6 of the Rules of Business of the Government of Punjab 1992 (hereinafter referred to as "the Rules of Business"). It is contended that as per rule 6, the Minister in-charge of a Department shall be primarily responsible for the disposal of the business pertaining to a department. In the case at hand, the power conferred under the rules i.e. rule 21, has been exercised by the then Minister-in-charge and that this act does not fall within the ambit of the schedule appended with the rules of Business, meaning thereby this power is not required to be or expected to be exercised by the "Council". It is not the case of a creation of a post which might have financial effect and that such act may fall within the ambit of "Council" or the "Finance Minister". It shall be apposite to notice the aforesaid rule, which reads as under :—

"DISPOSAL OF BUSINESS

XX XXX XXX XX

6. Without prejudice to the provisions of rule 4, the Minister-in charge of a Department shall be primarily responsible for the disposal of the business pertaining to that Department."

(23) It has also been contended that pursuant to Allocation of Business Rules, 1994, under rule 3, the Minister in-charge is allotted the business of the government by assigning one or more department to the charge of a Minister, on the advice of the Chief Minister by the Governor and this would mean that the Minister in-charge exercises the powers of the government while disposing of the business pertaining to that department. Thus, under rule 21, the Minister in-charge is the Government for exercising such power. Resultantly, the relaxation for holding of written examination for the purpose of selection to the post of B.D. & P.O. has been correctly exempted in the case of handicapped category.

(24) Learned counsel have further submitted that the admitted case is that the petitioners had been appointed as per the terms and conditions spelt out in the letter of appointment, which categorically provides that the petitioners shall be appointed on probation for a

period of two years. The period of two years had not expired and there is no complaint which had been received against any of the petitioners but the termination order has been passed while exercising the power under rule 12 of the Rules, which necessarily requires that an opinion must be formed by the appointing authority *vis-a-vis* conduct of a person during the period of probation. If there is no complaint *vis-a-vis* work and conduct of the appointee, the power under the aforesaid rule cannot be exercised arbitrarily and without affording opportunity of being heard. It is the settled law that in case of Probationer, it is always open to the government to hold enquiry merely to assess the merits of the employee to find out whether he is fit to be retained in service and to be confirmed. Where the services of the petitioners were intended to be terminated either during the period of probation or at the end of that period, for any fault or on account of his own suitability, he ought to be apprised of the grounds of unsuitability and would also be afforded opportunity to show cause against it before the orders are passed against him. It is also the settled law that the order by which the services of the employee were terminated, was an order simpliciter in nature, which was inaccurately worded but the form of the order is not decisive, the Court can go behind that order to find out whether it was forced on the misconduct of the employee. In support of this contention, reliance has been placed upon the judgments of the Hon'ble Supreme Court in re :

- (i) **Purshotam Lal Dhingra *versus* Union of India (1)**
- (ii) **Madan Gopal *versus* State of Punjab (2)**
- (iii) **State of Bihar *versus* Gopi Kishore Prasad (3)**
- (iv) **State of Orissa *versus* Ram Narayan Das (4)**
- (v) **Jagdish Mitter *versus* Union of India, (5) and**
- (vi) **Chandra Prakash Shahi *versus* State of U.P. and others (6)**

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- (1) AIR 1958 S.C. 36
 - (2) AIR 1963 S.C. 531
 - (3) AIR 1960 S.C. 689
 - (4) AIR 1961 S.C. 177
 - (5) AIR 1964 S.C. 449
 - (6) 2000 (2) RSJ 741

The contention is that the perusal of rule 12 of the Rules would show that if a person has been recruited by direct recruitment, his services may be dispensed with only if in the opinion of the appointing authority, the work and conduct of the person during the period of probation, is not satisfactory. Thus, a categorical finding was required to be given *vis-a-vis* the work and conduct of the petitioner during the period, which is conspicuously absent.

(25) Further, the submission is that the order under challenge does not inspire confidence that the same has been passed with honest intention on the part of the government. It is the settled law, if the rigour of the order is under doubt, the Court, will be well within its jurisdiction to lift the veil to read the real approach, for examining the applicability of the rules of arbitrariness. In the case at hand, the respondents have submitted two different sets of written statements, one in the case where the appointment of the petitioners has been challenged, where by the selection of the petitioners has been supported and the stand taken is that the same was held in accordance with the procedure prescribed. Further, the stand is that a fair selection has taken place and the petitioners were found meritorious and were, therefore, selected against the particular category. Suddenly, the things have changed and the stand taken in the present case is that the selection was not made as per the rules as the exemption of written examination was not granted by the competent authority. If this stand was to be read into the impugned order, the respondents should have been fair and honest by not using or enforcing rule 12 of the Rules. The Rules do not provide or confer any power upon the Government for cancelling the appointment without opining and concluding justiciably. Admittedly, the power vests in the Government under rule 21 of the Rules,— *vide* which the relaxation can be granted and which was granted by the competent authority. It shall be appropriate to refer to the stand taken by the then Deputy Secretary in his affidavit dated 10th December, 2002, where the words used are “it is further stated that selection and termination of the petitioner was made according to the changing circumstances”. It is obvious that with the change of the government, the circumstances changed and the petitioners have been removed by exercising the power which has not been honestly and correctly exercised nor is exercisable from the facts which have been divulged.

(26) On the other hand, learned counsel for the government, Mr. Ashok Aggarwal, Additional Advocate General, Punjab, has argued that the petitioners have availed the benefits on account of the procedural lapse committed by the concerned quarters. The case had been put up before the then Minister-in-charge for the purpose of fixing the date for the written examination as also the date for interview. But, the Minister-in-charge by exceeding his jurisdiction passed the order on the file for granting exemption for qualifying the written examination in the case of the handicapped category. This power could not have been exercised by the Minister-in-charge without the matter having been examined by the learned Financial Commissioner, who is ultimately the appointing authority. Qualifying the written examination has been provided under the rules and that the purpose and object is to assess the suitability of the person to be appointed as B.D. & O.P. The written acumen of the person also needs to be assessed before the person is considered eligible to be sent for the interview. For the purpose of granting relaxation, the case of each individual has to be examined and that by way of blanket order, the relaxation cannot be granted. The persual of rule 21 would show that the government has to form an opinion that it is necessary or expedient to grant the relaxation for the reasons to be recorded in writing. In the case at hand, the power, if at all exercisable by the Minister-in-charge, has not been exercised in the true and correct perspective as no opinion is shown to have been formed, which may be reflective from the reasons to be recorded, which are missing from the noting relied upon by the petitioners. The bland usage of such power would generally smack of the extraneous considerations. In the case at hand, usage of such power does not seem to fall within the four corners of the ingredients provided accordingly. The simpliciter relaxation cannot and should not bind the respondents. If such lapses are pointed out, the mistake which has occurred knowingly or unknowingly, can be rectified by way of recalling/cancelling such kind of benefits granted in favour of a person. The mentioning of the rule correctly or incorrectly would not defeat the right approach adopted as per the facts and circumstances spelt out. In such similar circumstances, the appointment had been cancelled by the Government of Maharashtra and that such an order was challenged by the Probationer on the premises that he had been regularly selected by the competent authority and that by selecting the eligible candidates, they are recommended for appointment.

Such appointment made, would not be justiciable on any ground. However, the Hon'ble Supreme Court of India accepted the contention of the government, that the letter by which it had been conveyed that the recommendations made were not authorized and according to the rules and that such cancellation cannot be found fault with, is sustainable under law. In support of his contention, reliance has been made upon a judgment in re : **Parmod Lahudas Meshram versus State of Maharashtra, (7)**. It is the settled law that anything which has happened in violation of the rules and the procedure and such detection is made subsequently, the beneficiary shall not be entitled to claim the benefit for regular appointment/selection, which had been made by the competent authority.

(27) Learned Additional Advocate General, further contended that the Rules of Business had provided that wherever the financial effect comes into being the matter would fall within the domain of the Council. In the case at hand, the direct selection to the post would entail the financial effect and, therefore, the power of relaxation could only be exercised by the Council and not by the Minister-in-charge. Since the Minister-in-charge has put it on the file without the power having been vested in him, such a note/order would be non est and cannot be taken advantage of by any one. Thus, the government had correctly cancelled the letters of appointment issued in favour of the petitioners as they had not fulfilled the basic qualifications of appearing in the written test. Qualifying the same, to become eligible to appear in the interview for selection, is mandatory. The matter had come to the knowledge of the government only when the complaints had been received and some of them had challenged the selection by way of petitions filed under Articles 226/227 of the Constitution of India before this Court. Pursuant thereto, conscious and cautious decision had been taken by the government in cancelling the selection and appointment of the petitioners. The mistake can be rectified at any stage and a person who is the beneficiary of the mistake cannot claim the advantage or any benefit under the provisions of law, rules and regulations. Thus, the petition, merits dismissal with costs.

(28) Mr. P.S. Patwalia, Senior Advocate, learned counsel for respondent No. 3, has also made written submissions supporting the arguments of learned Advocate General. Learned counsel further

contends that the noting made by the Minister or any other authority cannot be accepted as an order, because pursuant to the alleged note, no valid order communicating the relaxation awarded, was ever served on anyone. Further, the submission is that the words "discussed" does not indicate as to with whom the matter had been discussed by the Minister. The word used "because of shortage of time" would be indicative of one fact that the general elections in the State of Punjab had been announced and that the Minister naturally created cushions for his own favourites.

(29) Learned counsel has further contended that the action of the minister in granting relaxation in regard to the written test provided under the rules, if accepted for the sake of arguments, the same would also not be justifiable in view of the law laid down by the Hon'ble Supreme Court of India in *Re : Praveen Singh versus State of Punjab and others*, (8) In this judgment the recruitment to the post of Block Development and Panchayat Officer (hereinafter referred to as the "BD & PO) in the State of Punjab was in issue. In that case, the Punjab Public Service Commission had issued an advertisement for 26 vacancies and that before the selection process could be finalized, the Government of Punjab filled up the vacancies through ad hoc appointments. By reason wherefrom, the Service Commission considered it fit not to proceed with the selection any further. This act was challenged by way of a petition under Article 226/227 of the Constitution of India and that the ad hoc appointments so made were quashed and the appeal therefrom was dismissed by Hon'ble Supreme Court with a direction to the Service Commission for completing the process of selection by 9th July, 1995. Pursuant thereto a corrigendum had been issued but the vacancies were enhanced from 28 to 44 for reason of exigencies of the situation. About 4500 people appeared in the written test and against the aforesaid post 130 candidates were accepted as successful, having become eligible to appear in the viva-voce test. On the date fixed, by the Hon'ble Supreme Court, the final result was announced. This was again challenged by way of a writ petition. In regard to the written test a condition had been indicated in the advertisement that no candidate shall be eligible to appear in the viva-voce test unless the candidates obtains 33% marks in each paper and 45% marks in aggregate. This

Court came to the conclusion that there is no arbitrariness in the matter of selection of candidates. Being dissatisfied the matter was taken to the Hon'ble Supreme court. The point at issue raised was that a dual requirement for being successful has been provided under the rules as well as the advertisement i.e. written test as also the viva-voce test and that a candidate could be non suited by putting in a condition in the written test apart from providing the pass marks. The stand of the government has been that it was not possible to interview about 4500 candidates, therefore, the PPSC resorted to a written elimination test in order to facilitate the interview process in the viva-voce test. Resultantly, 130 candidates in order of merit had been called for the viva-voce/interview as against 44 vacant posts. Thus, by noticing two requirements, the Hon'ble Supreme Court came to the conclusion that the question of having the written test written off, in the matter of selection does not/cannot arise. In this regard, specific reference has been made to paras 10 and 12 of the aforesaid judgment, which reads as under :—

“10. The situation envisaged by **Chinappa Reddy, J. in Lila Dhar's case. Lila Dhar versus State of Rajasthan, AIR 1981 SC 1777 : 1981 Lab. IC 1515**, on which strong reliance was placed is totally different from the contextual facts and the reliance thereon is also totally misplaced. Chinappa Reddy, J. discussed about the case of services to which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held that “interview test may be the only way subject to basic and essential academic and professional requirements being satisfied”. The fact in the present context deal with Block Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview only, having regard to the nature and requirement of the concerned jobs. In any event, the Service Commission itself has recognized a written test as also viva voce test. The issue therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written examination can be deemed to be a mere qualifying examination and the appointment can only be given through viva voce test a

(33) Further, reliance has been placed upon the Full Bench Judgment of this Court in Amanbir Singh's case (Ravi Sidhu's scam) to the effect that the government is well within its right to cancel selections/appointments which are not legally justifiable and justiciable.

(34) Lastly, it has been contended that the selection of the candidates had also been challenged by way of CWP No. 19646 of 2001 and CWP No. 12518 of 2001. Since the selection had been cancelled by the government, the petition registered as CWP No. 19646 of 2001, was dismissed as withdrawn with liberty to challenge the appointments by way of a fresh or revival of the petition, as the case may be, if the cancellation ordered by the Government is set aside. However, the government has correctly cancelled the selection/appointments and that the petitioners are not stopped from participating in the process to be followed in accordance with law for selection against the aforesaid reserved category.

(35) We have heard learned counsel for the parties and have also perused the paper book as also the respective pleadings from time to time pursuant to the orders of this Court or otherwise by way of additional affidavits, as noticed above. We have also gone through the record produced by the respondents with regard to which we would make the observations in the subsequent part of the judgment.

(36) The question which needs consideration is as to whether the petitioners had been appointed in accordance with the rules and also by following the procedure provided therein. The other facet which needs to be considered is that the power of granting exemption/relaxation pursuant to rule 21 of the rules has been legally exercised by the then minister incharge, if so, its effect.

(37) It is the admitted case that for being appointed as BD&PO, the applicants were required to appear for written examination, which may be held by the government. In the case at hand, the admitted stand of both the parties is that the matter had been put up before the Minister concerned for taking appropriate decisions permissible under law. The stand of the petitioner is that as per the note put up before the then Minister in-charge, it had been submitted that the relaxation be granted for not holding the written test for the aforesaid posts meant for physically handicapped persons and alternatively if such relaxation is not granted the date and time

of written test as well as of the interview be indicated. On the other hand, the stand of the government is that the note did not contain any submission for granting relaxation from holding written examination and in fact the note discloses that the date of written examination as also of the interview be fixed. It is further the case that the file was required to be put up before the Financial Commissioner and Secretary to Government of Punjab, Rural Development and Panchayats Department, instead the file was called or put up before the then Minister in-charge directly and that the exemption from holding the written examination in the case of physically handicapped persons was granted. It is also the contention that the minister in-charge was not competent to grant the relaxation without the matter having been examined by the then Financial Commissioner and further order having been passed by the Council of Ministers.

(38) Be that as it may, the factum of issuance of the instructions for constituting the Departmental Selection Committee has not been denied and that the constitution of the aforesaid committee has also been admitted, which of course, was chaired by the then Director Rural Development and Panchayats. The criteria formulated for the interview had also been indicated pursuant to which the selection was to be made against the post meant for handicapped quota. Pursuant to the interview, the petitioners had been selected on merit. Upon the recommendation of the Departmental Selection Committee, the then Financial Commissioner issued the respective letters of appointment as per the terms prescribed therein and also indicating that the appointment shall be governed under the rules. It is also obvious that pursuant to the letter of appointment, the petitioners had been appointed on probation, the period of which has been prescribed as two years. Resultantly, the petitioners had joined upon the respective posts. The appointments were challenged by way of CWP No. 15755 and 15773 of 2001, which had been duly contested by the Government by taking the stand that the respondent-petitioners had been duly selected in accordance with the rules and that no arbitrary selection was made. While submitting the written statement to those petitions it was nowhere the stand that the relaxation was not correctly granted by the government. In the meanwhile, the government on its own decided to cancel the appointment of the petitioner by invoking rule 12 of the Rules. In the order dated 2nd August, 2003, of cancellation of the appointment, it has nowhere been indicated that the work and conduct

of the petitioner has not been found to be satisfactory. In fact, in the case of the petitioner the work and conduct has been appreciated by the controlling authority. It is also the admitted case that the petitioners had not been given the opportunity of being heard for contesting the opinion of the government in this regard. The stand is that the petitioners had been appointed and were on probation period, no opportunity of being heard was necessarily required.

(39) We had directed the respondents-State to produce the record,—*vide* order dated 27th July, 2005, which reads as under :—

“Learned counsel for the parties are *ad idem* that the record pertaining to this case shall be absolutely necessary to be referred to. It has also been pointed out that earlier,—*vide* order dated 10th December, 2002, the Bench had directed that the complete record be produced in support of the pleadings of the Government and that the concerned official be also present.

Learned AAG states that the record has not been received by the office of the Advocate General.

It is directed that the record of the case, along with the concerned official, be made available on the date fixed.

Adjourned to 3rd August, 2005.

Mr. P. S. Patwalia, Sr. Advocate, states that he may be in difficulty on that date and if possible the matter be taken up at 1.45 p.m. The request is not opposed. Be put up at the said time on the aforestated date.”

On the date fixed i.e. 3rd August, 2005, the officials, who had come from the concerned department had informed orally that the record is not available/traceable. We had taken exception to the same and while passing the order on 3rd August, 2005, had directed that the Director Rural Development and Panchayats Punjab, shall be present in person to explain such pleas having been taken at the instances of the officials of the department. We had further observed that if the record is traced out before the date fixed the

Director need not be present. The order dated 3rd August, 2005 reads as under :

“We had taken up the matter for final hearing earlier on 27th July, 2005. It had been pointed out that,—vide order dated 10th December, 2002 the Bench had directed that the complete record be produced in support of the pleadings of the Government and that the concerned official be also present. Pursuant thereto, we had directed that the record of the case, along with the concerned official, should be available on the date fixed.

Learned Assistant Advocate General, accordingly addressed a communication dated 29th July, 2005 to the Principal Secretary, Department of Rural Development and Panchayat, Chandigarh. Learned counsel states that as per his oral information given by Lakhmir Singh, Sr. Assistant, office of Director, Rural Development and Panchayat, Punjab, the record is not available/traceable.

The direction for producing the record was given way back on 10th December, 2002 and at that time or thereafter no indication had ever been given that the record is not available/traceable. It is a new plea which has been set up now, we do not understand at whose instance. Resultantly, the Director, Rural Development and Panchayats Punjab, shall be present in person to explain such plea having been taken at the instance of the Senior Assistant. Additionally, Senior Assistant, shall also be present on the date fixed. We may observe if the record is traced out before the date fixed, the Director need not be present in person, however, the Senior Assistant shall be present.

Adjourned to 24th August, 2005.

Copy of this order, under the signatures of the Special Secretary of the Bench be delivered to the Assistant Advocate General for onward transmission and compliance accordingly today.”

We had perused the record on 24th August, 2005, however, the officials who were present from the concerned office were not able to explain as to in which file the proceedings have been recorded after the note dated 16th December, 2000 had been made by the then Minister. The officials had taken time to trace out and produce the record pertaining to the recording of the proceedings with effect from 18th December, 2000 to 11th April, 2001, the aforesaid order reads as under :—

“Pursuant to our order dated 3rd August, 2005, Mr. D. S. Sarora, Superintendent and Mr. Lakhmir Singh Thind, Senior Assistant of the office of Director, Rural Development and Panchayats, Punjab, have brought the record. It may be mentioned that only two files have been shown to us which contains the noting of the Minister dated 16th December, 2000. The perusal of these files shows that there is no further note upto 4th February, 2002, which has been made by the Financial Commissioner, Rural Development and Panchayats, Punjab. The officers, who are present have not been able to explain as to on which file the proceedings have been recorded after the note had been made by the then Minister. However, they have produced another file in which the noting commences from 12th April, 2001, which is not indicative of the fact as to what communication has been issued by the Secretariat/ Department on the basis of the noting of the Minister. The officials seeks time to trace out the concerned file which would be indicative of the fact as to what had transpired from 18th December, 2000 to 11th April, 2001. The aforesaid record is ordered to be retained in a sealed cover, which shall be opened on the date fixed.

It is further directed that the officials shall spell out the details of the files and the same shall be kept in a sealed cover along with the file, a duplicate of the same shall be supplied to learned AAG Punjab.

Adjourned to 31st August, 2005.

The officials i.e. Mr. D. S. Sarora, Superintendent and Mr. Lakhmir Singh Thind, Senior Assistant shall be present with the explanation/record if the same is available on the date fixed.”

(40) On 31st August, 2005, two files had been produced allegedly containing the proceedings from December, 2000 to 11th April, 2001 and so also thereafter. The then Director, Rural Development and Panchayats, Punjab had been requested to be present to render assistance for the purpose of reading the notings/rendering any explanation which may be beneficial for the disposal of the case. Consequently, Mr. R. Venkatratnam, the then Director, had come present and he had been allowed to peruse the record produced by the office of the Director so as to refresh his memory accordingly. He had stated that upon perusal of the record, no further clarification is required to be given more than what has been stated in the written statement.

(41) We have perused the files and that the manner and the method in which they have been maintained, less said the better it is. The perusal of the file continuing from, April, 1999, which has been defined as "File No. 18/3/99/4 RDE-III", shows that all along the effort has been made for filling up the vacancies pursuant to the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the 1995 Act"). It was on 23rd September, 1999 the office is shown to have made a note that a committee under the Chairmanship of Director, Rural Development and Panchayats be constituted and that the designation of other members had also been indicated. The file progressed as usual and ultimately the committee is shown to have been constituted under the orders of then Minister of Rural Development and Panchayats,— *vide* order dated 3rd February, 2000. The perusal of the file shows that the selection to the post of BD & P.O. against the post meant for handicapped persons was to be made through the interview and for such recruitments from different departments different committees had been constituted by an order finally approved on 16th December, 2000. It is indicative that the date for holding interview had been identified as 4th January, 2001 onwards. Pursuant to this order, the notice was to be inserted in the news papers and that compliance was duly made. Yet the perusal of another file which has been marked as "File No. 1/4/99-1RDE-I" is indicative that the same was started on 14th December, 2000. The note indicates that till now the posts have been filled by way of holding written examination and interview and at the same time the note also contains the fact that the Social Security Department is pressing hard for filling up the vacancies pertaining to the disabled persons and for the purpose of holding

written examination and interview, time would be consumed. It is shown to be marked to "ASDP" and thereafter to the Financial Commissioner, Rural Development and Panchayats, Punjab, but the same does not seem to have been shown to him or may be he was away on that date. The file is shown to have been put up before the then Minister of the concerned department, who has specifically passed the order of exemption from holding the written examination and further directed that the vacancies be filled up on the basis of interview only. Subsequently, the noting of the Director Rural Development and Panchayats is shown to have been made which is indicative that the file had not been shown to the Financial Commissioner Rural Development and Panchayats, who is the appointing authority of the BD & PO. The note also contains the averment that the order of the Minister cannot be implemented, if implemented will lead to legal complications as the power to relax the rules lies with the Government and not the Minister of the Government as per rule 21 of the Rules. The note also contains the averment "with these observations the file is submitted to FCRDP for kind perusal and appropriate orders in this case."

(42) Thereafter, the file does not move anywhere but it is only on 4th February, 2002, the Financial Commissioner Rural Development and Panchayats passed an order on the file which reads as under :—

"This file has been sent to me today. Evidently I do not subscribe to the view expressed by Rural Development and Panchayats Minister on page 3 ante in his note dated 16th December, 2000. The condition of written test is part of the service rules which cannot be relaxed without the approval of the cabinet. Even, in case of emergency, one can think of expediting the case but the requirement as per the service rules cannot be dispensed with. Accordingly, the order of Hon'ble Minister cannot be implemented. This being a case of difference of opinion between the Minister and the Secretary is sent to the Chief Secretary for his advice".

It is, thereafter, the file progressed and the basis are made that holding of written examination was necessarily required and that the exemption granted does not seem to be correct. Reference has also been made to the Civil Writ Petition which had been filed for challenging the appointments of the petitioners.

(43) It is strange that in one file the matter is shown to have been dealt with by the same officials i.e. Director, Rural Development and Panchayats and the Financial Commissioner, Rural Development and Panchayats,—*vide* which the interview was ordered to be held on January 4, 2001 onwards. Pursuant to the interviews, the petitioners had been appointed and that the letters of appointment have also been issued by the same Financial Commissioner, Rural Development and Panchayat which has been appended as Annexure P1. The order was passed on the recommendation of the Selection Committee, which was headed by the Director, Rural Development and Panchayats, who is the same officer who is shown to have made the note on December 18, 2000 after the note of the then Minister of the concerned department.

(44) We have pondered over the matter and have also considered the respective pleas and pleadings of the parties and have also seen the manner in which the files have been maintained containing the notings as noticed above. The stand of the Government is that though the order of cancellation of appointment indicates the exercise of power under rule 12 of the Rules but in fact the stand taken is that the compliance of holding of written examination having not been made, the appointment of the petitioners is not sustainable. It is further the stand that the then Minister of Rural Development and Panchayats was not competent to grant exemption of holding of written examination and that the matter was never put up before the cabinet and, therefore, the exemption granted on December 16, 2000, cannot be of any help to the petitioners.

(45) We are afraid the above plea is not sustainable. From the perusal of the dates of both the files, as aforesaid, we are convinced beyond any doubt that the noting of the officer, which is dated December 18, 2000, does not inspire confidence at all because in one file, which is continuously dealing with filling up of the vacancies relating to the disabled persons pursuant to 1995 Act, does not make a mention of holding of written examination. This file indicates the constitution of the committee for holding the interview and further these very officials identified the date of holding the interview i.e. January 4, 2001 onwards and this order is passed on December 16, 2000. If that be so, where was the necessity to make a note on December 18, 2000 and further this file did not reach the Financial Commissioner, Rural Development and Panchayats, as is indicative

from the aforesaid note that the file had been put up before him on February 4, 2002. It is not understandable which file is speaking the truth and which official is acting truthfully to his job.

(46) Further, the manner in which the written statement has been filed in this case and so also in the petitions by which the appointments of the petitioners had been challenged, less said the better it is. This act on the part of the officials, who filed the written statement is quite clear from the order passed by a Division Bench of this Court dated 10th December, 2002, which has been noticed above. Apart from this, the manner and the method in which the record has been produced pursuant to the orders, which have been noticed above, is itself indicative of the fact that there was an act of concealment on the part of the concerned officials. It is certainly not in good taste. If a mistake has been committed, the same should be owned by the concerned quarters honestly and fairly. It is apparent from the stand which has been taken by the government, virtually conceding that the order has been passed pursuant to rule 12 of the Rules. This in itself would be sufficient to quash the impugned order.

(47) The perusal of the file shows that the Government has been toying with the idea of constituting the committee to examine the fact as to whether the cancellation order passed in regard to the appointments made of the disabled persons are correct or incorrect but this does not seem to have been taken to a logical conclusion as nothing is indicative from the files nor we have been informed in this regard.

(48) So far as the power of the Minister to grant exemption from holding the written examination is concerned, we are of the considered opinion that it is indicative from the Rules of Business as to in what manner and what power can be exercised by a Minister in-charge. We have perused rule 6 of the Rules of Business, which is indicative that Minister in-charge would be well within his rights to make decisions wherever the same have to be taken under the rules. Apart from this, pursuant to Allocation of Business Rules 1994, under Rule 3, the Minister in-charge is allotted the business of the Government by assigning one or more departments to the charge of a Minister, on the advice of the Chief Minister by the Governor. This would mean that the Minister in-charge exercises the powers of the government while disposing of the business relating to that department. The power which has to be exercised by the Council would relate only to the matters which would effect the revenue of the State unless otherwise defined specifically. The case at hand is not a case of creation of posts

which might have financial effect and which may fall within the ambit of "Council" or "the Finance Minister". Thus, we are of the considered opinion that the Minister in-charge is well within his rights in exercising the power under rule 21 of the Rules, which had been exercised by him, as is evident from the order dated 16th December, 2000. Learned Additional Advocate General, has not been able to address meaningful arguments in this regard that the Minister did not enjoy such power. We may also observe that in the civil writ petitions which had been filed challenging the order of appointment of the petitioners, no such stand had been taken nor the government had given any indication while submitting the written statement to the said petitions. In fact, the Government has taken a categorical stand that the selections had been made as per the rules and the procedure provided under law. It may also be noticed that the then official, who filed the written statement, has also submitted an affidavit dated 10th December, 2002 wherein he has stated that action has been taken as per the "changing circumstances." Would it mean that whenever there is a change in the government i.e. a new minister comes in, the appointments made would have to undergo the change accordingly. What would be the sanctity of the orders passed by a government ? There would be no stability ascribable to an act of the government.

(49) In view of the above, the petition is allowed and the impugned order dated 2nd August, 2002, copy Annexure P3, is quashed and also such similar orders in the other petitions. It is clarified that the petitioners shall be taken back into service with all consequential benefits payable up to date but without interest. It is further clarified that the continuity of service shall be subject to a rider that from the date of joining pursuant to this judgment shall remain subject to the rigour of the balance period of probation and that the period from the date of cancellation of appointment up to the date of joining would not be counted for seeking the regularization as also the service benefits unless permissible under the rules, except for the fiscal benefits.

(50) It shall be appreciated if the aforesaid is complied with within a period of eight weeks from the date of receipt of certified copy of this judgment from any quarters.

(51) Record is directed to be returned to the learned Additional Advocate General, Punjab as per the indications given in the certificates appended to the files.

R.N.R.