
Before Binod Kumar Roy, C.J., Rajive Bhalla & Surya Kant, JJ.

JASKARAN SINGH BRAR,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 2527 of 2004

15th October, 2004

Constitution of India, 1950—Arts.14, 16 & 226—Punjab Police Rules, 1934—Rls.13.8 & 13.9—Punjab Police Service Rules, 1959—Rls.2, 6, 7 & 14—Punjab Recruitment of Sportsmen Rules, 1988—Rl.2(d)—Notification dated 23rd January, 2004 issued by the State of Punjab—Recruitment to ex-cadre posts of D.S.Ps. reserved for 'Outstanding Sports Persons' in Punjab Police—1959 Rules provide that 25% posts are to be filled up by direct recruitment through Public Service Commission and remaining 75% by promotion amongst Inspectors of Police—Council of Ministers approving the proposal to amend the 1959 Rules and creation of additional posts for adjusting sports persons of Police Department who were facing reversion—Council of Ministers requiring constitution of a Committee to give final shape to the amendments in 1959 Rules—Recommendations made by the Officers' Committee contrary to the decision of the Council—Council never authorised to make direct recruitments of 7 posts of D.S.P. through a Departmental Selection Committee—Notification dated 23rd January, 2004 issued without any authority in law and is a fraud upon the powers of the Council of Ministers—Rl.6(3) of 1959 Rules requires recruitment to the Punjab Police Service in the rank of D.S.P. through the State Commission—Decision to make recruitments through a Departmental Selection Committee by following an extra-ordinary hurried process is against the statutory service rules—No emergent situation or an imminent public interest there to give a go-by to a well established procedure and practice in relation to recruitment—State cannot run away from its constitutional duty to consult the Commission and any deliberate, motivated or flagrant defiance thereof alone sufficient to annul such an action—'Outstanding Sports Person', defined—Under 1988 Rules, if a person has won Championship in team or individual events while representing State of Punjab or he has won National Championship in team or individual events

organised by the Indian Olympics Association—Definition of 'Outstanding Sports Person' incorporated in the Notification making a person as eligible sportsman who merely participated in a junior national championship and winning a stray medal therein—Some selected persons merely part-timers without any contribution to sports—Definition/criteria incorporated in the notification is not only vague, wild and uncertain but suffers from the vice of arbitrariness also—Notification provides appointment of D.S.Ps. against ex-cadre posts—Ex-cadre, means—A diminishing cadre and once the incumbent goes, the post also stands abolished—No right either for fixation of inter se seniority in the cadre nor any claim to pay scale, promotion etc.—Government inducting respondents into the cadre of D.S.P. by using expression 'ex-cadre' to give legitimacy to the bye-pass method adopted in their recruitments—This method is totally impermissible in law and is wholly unfair to the existing members of the cadre—Petition allowed while holding the impugned selections without any authority in law, an outcome of discriminatory and arbitrary criteria and marred by nepotism and favouritism.

Held, that :—

- (i) The notification dated January 23, 2004(Annexure R-1) to the extent it runs contrary to the decision taken by the Council of Ministers in their meeting held on 17th October, 2003, is declared illegal and accordingly struck down.
- (ii) As a necessary corollary of direction No. (i) above, the advertisement dated February 7, 2004, whereby seven *ex-cadre* posts of D.S.Ps. to be filled up by the Departmental Selection Committee were advertised and the entire selection process pursuant thereto, is declared illegal and consequently, the impugned selections and appointments of respondents Nos. 4 to 10 as D.S.Ps. against the aforementioned advertised posts are hereby quashed.
- (iii) The criteria-cum-definition of 'Outstanding Sports Person' laid down by the State of Punjab which was also included in the Notification dated 23rd January, 2004 is declared to be arbitrary and discriminatory. Consequently, the same is struck down.

- (iv) The selection criteria laid down for the impugned selections by the Departmental Selection Committee is also declared to be totally illegal, discriminatory and beyond the powers of Departmental Selection Committee, therefore, the selections based thereupon are declared to be suffering from inherent illegality also.
- (v) The decision taken by the Council of Ministers in their meeting held on 17th October, 2003 is declared to be meant only to the creation of 431 *ex-cadre* posts for the sole purpose of adjusting 337 sports persons of the Police Department who were in different ranks and were facing reversion on the implementation of directions dated 21st April, 1998 issued by this Court in CWP No. 13788 of 1997. We further declare that the afore mentioned decision taken by the Council of Ministers does not authorise and cannot be construed to have empowered the Departmental Selection Committee to fill up the left out *ex-cadre* posts created by the Council of Ministers by way of direct recruitment.
- (vi) It will be open for the State of Punjab to consider and decide as to whether seven *ex-cadre* posts of D.S.Ps. are to be merged in the existing cadre of D.S.Ps. or are to be kept as *ex-cadre* posts only. If these posts are decided to be merged, it is directed that the same shall be filled up strictly in accordance with the provisions contained in the Punjab Police Service Rules, 1959. However, if the State Government decides to keep these posts as *ex-cadre*, then it shall objectively consider as to why these posts cannot be filled up through the regular mode of recruitment, namely Punjab Public Service Commission. We, however, further direct that irrespective of the mode of recruitment, the incumbents of these *ex-cadre* posts shall not be allowed either to man or to have fixation of seniority and/or claim for future promotions at par with incumbents of the cadre posts. They shall continue against these *ex-cadre* posts only.
- (vii) We also direct the State of Punjab through its Sports Department to lay down a fair, just, reasonable and objective criteria while defining the "Outstanding Sports Person".

Further held, that since respondents Nos. 4 to 10 are the sole beneficiaries of these patently illegal and arbitrary selections, it is they who are liable to share the burden of costs, except the two of them, namely Palwinder Singh Cheema and Manavjit Singh Sandhu, whom we have already noticed to be genuinely outstanding sports persons and hence these two respondents are not burdened with costs. The remaining selected candidates, who are five in total, are accordingly directed to pay cost of Rs. 10,000 each which shall be deposited in the Punjab Legal Services Authority within a period of one month from today:

(Para 87)

Constitution of India, 1950—Arts.14, 16 & 226—Recruitment to the posts of DSP from quota of ‘Outstanding Sports Persons’—Allegations of fraudulent & colourable exercise of power in the selection process by the State—Public Interest Litigation—Whether maintainable in such a case of service matter—Scope and extent of, stated—PIL by a person having no public interest and having no direct or indirect oblique considerations and/or private motive or profit but there is a definite issue in relation to the larger public interest involved in the matter is maintainable—No personal gain to petitioner out of this PIL—No allegation of any private profit against the petitioner—PIL not an abuse of process of law and held to be maintainable.

Held, that the element of “public interest” whether sufficiently exists or not to give standing to a member of the public, has to be determined by the Court in each individual case. While doing so the Court, however, has to guide itself with the parameters and principles as laid down by their Lordships of the Supreme Court, namely, a PIL would be liable to be thrown at the threshold if it has been filed by the party merely as a cloak for attaining private ends, camouflage for private gains, intends to achieve private profit and/or motive, has been initiated for political motivation and/or suffers with other oblique considerations. Not only this, if the petition has been filed merely to abuse the process of law, is in fact a “propaganda” or “publicity” or “paise” or “personal interest”, the same is liable to be rejected summarily. Even if a petition dubbed as a PIL does not suffer from any of these

disqualifications but also does not disclose any “public wrong” or “public injury” or if it does not espouse the cause of public interest, such petition still cannot be permitted to be pursued as a PIL. These factors, however, will have to be determined on the basis of the facts and circumstances of each case.

(Para 23)

Further held, that it has not been suggested or alleged on behalf of respondents that the petitioner has any personal interest or would have any personal gain out of this PIL. Nothing has been pointed out that the writ petition has been filed either on account of political motivation or as a cloak for attaining private ends. No allegation of any private profit has been levelled by the respondents. On the other hand, he is sought to be non-suited by the State of Punjab with a preliminary objection that he was not a candidate for the post in question. At the stage of preliminary hearing, one of the issues of great public importance, raised by the petitioner, namely, the impugned selection process is marred by fraudulent and colourable exercise of power and has been resorted to defunct the constitutional authority like State Public Service Commission and that if recruitments to the Class-I services were allowed to be made by the Departmental Selection Committees, a valuable right guaranteed under Article 16 of our Constitution which embraces in itself a fair and impartial opportunity to compete for public employment shall be severely injured. This conclusion led us to *prima facie* believe that the writ petition was not an abuse of process of law and there were more than one issue of general importance which required consideration by this Court. When the entire record pertaining to these selections was summoned and perused, it completely satisfied us not only with regard to the *bona fides* of the petitioner but also the fact that the questions of paramount consideration which have direct bearing on the sanctity of public employment on the touchstone of Articles 14 & 16 of the Constitution of India, are directly and substantially involved in these writ petitions. We are, therefore, unable to turn down this petition either for want of *locus standi* of the petitioner and/or its maintainability.

(Para 24)

Argued by :

M.P. Goswami, Advocate (CWP 2527 of 2004)

R.K. Chopra, Advocate (CWP 3384 of 2004)

H.S. Matewal, Senior Advocate with H.S. Sidhu, Advocate
(CWP 3603 of 2004)

T.S. Dhindsa, Advocate (CWP 3663 of 2004), *for the petitioner.*

Rakesh Dwivedi, Senior Advocate with B.B.S. Sobti and Atul
Nanda, Additional Advocates General, Punjab for the
official Respondents.

G.K. Chatrath, Senior Advocate with Mrs. Anu Chatrath
Kapoor, Advocate for Palwinder Singh Cheema.

H.S. Deol, Advocate for Manavjit Singh Sandhu.

H.S. Toor, Senior Advocate with J.S. Toor, Advocate for Major
R.S. Ahluwalia.

M.K. Vashishtha, Advocate for Gagan Inder Singh.

Vikram Aggarwal, Advocate for Vimmy Singh.

Rajiv Atma Ram, Senior Advocate with Manu Bhandari,
Advocate for Bikram Inderjit Singh Chahal and Gulzar
Inder Singh Chahal, *for the private respondents.*

JUDGMENT**SURYA KANT, J.**

Whether the allegations of fraud in public employment centre-staged on the “procedure and mechanism” adopted by the State of Punjab in the wholesome selection of Deputy Superintendent of Police (DSP) from “Outstanding Sports Persons”, can be a subject matter of public interest litigation or not and whether this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India can entertain such public interest litigation, even if it is found to be a *pro-bono publico* to prevent and remedy the abuse and misuse of executive powers by the State apparatus, or it shall amount to mere adjudication of “competing claims” between two sets of parties with no element of larger public interest involved? — are some of the vital issues to which

this larger bench is confronted with. The other related issues pertaining to the legality and propriety of these selections have also been raised in certain individual Writ Petitions, which we propose to dispose of along with the public interest litigation.

(2) Two Civil Writ Petitions bearing CWP No. 2527 of 2004 and 3384 of 2004, dubbed as Public Interest Litigation, have been filed by Sarvshri Jaskaran Singh Brar and Ravdip Singh Atwal. In the first Writ Petition, the petitioner (Jaskaran Singh Brar) has come up with the following prayers :—

- (i) a writ in the nature of *mandamus* may be issued commanding the official Respondents to stop the process initiated for recruitment to the ex-cadre posts of DSPs in Punjab Police for which an advertisement was published in the newspaper “The Tribune, Chandigarh” dated February 7, 2004 (Annexure P-2);
- (ii) a direction be issued to the State of Punjab to forward the requisition to fill up the afore-mentioned posts to the Punjab Public Service Commission and to follow the proper procedure prescribed under Rule 6 of the Punjab Police Service Rules, 1959; and
- (iii) the official Respondents be directed to give wide publicity and sufficient time for conducting and concluding the recruitment process.

(3) This Writ Petition appears to have been drafted on February 11, 2004 and on its filing, came up for hearing before a Division Bench of this Court on February 13, 2004 when, while issuing notice to the State of Punjab, a direction was issued that “any action taken shall be subject to the result of this Writ Petition”.

(4) Civil Writ Petition No. 3348 of 2004 (Ravdip Singh Atwal, Petitioner) has been filed with the following prayers :—

- (i) a writ in the nature of *quo-warranto* be issued thereby setting aside the appointments of Respondents No. 4 to 10 as DSPs in the Punjab Police;
- (ii) a writ in the nature of *mandamus* be issued directing Respondents No. 1 to 3 that the posts of DSPs earmarked for outstanding sports persons be filled only out of the deserving and meritorious candidates there being no extraneous consideration;

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- (iii) a writ in the nature of prohibition may be issued restraining Respondents No. 1 to 3 from issuing appointment letters to Respondents No. 4 to 10 and also to issue an *ad-interim* order to restrain the aforementioned Respondents from joining the post of DSP.

This Writ Petition came up for hearing before a Division Bench of this Court on February 27, 2004 when notice was issued to the Respondents.

(5) We have purposely referred to the dates when the aforementioned two Writ Petitions came up for hearing and the nature of reliefs prayed therein. The dates of filing of the two Writ Petitions indicate that the material events pertaining to the impugned selections have taken place between February 7, 2004 till the second Writ Petition was filed, namely, February 27, 2004.

(6) let us take notice of those events as well. On February 7, 2004, an advertisement was issued by the Department of Home Affairs and Justice, Government of Punjab in the Newspapers 'The Tribune', Chandigarh for "recruitment of ex-cadre posts of DSP reserved for outstanding sports person in Punjab Police as one time measure". It was stipulated in the advertisement that a committee of officers headed by the Principal Secretary, Home, would select the suitable candidates for "7 ex-cadre posts" of DSPs for which the candidates were required to possess the following eligibility conditions :—

- (i) The candidate must be graduate from any recognised University.
- (ii) Physical standard

	For Men	For Women
Height	5' 7"	5' 3"
Chest Expanded	33"	—
Unexpanded	34-1/2"	

- (iii) Outstanding Sports Person shall mean, a person who has participated in Olympics, World Cups, Common-Wealth, Asian Games, SAARC and SAF games: won any medal (Gold, Silver or Bronze) in Senior or Junior International or National Championship in individual or team events.
- (iv) The candidate should be an Indian national.

(7) The eligible candidates were directed to appear along with the application, original certificates of educational qualifications and achievements in sports on 13th February, at 10 AM in Punjab Bhawan, Sector 3, Chandigarh for physical test and interview. On 13th February, 2004 deliberations amongst members of the Selection Committee took place, to which a detailed reference will be made in the later part of the judgment, however, the interviews were postponed for 17th February, 2004 and it was decided that another advertisement be also issued asking the eligible candidates to appear along with their original certificates etc. on the postponed date of interview. Resultantly, another advertisement was issued on 14th February, 2004. The interviews were thereafter held on 17th February, 2004 and on that very day, selections were finalised. The selected candidates were not subjected to any kind of verification of character antecedents and/or medical examination and were offered appointments on 24th February, 2004. Thus, the entire selection process including appointment of the selected candidates was concluded within a period of 17 days.

(8) Reverting back to the public interest litigation, the Petitioner (Jaskaran Singh Brar) in CWP No. 2527 of 2004 asserts that he himself is not a sports person, therefore, was not a candidate for the posts in question and has no "personal interest" involved. He approached this Court on 11th/12th February, 2004 immediately on issuance of advertisement dated 7th February, 2004 (Annexure P-2). He sought an order of restraint against the official Respondents from proceeding with the impugned selections on the ground that (i) there are statutory Service Rules of 1959 which prescribe the mode of recruitment to the post of DSPs but the said procedure has been dispensed with by the State of Punjab; (ii) there exists a constitutional authority, namely, the Punjab Public Service Commission (PPSC) consisting of eight members alongwith a Chairman and the posts of DSP come within its purview, therefore, the recruitment be made by the said State agency only; (iii) the recruitment procedure was being carried out in a hurried manner without a wide publicity being given to the posts in question to deny consideration to all the competing claims. During the course of hearing, added submissions have been made on his behalf that he has filed the writ petition in larger public interest to expose as to how "recruitment to public employments" has been distributed like a State largesse and fraud has been committed by the Government of Punjab in making recruitments of kith and kins of its

highly influential political and/or administrative functionaries. He approached this Court much before the first interview was held on 13th February, 2004 as he had no personal vendetta or an axe to grind against any individual candidate. His grievance was against the procedure and mechanism laid and adopted by the State of Punjab in making these hasty recruitments.

(9) The Petitioner (Ravdip Singh Atwal) in CWP No. 3384 of 2004, on the other hand, asserts, *inter-alia*, that he is an “outstanding sports person” and appeared along with the application form and other requisite certificates on 13th February, 2004, was shortlisted also but in the final bout, he has been knocked down to accommodate the kith and kin of highly influential persons having their say in the corridors of political power. He claims that the Writ Petition is not confined to an individual relief as no direction is sought for reconsideration and/or his appointment to one of the advertised posts, rather, prayer is to fill up the posts earmarked for outstanding sports persons by appointing deserving and meritorious sports persons who have actually given outstanding performances in sports arena. In sum and substance, his contention is that under the garb of recruitment of “outstanding sports persons”, those who are at the helm of affairs in the State be not permitted to make back-door entries.

(10) Since we are required to answer the preliminary objection raised on behalf of the State of Punjab in relation to the maintainability of a Public Interest Litigation in such type of “service matters”, we may firstly reproduce the preliminary objection to this effect taken by the State of Punjab in both the written statements which we reproduce from CWP No. 2527 of 2004 and reads as follow :—

“Both the writ petitions purport to be Public Interest Litigation. While Petitioner Jaskaran Singh Brar is not a candidate for the post at all, Ravdeep Singh Atwal was a candidate, admittedly he was in the short list interviewed by the Committee which did not select him. Articles 14 and 16 confer right to be considered for selection. There is no right to selection and appointment.”

Thus, the State of Punjab wants to non-suit the first Writ Petitioner on the plea that he was not a candidate for the post in question and the second Writ Petition on the plea that he was a candidate for the afore-mentioned post and has been duly considered.

(11) Shri Rakesh Dwivedi, learned Senior Counsel representing the State of Punjab, while contending that the first Writ Petitioner (Jaskaran Singh Brar) is not an "outstanding sports person" in terms of the definition given in the government Notification dated January 23, 2004 (Annexure R-1) whereby 431 ex-cadre posts in Punjab Police were created, highlighted that the concept of PIL is basically pre-pondered to protect the interest of the poor, deprived, illiterate, unorganised labour sector and those who are handicapped by ignorance, indigenious and illiteracy and/or being down-trodden have no access to justice. According to him, in service matters, there are always competing candidates who would be available to question the selection process for recruitment and since three of such candidates have already approached this Court, the Public Interest Litigation should not be entertained by this Court. An "oblique motive" has also been sought to be attributed to the Petitioner on the plea that he has chosen to question the recruitment of seven sports persons as DSP only and not "the adjustment of *ad hoc* promotees" who too have been adjusted against the remaining *ex-cadre* posts in different ranks. Reliance has been placed by him upon (i) **R.K. Jain versus Union of India (1)**, (ii) **Janta Dal versus H.S. Chaudhary, (2)**, (iii) **Rajniti Prasad versus Union of India, (3)** (iv) **Charanjit Singh & others versus Harinder Sharma and others, (4)**, (v) **Gurvayoor Devosam Managing Committee and another versus C.K. Rajan and others, (5)** and (vi) **Dr. B. Singh versus Union of India (6)**.

(12) By now in catena of judgments, their Lordships of Supreme Court have laid down the parameters for the maintainability and entertainment of a public interest litigation. The growing tendency of indulging into "Publicity Interest Litigation", "Paisa Interest Litigation", "Propaganda Interest Litigation", and "Personal/Private Interest Litigation" have not only been seriously noticed, a note of circumspection, caution and care in entertaining such petitions has also been authoritatively laid down. The busy bodies and meddlesome interlopers who pose themselves as crusaders for justice and pretend

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- (1) 1993 (4) S.C.C. 119
 - (2) 1992 (4) S.C.C. 305
 - (3) 2000 (9) S.C.C. 313
 - (4) 2002 (9) S.C.C. 732
 - (5) 2003 (7) S.C.C. 546
 - (6) 2004 (3) S.C.C. 363

to act in the name of **pro-bono publico** though they have absolutely no interest of the public to protect, have no place in the horizon of Public Interest Litigation. Any petition which is dubbed as Public Interest Litigation but is actually a cloak for attaining private ends of a party, obviously filed for personal gains, private motive and/or profit, political motivation or any other oblique consideration, has to be thrown at the threshold.

(13) However, a Public Interest Litigation at the behest of an organisation, an individual or a group of individuals, who have no personal gain or private motive or other oblique consideration except to see that public injury does not take place and who intend prevention or annulment of executive actions which are violative of the Constitution or laws of the land, have been held to be maintainable. In **Janata Dal's case** (supra) relied upon by Shri Dwivedi, their Lordships have said that the judiciary is to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. In **State of Maharashtra versus Prabhu (7)**, the Supreme Court said that the courts must do justice by promotion of good faith and prevent the law from crafty evasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. In **S.P. Gupta versus President of India (8)** which too has been relied upon by Shri Dweivedi, the Hon'ble Supreme Court held that "whenever there is public wrong or public injury caused by an act or commission of the State or public authority which is contrary to the Constitution of law, any member of the public acting *bona fide* and having social interest can maintain an action for redressal of such public wrong or public injury. Their Lordships further held that "what is social interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait jacket formula for the purpose of defining or delimiting social interest. It is necessarily to be left to the discretion of the Court." "But we must be careful to see that the member of the public who approaches the Court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The Court must

(7) 1999 (2) S.C.C. 481

(8) AIR 1982 S.C. 149

not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.” “Any member of the public having social interest can maintain an action for judicial redress for public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal profession. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives.” (emphasis applied).

(14) Dismantling the fake plea of *locus standi* invariably raised by status quoists, the Apex Court in **Fertilizer Corporation Kamgar Union versus Union of India (9)** observed as under :—

“Public interest litigation is part of the process of participate justice and ‘standing’ in civil litigation of that pattern must have liberal reception at the judicial doorsteps. The floodgates argument has been nailed by the Australian Law Reforms Commission :

“The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room [Prof. K.E. Scott : “Standing in the Supreme Court : A Functional Analysis” (1973) 86].

A major expressed reason for limiting standing rights is fear of a spate of actions brought by busybodies which will unduly extend the resources of the courts. No argument is earlier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered.

.....Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented : [Op Cit, 673]

When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissentors feared.

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter.”

We agree with the conclusion of the Commission :

“The moral, perhaps, applies; if the courts cannot, or will not, give relief to people who are in fact concerned about a matter then they will resort to self-help, with grave results for other persons and the rule of law. Some may reply that if there is no evidence of a great increase in numbers there is no evidence of need for enlarged standing rights. The reply would overlook two considerations. One case may have a dramatic effect on behaviour in hundreds of others; this is the whole notion of the legal test case. Secondly, the mere exposure to possible action is likely to affect the behaviour of persons who presently feel themselves immune from legal control.”

These observations were reiterated by their Lordships in **Bihar Legal Supports Society versus Chief Justice of India, (10)** wherein it was laid down that “ordinarily only a person whose rights are violated, can move a Court for redress. However, where there is likelihood of any government injuring the interests of many persons, any one may move the Court for the relief.”

(15) It is thus well settled that a Public Interest Litigation can be maintained only by a person who has no personal interest in the matter and there are no direct or indirect oblique considerations and/ or private motive or profit but there is a definite issue in relation to the larger public interest involved in the matter. The ever-increasing abuse of power by the public authorities has been a subject matter of concern for the Courts who, depending upon the need, forge new

tools and devices to remedy the wrongs so as to protect fundamental rights of the citizens and/or to compel the State and the public authorities to perform their duties and functions strictly in conformity with the laws of our land. In **P&T SC/ST Employees Welfare Association versus Union of India**, (11) their Lordships having found that the cancellation of reservation policy in promotions was militating against Article 16(4) of our Constitution, held the action to be one which required correctional measures by the Court through a PIL.

(16) In the context of adjudging the *bone fides* of the first Writ Petitioner (Jaskaran Singh Brar) before us, the following observations made by their Lordships in **K.R. Srinivas versus R.M. Premchand**, (12) have a direct bearing which we profitably quote as follows :—

“Writ Petitioner who comes to the Court for relief in public interest.....as a sequel of the grounds against appeals, after any judgment of the Division Bench of the High Court, not only get expunged but the whole basis on which they rest, stand vacated.”

(17) We may now refer the judgments relied upon by Shri Dweivedi, learned Senior Counsel appearing on behalf of the State of Punjab. In **Janta Dal's case** (*supra*), one Shri H.S. Chaudhary, Advocate, filed a Criminal Miscellaneous Application before the Special Court, Delhi with a prayer that the application moved by the Central Bureau of Investigation in Bofors case for issuance of a letter rogatory to Switzerland be declined unless the allegation against named persons are established to the satisfaction of the Court. The aforesaid application was dismissed by the Special Judge, therefore, Shri Chaudhary filed a Criminal Revision before the High Court of Delhi which too was, dismissed by the High Court for want of *locus standi*. However, the High Court invoked its powers under Sections 397, 401 read with Section 482 of the Code of Criminal Procedure and returned a prima-facie finding that the FIR filed by the CBI in the Bofors case did not disclose any offence and thus, called upon the CBI and the State to show cause as to why the proceedings initiated on the filing of the FIR in question be not quashed. Their Lordships of the Supreme Court set aside the afore-mentioned order passed by the

(11) AIR 1989 S.C. 139

(12) 1994 (6) S.C.C. 620

High Court of Delhi and in that context dealt with the aspect of misuse of PIL as the Petitioner had taken grounds merely to oppose the request of CBI to issue letter of rogatory whereas by initiating *suo motu* proceedings, the High Court decided to quash the FIR itself, namely direct interference in a matter which was still pending investigation by the CBI.

(18) In **R.K. Jain's case** (*supra*), real dispute pertained to the selection and appointment of the President of CEGAT. The Petitioner had questioned the appointment of a particular person as President of CEGAT, who, on judicial review of the appointment, was found to be qualified and eligible for appointment. While questioning the aforementioned appointment, the Petitioner took up a plea that there was another senior-most member of CEGAT whose claim for such appointment ought to have been considered. Their Lordships held that the contention regarding need to evaluate the comparative merits of the appointee, who was a Senior Vice-President of the Tribunal and senior most member, for appointment as President would not be gone into a PIL.

(19) In **Ranjit Prasad's case** (*supra*), a PIL was filed by the above named Petitioner who was a practising Advocate at Patna, challenging the judgment dated April 29, 1998,—*vide* which the High Court set aside an order passed by the Central Administrative Tribunal (CAT) and quashed the charge-sheet issued to Dr. U.N. Biswas, IPS who was a Joint Director in the CBI at Calcutta at the relevant time. The Supreme Court held that the Petitioner had no *locus standi* to question the afore-mentioned order as he was not a party either before the CAT or before the High Court. Their Lordships categorically held that a mere busy body who has no interest, cannot invoke the jurisdiction of Court in respect of departmental proceedings which are initiated or sought to be initiated by the Government against its employees and that “public interest of general importance is not involved in disciplinary proceedings”. “In fact, if such petitions are entertained at the instance of persons who are not connected with those proceedings, it would amount to an abuse of the process of law.”

(20) In **Charanjit Singh's case** (*supra*), appointments to certain posts of Clerks, Foreman, Driver, Peons and Instructors etc. in the Municipal Council of Mansa (Punjab), were challenged by way

of a PIL by two Municipal Councillors and wife of one of the Municipal Councillors. Their Writ Petition was allowed by the High Court and the selections were annulled on the ground that some of the selected candidates were related to the members of the Selection Committee. The Apex Court took notice of Rule 7 of the Punjab Municipal General Rules, 1979 which mentions certain relationships and in the event of direct or indirect interest of any such related persons. Rule 8 of the Rules further provides that they can be appointed only with the previous approval of the Regional Deputy Director, Local Government. On a consideration of the aforesaid scheme of the Rules, their Lordships held that rationale behind this rule is that in a small place like Mansa, most of the persons would be related to one or the other and what was required to be considered was whether or not they were so closely related as mentioned in Rule 7 of the Rules and whether or not they comply with Rule 8. Since this aspect of the matter was not considered by the High Court, the judgment of the High Court was reversed. It is, however, relevant to refer to the observations made by their Lordships in Para 5 of the report where it is noticed that "the petition is filed by the respondents in the nature of PIL and two of them being Municipal Councillors, are parties to the administration of approving the decision made. The public interest in such matters would be adequately protected if Rules are duly complied with". (emphasis supplied).

(21) In **Gurvayoor Devosam Managing Committee and another versus C.K. Rajan and others** (*supra*), the Apex Court considered the scope and ambit of a Public Interest Litigation in the matter of management of a temple governed by the provisions of a statutory enactment. The Srikrishna Temple draws millions of people from all over the country. This ancient temple is of unique importance and is held in great reverence by lacs of devotees. The temple owns extensive moveable and immovable properties and has its own heritage and traditions. The State of Kerala, for the proper administration of Gurvayoor, enacted the Gurvayoor Act, 1978. The management of the temple is, thus, carried out in accordance with the provisions of the said Act. Respondent No. 1 sent a letter to one of the Judges of the High Court of Kerala alleging serious irregularities, corrupt practices, mal-administration and mismanagement prevailing in the temple. This letter appears to have been treated as a Writ Petition under Article 226 of the Constitution whereupon the High Court appointed

a District Judge as the Commissioner of Inquiry to make a general inquiry and in particular make study of the various aspects highlighted in the complaint. This led to holding of a fact finding inquiry by the District Judge wherein statements of about 100 witnesses appear to have been recorded followed by several interim reports to the High Court. By-passing the provisions of the Statute, the High Court appointed an Administrator of the temple, who in the concluding proceedings was allowed to continue even when the maximum term prescribed under the Act had expired. In sum and substance, enactment of 1978 Act was completely by-passed by the High Court and a new channel of administration and management of the temple was created. On a Special Leave Petition filed by the statutory Managing Committee and the State of Kerala, their Lordships of the Apex Court considered the aspect of a PIL in such like matters relating to the management of a temple where lacs of devotees pay their obeisance and held that violation of Articles 25 and 26, *per-se*, cannot become the subject matter of a PIL, which is maintainable whenever injustice is meted out to a large number of people and/or their fundamental rights are violated. However, issues of public importance, enforcement of fundamental rights of the public *vis-a-vis* constitutional duties and functions of the State is a condition precedent for the maintainability of a PIL and once the Court is *prima-facie* satisfied about violation of any constitutional right of group of people belonging to the disadvantaged category, it will allow the State or the Government from raising the question of maintainability of the Petition and/or *locus standi* of the person who has approached the Court. The dispute between two warring groups, purely in the realm of private law, would not be allowed to be agitated as a Public Interest Litigation, though in a proper case, the Court, in furtherance of public interest, may treat it necessary to interfere with the state of affairs of the subject of litigation in the interest of justice, although the Petitioner might have moved the Court in private interest and redress of his personal grievance. Their Lordships also held that a High Court should not entertain a Writ Petition by way of PIL questioning the constitutionality or validity of a statute or statutory rules. It, however, concluded that no direct rules in relation to the scope and extent of a Public Interest Litigation are intended to be laid down as each case has to be adjudged on its own merits and different problems may have to be dealt with differently. (emphasis applied).

(22) In **Dr. B. Singh's case** (*supra*), the Hon'ble Supreme Court having noticed that the Petitioner was not acting *bona fide* and in fact had filed the petition to scandalise and/or for cheap propoganda, came heavily upon him by dismissing the Petition with exemplary costs of Rs. 50,000 though he was directed to deposit Rs. 10,000 for the time being within expectation that he would not hazard such vexatious litigation in future.

(23) On a consideration of the case law, referred to the above, in relation to maintainability and/or *locus standi* to file a PIL, it clearly emerges that the element of "public interest" whether sufficiently exists or not to give standing to a member of the public, has to be determined by the Court in each individual case. While doing so the Court, however, has to guide itself with the parameters and principles as laid down by their Lordships of the Supreme Court, namely, a PIL would be liable to be thrown at the threshold if it has been filed by the party merely as a cloak for attaining private ends, camouflage for private gains, intends to achieve private profit and/or motive, has been initiated for political motivation and/or suffers with other oblique considerations. Not only this, if the Petition has been filed merely to abuse the process of law, is in fact a "propaganda" or "publicity" or "paisa" or "personal interest" litigation, the same is liable to be rejected summarily. Even if a petition dubbed as a PIL does not suffer from any of these disqualifications but also does not disclose any "public wrong" or "public injury" or if it does not espouse the cause of public interest, such petition still cannot be permitted to be pursued as a PIL. These factors, however, will have to be determined on the basis of the facts and circumstances of each case.

(24) It has not been suggested or alleged on behalf of the Respondents that the above named Petitioner has any personal interest or would have any personal gain out of this PIL. Nothing has been pointed out that the Writ Petition has been filed either on account of political motivation or as a cloak for attaining private ends. No allegation of any private profit has been levelled by the Respondents. On the other hand, he is sought to be non-suited by the State of Punjab with a preliminary objection that he was not a candidate for the post in question. At the stage of preliminary hearing, one of the issue of great public importance, raised by the Petitioner, namely, the impugned selection process is marred by fraudulent and colourable exercise of

power and has been resorted to defunct the constitutional authority like State Public Service Commission and that if recruitments to the Class-I services were allowed to be made by the Departmental Selection Committees, a valuable right guaranteed under Article 16 of our Constitution which embraces in itself a fair and impartial opportunity to compete for public employment shall be severely injured. This conclusion led us to *prima-facie* believe that the Writ Petition was not an abuse of process of law and there were more than one issue of general importance which required consideration by this Court. When the entire record pertaining to these selections was summoned and perused, it completely satisfied us not only with regard to the *bon fides* of the Petitioner but also the fact that the questions of paramount consideration which have direct bearing on the sanctity of public employment on the touchstone of Articles 14 and 16 of the Constitution of India, are directly and substantially involved in these Writ Petitions. We are, therefore, unable to turn down this petition either for want of *locus standi* of the Petitioner and/or its maintainability.

(25) The dispute regarding maintainability and/or locus standi of the Writ Petitioners in PILs need not detain us from examining the manner and method in which the impugned selections have been made for the reason that connected CWP Nos. 9041, 9138 and 3662 of 2004 have been filed by the unsuccessful candidates. The Petitioner in CWP No. 3662 of 2004 claims to be a Golfer who had won gold medal while representing the Punjab team in the National Games held in the year 2002 and has also represented India at international levels. He has contended that the selection and appointments of Respondents No. 4 to 10 was not made on the basis of any rational and reasonable criteria as Respondents No. 9 and 10 had played at the junior level and represented the State but have been selected purely on account of extraneous considerations and favouritism.

The Petitioners in CWP No. 3603 of 2004 are two Sub-Inspectors of the Punjab Police who assert that their achievements in sports are far better than those of Respondents No. 6 to 10 who, according to them, were selected purely for extraneous and/or political considerations.

If CWP No. 3384 of 2004 filed by Ravdip Singh Atwal is not to be treated as a PIL as his personal interest is definitely involved he being a candidate for the post in question but not having been

selected, he has claimed himself to be an outstanding sports person who won gold medal in the Junior National Handball Championships held in the year 1992 and 1994.

In view of these competing claims questioning *inter se* eligibility, suitability, achievements in sports and consequential *inter se* placement in the selection list, we proceed to examine the genesis, method and the manner in which the impugned selections have taken place.

(26) Recruitment to the Punjab Police upto the non-gazetted ranks is governed by the Punjab Police Rules, 1934, Vol. 2, Chapter XII thereof deals with "appointments and enrolments". Rule 13.8 provides promotion from the rank of Constable to Head Constable and according to this Rule, a Constable who has passed the lower school course and whose name has been entered into List-C is eligible for such promotion as per the criterion laid down. Similarly, Rule 13.9 provides promotion from Head Constable to the rank of Assistant Sub-Inspector out of those who have qualified the promotional course and whose names have been entered into List-D. Rule 13.9(2), however, envisages promotions against more than 10% of the posts of Assistant Sub Inspector from amongst Head Constables of "exceptional merit" who have not been able to pass the promotion course but are considered suitable by the competent authority. Rule 13.10 envisages promotions from the rank of Assistant Sub Inspector to the rank of Sub Inspector on qualifying the promotion course and after their names are entered into List-E. Rule 13.15 lays down the method of promotion from the rank of Sub Inspector to Inspector from amongst those Sub Inspectors whose names have been admitted to promotion List-F.

(27) So far as the recruitment in the gazetted rank, namely, the Deputy Superintendent of Police (DSP) is concerned, the same is governed by the Punjab Police Service Rules, 1959. The service under these Rules is defined as "The Punjab Police Services" (PPS). According to these Rules, while 25% posts are filled up by direct recruitment through the Punjab Public Service Commission, remaining 75% are filled up by promotion from amongst Inspectors of the Punjab Police.

(28) It appears that for a long period of time, particularly when the State of Punjab was afflicted with terrorism, large scale *ad hoc* and/or fortuitous promotions were made in different ranks of the police officials as an incentive to their fight against terrorism.

These promotions originated from Rule 13.8(2) and 13.9(2) of the Rules, referred to above. The total strength of the promotees of "outstanding merit" could not have been more than 10% of the total vacancies but it appears that this percentage was not strictly adhered to and promotions were made much in excess of the maximum quota. The resultant effect was that promotions of the Constables/Head Constables who had qualified the promotional courses and kept waiting for their turn for promotion to the rank of Head Constables/ASIs, stagnated there only as the vacancies were consumed by the out of turn promotees. This led to the initiation of litigation including a bunch of Writ Petitions which was disposed of by a Division Bench of this Court,—*vide* judgment dated 21st April, 1998 with certain directions issued in CWP No. 13788 of 1997, which read as under :—

- (i) Constables on List C-II up to 10% (and no more) of the cadre strength of Head Constables can be promoted at any given time.
- (ii) That the Constables on List C-II to the aforesaid extent have to be promoted strictly in accordance with the dates they are brought on List C-II.
- (iii) There would be no bar for a person on list C-II who happens to be a sportsman to be brought on List C-II, of course, subject to the approval of the DIG but his date on list C-II will be the date on which he is brought on the said list and may be promoted as a Head Constable in accordance with the date he is brought on List C-II.
- (iv) There is no special quota of 5% for sportsmen in List C-II. Rule 13.8(2) envisages filling of 10% posts of the Cadre of Head Constables from amongst Constables who might excel in various fields which would include sports.

While carrying out the aforesaid directions, persons may be reverted, if necessary, from the post of Head Constables to Constable strictly in order of their having been brought on List C-II but such Head Constables from List C-II would be no more than 10% of the total cadre strength of the Head Constables. Those Head Constables who are

within 10% quota from list C-II and have further been promoted to a higher rank on officiating or *ad hoc* basis would hold lien on the substantive post of Head Constable. Such posts may be temporarily filled by promoting Constables from List C-II strictly in accordance with the dates of their being brought on List C-II but if any of the Head Constables who is holding higher posts on officiating basis is reverted to the post of Head Constable who had been promoted from list C-II, then such an incumbent is to make room for such a revertee in accordance with his seniority.

Coming to the point raised by the learned counsel for the petitioner that some of the petitioners have been promoted as *ad hoc* ASI and even SI (ORP), they could not be reverted to the rank of Constables as they did not remain as Head Constable after having been promoted as ASI. We may observe that persons who is working as *ad hoc* ASI, has no right to cling to the post, being *ad hoc*. In other words, he can be reverted as a Head Constable. However, the next question which would arise is whether the petitioners are within the limits of percentage of Head Constables who can be promoted on the basis of their being on list C-II? The answer is that if they are within the 10% of the Cadre strength of the Head Constables, they would not be reverted to the rank of Constables but if they are beyond 10% then the persons who are the junior most on the basis of the date of being brought on list C-II would have to make room while retaining 10% of such candidates on list C-II as Head Constables. The official respondents shall after taking into consideration the aforesaid observations, carry out an exercise as to whether any person cannot be retained as a Head Constable who might have been promoted from list C-II.”

(30) In the State of Haryana also, such out of turn promotions were made which too became subject matter of judicial review before this Court and the matter pertaining to Haryana appears to have been disposed of vide order dated 19th May, 1998 with somewhat similar directions as were issued in the Punjab matter reproduced above. Both these judgments were thereafter taken to the Apex Court and

were decided by their Lordships by a common judgment rendered in **S.I. Paras Kumar and others v. Ram Charan & others (13)** with the observations that :—

“11. xxx xxx xxx xxx xxx This Court had occasion to look into the validity of promotion to a Police Officer in accordance with Rule 13.8(2) in **Rishal Singh versus State of Haryana and others**, 1994(2) SCT 556 (SC): JT 1994(2) SC 157. Here it was held that a promotion within the 10% quota as provided in Rule 13.8(2) could only be treated as a regular one and not as an *ad hoc* temporary one. This view was again followed in **Jagbir Singh versus State of Haryana and others**, 1996(2) SCT 676 (SC) : JT 1996(4) SC 332. In the special circumstances of this case, though the impugned promotions are not promotions under the Rules, the State came up with a proposal of the ORP scheme so as to deal with the out of turn/*ad hoc* promotees. Therefore, we are of the opinion that those officials who are promoted within the 10% limit of Rule 13.3 (2) could be given regular promotion and those who are beyond the 10% limit of Rule 13.8 (2) could be given ORP promotion which is designed to encourage and reward the good work of meritorious officers without excessively burdening the exchequer.”

Meanwhile some Head Constables approached this Court by way of **CWP No. 6465 of 2003 (HC Kuldip Kumar & others versus State of Punjab and others)** wherein they sought a direction to promote them as Assistant Sub Inspectors in view of the fact that they have already passed the intermediate school course and their names were brought on promotion List-D with effect from October 2002 and instead of promoting them, large number of *ad hoc* ASIs were being allowed to continue. In sum and substance, they were seeking implementation of the directions contained in the Division Bench judgment dated 21st April, 1998 passed in CWP No. 13788 of 1997 a copy of which was also appended by them as Annexure P-4. Upon issuance of a notice in the afore-mentioned Writ Petition that a case of “emergent situation” was sought to be made out by the authorities

in the Police Department on the pretext that if the directions dated 21st April, 1998 were implemented, a lot of heart burning was likely to be caused to hundreds of police personnel.

(30) It further appears that most of the beneficiaries of the out of turn promotions were those sports persons who were recruited to different ranks in the Punjab Police and could not undertake the promotional courses presumbaly on account of their pre-occupation/ involvement with the sports activities, and hence were given *ad hoc* promotions to the next higher ranks.

(31) On an initiative taken by the Sports Department of Punjab, the Director General of Police (DGP), Punjab constituted a committee on 21st August, 2003 headed by an Additional DGP, Punjab with two of its members bearing the rank of Deputy Inspector General of Police, to chalk out the modalities for complying with the directions dated 21st April, 1998 passed by this Court and reproduced above and also to suggest measures to prevent reversions of Sports persons. The Committee submitted a report on 24th August, 2003 suggesting four remedial measures. It is significant to mention here that the Committee identified that a total of 542 officials were to be brought down to their substantive ranks and out of these 542 police officials, 337 were the sports persons, namely Olympians, international and national players and coaches. In their efforts not to cause demotions in respect to the sports persons and while agreeing to certain recommendations made by the Committee referred to above, the DGP, Punjab,—*vide* his memo dated 25th August, 2003, recommended the follolwing to the State Government :—

“6. There are total 542 officials (DSP/9, INSP/43, SI/77, ASI/ 114, HC/299) who are to be brought down to their substantive ranks in compliance with the aforesaid directions dated 21st April, 1998. Out of these 542 officials 337 officials (DSP/9, INSP/35, SI/67, ASI/67 HC/159) are Olympians. International and National Players and Coaches. It is a fact that Punjab Police is contributing a lot in the field of sports, which has brought laurels to India in general and to Punjab State in particular. So it will be

befitting if in order to maintain the said standard of sports in Punjab, aforesaid DSPs/9, INSP/35, SI/67 (to be taken as ASIs and given local rank of SIs) and ASI/67 are retained in their present ranks by making their fresh recruitment against the vacancies of direct recruitment quota in each rank by granting all types of relaxations as a one time measure for which vacancies (DSP/13, INSP/46, ASI/103) are available. However, HCs/159 will be brought to their substantive rank C-II Constable and given local rank of head Constable. A committee headed by Shri D.R. Bhatti, IPS, ADGP/PAP has been constituted to examine the sports achievements of all these 542 officials and recommend the names of Olympians/International/National Players and Coaches and officials who have done well on anti-terrorist front and action will be taken accordingly. It is added here that the recommendations will not exceed the vacancies mentioned above. It is therefore, requested that this proposal may kindly be approved after which suitable reply will be filed in the Hon'ble Punjab & Haryana High Court and necessary action will be taken on the recommendations of the aforesaid committee in due course of time.

Director General of Police
Punjab.”

The DGP thus wanted that by relaxing the recruitment rules 337 police officials, who were sports persons of stature of Olympians, international, national players and coaches, be retained in their present ranks by making their fresh recruitments against the vacancies of direct recruitment quota in each rank.

(32) The original records produced before us reveal that the proposal sent by the DGP,—*vide* his memo dated August, 25, 2003 was examined in the Home Department at length. Financial implications were identified, information regarding the achievements of the sports persons who were sought to be protected in their present

ranks by adjusting them against the direct recruitment posts, was sought from the DGP, on receipt of which the following picture emerged out depicting the achievements of the 337 sports persons :—

	DSP	INSPR.	SI	ASI	HC	Total
1. Olympians	2	4	1	-	-	7
2. Common Wealth/ Asian SAF Games	1	6	-	5	-	12
3. Sr./Jr. Inter- national	1	12	26	32	32	103
4. Sr./Jr./National	-	1	24	24	121	170
5. All India Police Games	-	-	2	6	20	28
6. Coaches	-	-	4	2	11	17
Total	4	23	57	69	184	337

Needless to say that amendment in the Punjab Police Service Rules, 1959 was also required to be carried out as out of 337 police personnel of the sports category, 4 were in the rank of DSP (Class II) governed by these Rules and they too were to be adjusted in terms of the proposed decision taken by the State Government.

(33) Thereafter,—*vide* his office note dated September 29, 2003, the Additional Secretary, Home suggested the adjustments of 337 police personnel of sports category in the following terms :—

- (i) 15% increase may be made in the quota for direct recruitment to the post of DSP which would increase 11 posts in the cadre of DSPs,
- (ii) 10% direct recruitment quota may be increased for Inspectors by 50% which would provide 35 posts in the rank of Inspectors against which 35 outstanding sports persons may be adjusted,

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- (iii) the direct recruitment quota of SIs and ASIs may be increased by 15% which would provide 142 additional posts against which 57 SIs and 69 ASIs of outstanding sportsmen quota may be adjusted,
 - (iv) the direct recruitment quota of Constables may be increased by 0.5% thereby creating 243 posts against which 184 serving Head Constables of outstanding sportsmen category may be adjusted and the cadre of Head Constables may be accordingly increased by 184 posts.

He also recommended that the advice of Personnel Department, Finance Department and Punjab Public Service Commission may be obtained before carrying out amendments in different sets of service rules. These recommendations were approved by the Principal Secretary, Home, who is also Principal Secretary to the Chief Minister, on 7th October, 2003, with the following remarks :—

“Discussed with C.M. and C.S. on 5th October, 2003 at Patiala.
Both approved.”

(34) Since the above mentioned proposal entailed amendments in the service rules, the matter was decided to be placed before the Council of Ministers in terms of the Rules of Business. A memorandum was drafted along with Annexures I & II, which were the draft notifications to amend (i) the Punjab Police Service Rules, 1959, and, (ii) the Punjab Police Rules, 1934.

(35) It appears that pursuant to the suggestion of Home Department, the advice of Public Service Commission was sought, who,—*vide* its letter dated October 15, 2003 declined its approval to the proposed amendment in the 1959 Rules, more particularly in relation to the criteria for “outstanding sports persons” and “exemplary courage and bravery” as according to the Commission, the criteria proposed to be incorporated in the rules was vague, not well defined, prone to indiscriminate use and would give a lot of discretion and unlimited as well as unchecked powers to the enforcing authority. The Commission was firm in observing that the guide-lines sought to be incorporated in the rules “did not meet the requisite conditions for fair selections”.

(36) The memorandum dated 15th October, 2003, however, was placed before the Council of Ministers, containing the proposal which was *mutatis mutandis* to the suggestion of the Additional Secretary, Home regarding increase of a certain percentage of posts in different cadres. The proposal further recommended that 337 sports persons who were promoted in excess of 10% quota need not be reverted and after they are selected against the newly created posts, it will be open for the Departmental Selection Committee (DSC) to protect their pay and seniority. The memorandum also contained proposals to approve the enclosed draft notifications, including the one to carry out following amendments in the Punjab Police Service Rules, 1959 :

8. It is, therefore, proposed to add the following provisions at the end of rule 6 of the Punjab Police Service Rules, 1959 :

“Provided further, that the State Government may, from time to time, increase the number of posts for direct recruits in the rank of DSP to be filled up from amongst outstanding sports-persons and those persons who have shown exemplary courage and bravery in the cause of national security or their dependents, as a measure of honour and gratitude :

“Provided further that in the case of such increased posts for direct appointment, the provisions of reservation will not apply and vacancies to that extent will stand taken out of the purview of the Punjab Service Commission :

“Provided further that the selection to such increased posts will be made by the Government through a Departmental Selection Committee consisting of Principal Secretary Home as Chairman, Secretary Sports and Director General of Police being its members ;

“Provided further that a person who qualifies as an outstanding sports person and who also qualifies for being considered under the “honour and gratitude” category, as defined above, will be given preference over and above those persons who qualify for being considered only under one of the two categories mentioned above.”

Further, an amendment in Rule 2 may be done by adding sub clause (g), (h) and (i) as under :—

- (g) “Outstanding sports person” shall mean a person who has participated in Olympics, World Cups, Common-wealth, Asian, SAARC and SAF games ; won any medal (Gold, Silver or Bronze) in Senior or Junior International or National Championships in individual or team events.
- (h) “Exemplary courage and bravery in the cause of national security” means an act which would have put the person’s life in danger in the cause of national security.
- (i) “Dependent” means legitimate son or daughter of the concerned person.

10. After the rules are amended, it is proposed that 15% increase may be made in the quota for direct recruitment to the posts of DSPs. At present the quota is 72 and 15% increase would mean 10.8, say 11 posts. Thus the 4 DSPs. who have been serving as outstanding sports persons can be accommodated as well as the two outstanding sports persons (one shooter as well as one equestrian) sought to be recruited, leaving a balance of 5 more vacancies.

It is proposed that 337 sports persons promoted in excess of 10% quota need not be reverted and then selected against the newly sanctioned posts. Rather the Departmental Selection Committee can consider their appointments directly against the newly sanctioned posts meant for the sports persons and also protect their pay and seniority.

11. Approval of the Council of Ministers is solicited for amendment of Rules 2 and 6 of Punjab Police Service Rules, 1959 and Rule 12.3 and 12.1 of the Punjab Police Service Rules-1959 contained in para 8 and 9 and to the creation of posts as mentioned in para 10 of this Memorandum.

(37) The afore-mentioned memorandum was placed as Agenda Item No. 213 before the Council of Ministers in its meeting held on

17th October, 2003. The decision taken by the Council of Ministers, on translation, reads as under :—

“As per the proposal of the Department of Home Affairs and Justice dated 15th October, 2003 approval in principle was given regarding the amendment of Punjab Police Service Rules, 1959 and the creation of the additional posts. However, it was felt that since the Finance Department and Personnel Department have not expressed their views regarding these amendments and Legal Remembrancer has also not vetted the draft, therefore, a Committee of officers under the chairmanship of Chief Secretary, Punjab will give a final shape to the amendments. Hon’ble C.M. is authorized to approve the amendments recommended by the Officers Committee.” (emphasis by us)

The Council of Ministers, thus principally approved the proposal regarding amendment in Rules, however, it recommended for constitution of a Committee to be headed by the Chief Secretary to give final shape to the amendments which were decided to be carried out in the service rules for the reasons that the advice of the Personnel and Finance Departments was not taken and the proposed amendments in the rules were also not vetted by the Legal Remembrancer, Punjab. The Council of Ministers also authorised the Chief Minister, Punjab to approve “the amendments” recommended by the Officers Committee.

(38) The Chief Secretary to the Government of Punjab, thereafter, held a meeting on 10th November, 2003 which was attended by the representatives of various Departments in which the following decisions were taken :

X	X	X
X	X	X

“1. There is no need to amend Punjab Police Service Rules, 1934; rather the object of accommodating and protecting the interest of 337 sports-persons may be achieved by creating additional posts in relaxation of the relevant rules. The reservation policy will not be applicable to additional posts. These posts will be taken out of the purview of the PPSC/SSSB, as the case may be.

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2. The proposal of the Home Department so far as the category of exemplary courage and bravery in the cause of national security is concerned, was dropped.
 3. AIG/Personnel stated that 96 officials, who are not sports-persons, are being reverted to the rank of Constable as per the orders of Hon'ble High Court. It was decided to expedite the action regarding reversion of such 96 officials.
 4. 431 ex-cadre posts may be created additionally to adjust the sports-persons which will be a dying cadre i.e. the posts will stand automatically abolished on retirement or otherwise vacation of posts. Equal number of posts will be kept in abeyance in the feeder cadre of Constables.
 5. The sports-persons now being adjusted against the additional posts will be assigned seniority after all the officials appointed and promoted earlier to them.
 6. A Screening Committee headed by ADGP/PAP, Jalandhar with DIG/Admn. Director, Sports and Additional Secretary Home as its members will scrutinize the particulars of 337 sports-persons to prevent entry of non sports-persons. The suitability of the sports-persons will be adjudged with reference to their definition as per the proposal of the Home Department."

The afore-mentioned recommendations of the Officers' Committee were approved by the Chief Minister, Punjab on 24th November, 2003.

(39) Coming back to the case of HC Kuldip Kumar etc., referred to earlier, it appears that an affidavit dated 19th November, 2003 was filed in High Court by the Government of Punjab. On a perusal of this affidavit, the Bench hearing the matter noticed that a total of 431 officials were promoted from List-CII as per the 10% quota prescribed in Rule 13.8(2) of the PPR yet the show cause notices were issued to 94 officials only. The Bench, therefore, directed that :—

"The Additional Secretary to Government of Punjab, Department of Home Affairs and Justice, who has filed aforesaid affidavit is directed to file a fresh affidavit indicating the reason why notices have not been issued to the remaining persons who have been promoted from List C-II in excess of 10 per cent quota."

(40) Thereafter, it appears from the records of the afore-mentioned case that the directions issued by the Bench were complied with and after carrying out all the consequential reversions and/or promotions, a necessary affidavit to this effect was filed before the Bench. The Bench accordingly disposed of the matter on 27th January, 2004 with the following observations :—

“In the above circumstances, there is nothing much survives before this Court for adjudication. In the facts and circumstances of the case and keeping in view the peculiar circumstances, service records of large number of employees require to be scrutinised before these rival contentions can be settled, we consider it fit, in the interest of justice, that the Director General of Police is directed to consider the matter and to pass a speaking order dealing with the rival contentions, raised by the parties. At this stage, it will be appropriate for us to notice that in furtherance to the orders of this Court dated 20th November, 2003 records have been produced before us. However, the perusal of the same do not show that any speaking order has been passed by the Inspector General of Police while exercising his powers under Rule 13.21.”

(41) There, however, remains no doubt that neither any interlocutory and/or a final direction was issued by this Court in any of the proceedings to fill up the newly created posts in a time bound manner nor was there even a remote threat of any contempt proceedings for non filling up and/or delay in the filling up of the newly created posts. What we want to clarify is that the extra-ordinary hurried process followed to fill up the posts of DSPs was taken up by the State Government at its own volition and without there being any immediate compulsion in respect thereto though in the government files, pendency of the afore-mentioned cases has been used as a tool to “expedite the selection under challenge” and/or other adjustments.

The saga of the subsequent story, however, reveals the truth as to whether the panic was created for compliance of the Court directions and/or to hijack the occasion to fit in certain high profile candidates in the garb of “outstanding sports persons” symbolising the “state largessy” in “public employments”.

(42) We may outrightly mention here that after a marathon exercise carried out by the Police Department, only 337 sports persons serving in different police ranks were identified as the ones to be facing demotion on account of the High Court directions. This figure has not been varied at any point of time. Out of these 337 police personnel, only 4 members of the Punjab Police Service were in the rank of DSP and rest of 333 persons belonged to the non-gazetted ranks. It is most relevant to mention here that each one of them was promoted from one rank to other higher rank and these promotions were found to be in excess of the prescribed quota of 10%. It is for this precise reason that after creating additional posts, a method to constitute the screening committee was devised so that it could adjudge their suitability for adjustment against these newly created posts and thus allow them to continue without facing reversions. The posts, however, were created against direct recruitment quota for the obvious reason that the same were to be consumed by adjusting the existing promoted police personnel inasmuch as had there been creation of posts against the promotion quota, the same would have again gone to those persons who had qualified the promotional courses and were figuring in different lists, namely, List C, D, E and F and they would have staked claim for promotions against the newly created posts as well thereby defeating the very object of the entire exercise undertaken by the State Government to protect the sports persons from reversions.

(43) To us, without any doubt in our minds, it is writ large that the proposal put up and approved by the Council of Ministers had the following salient features :—

- (i) to approve the modalities required to be adopted in compliance of the directions dated 21st April, 1998 issued by this Court in CWP No. 13788 of 1997.
- (ii) 542 police personnel were identified as having been promoted in excess to the 10% quota and out of them, 337 were identified to be sports persons.
- (iii) there was a conscience decision taken by the State Government to see that these 337 sports persons do not face reversion/demotion to their ranks.
- (iv) the object of creating new posts by increasing **direct** recruitment quota in different cadres was to facilitate adjustment of the 337 sports persons who had already been appointed by way of promotions in different ranks.

- (v) the proposed amendments in 1959 Class II Rules and/or 1934 Rules were also meant for paving way for adjusting these sports persons.
- (vi) the DSC was proposed to be constituted only to adjudge suitability of the 337 sports persons promoted in excess of 10% quota.
- (vii) The posts were taken out of the purview of the Punjab Public Service Commission and the Punjab Subordinate Services Selection Board so that adjustment of 337 sports persons was not required to be made through these recruiting agencies.
- (viii) while taking the posts out of the purview of the Commission/Board, neither the Council of Ministers decided that the DSC would be the sole authority to make direct recruitments against the newly created posts as a super-constitutional authority nor any such proposal was contained in the agenda Item No. 213.
- (ix) Likewise, it was never ever the proposal and/or approval by the Council of Ministers that the DSC shall continue to exist and/or be functional even after screening and consequential adjustment of 337 sports persons on the ranks which they were already holding but were apprehending their reversions. In other words, the DSC would become *functus officio* after adjustment of the sports persons in their respective ranks against the newly created posts.

(44) However, with a view to fill up seven newly created posts of DSPs, the administrative file in the Department of Home was kept on tenter hooks with brief notes referring to the Court proceedings in CWP No. 6465 of 2003 (HC Kuldip Kumar etc.'s case). It appears from the record that the DGP sent a detailed draft affidavit for filing in the above mentioned case to the State Government for its approval in which it was stated that the directions issued by the Division Bench in CWP No. 13788 of 1997,—*vide* order dated 21st April, 1998 stood complied with as those police officials who were to be reverted, had already been reverted and those who were to be promoted in their places, had also been promoted and the remaining 337 officials from the sports quota had been adjusted against newly created posts. The Office note prepared on 10th December, 2003 suggests that the next date of hearing in the Court case was 27th January, 2004, therefore, the draft affidavit sent by the DGP was required to be

finalised. The notings in the files of the Home Department, in relation to this pending litigation, however, are shockingly misleading, it is strange that a simple and plain fact regarding the reversions, consequential promotions and/or adjustment of 337 sports persons, could not be incorporated in an affidavit or reply and placed before the Court, rather there were proposals one after the other to send reminders to the DGP and to other police authorities so that “contempt proceedings could be avoided”. The panic ridden situation, however, was not a routine event but was apparently designed to achieve the object, namely, to fill up the seven posts of DSPs through a “summary trial”, therefore, a meeting was convened to be presided over by the Chief Minister, Punjab on 1st January, 2004 “to discuss the issue of Punjab Police personnel who were recruited under sports quota and apprehended reversions, etc. because of a judgment of the High Court.”

(46) There are no formal minutes of the meeting held on 1st January, 2004 presided over by the Chief Minister, therefore, we do not know as to what actually transpired there. It, however, appears to have been noticed in the said meeting that no formal notification was issued to the decision taken by the Council of Ministers in their meeting held on 10th October, 2003. A “notification” was, thus got drafted without any loss of time, got vetted from the Legal Remembrancer and came to be published on 23rd January, 2004, and has been appended as Annexure R-1 with the written statement filed on behalf of the State of Punjab. Since shelter is being taken behind this notification on behalf of the State, we reproduce the same in extenso :—

GOVERNMENT OF PUNJAB

DEPARTMENT OF HOME AFFAIRS AND JUSTICE

(HOME-III BRANCH)

Notification

The 23rd January, 2004

No. 7/140/2003-5H3/175.—Whereas the Governor of Punjab is pleased to order that with a view to encourage sports and sports persons, it

has been decided to create 431 ex-cadre posts in the Police Department as detailed below :—

Deputy Superintendent of Police	..	11
Inspector of Police	..	35
Sub Inspector of Police	..	57
Assitant Sub Inspector of Police	..	85
Head Constable	..	184
Constable	..	59
Total	..	<u>431</u>

These posts have been created on the conditions laid down in Government Memo No. 7/140/2003-5H3/4284, dated 5th December, 2003. The above said posts have been created on the basis of diminishing cadre and the posts vacated by the incumbents of the aforesaid posts on account of resignation/termination/dismissal/retirement or any other reason, shall automatically stand abolished.

Whereas, it has been decided that appointment to the said ex-cadre posts shall be made in relaxation of all the relevant rules and the rules relating to reservation, appointment and promotion i.e. Rule 6 of the Punjab Police Service Rules, 1959 (in the case of DSPs) and Rules 12.1, 12.3, 13.8, 13.9, 13.10, 13.15 and 13.16 of Punjab Police Rules, 1934 (in case of N.G.Os. and O.Rs.) will also not apply to these posts. This has been done purely as a one time measure.

Whereas, it has further been decided that the said 431 ex-cadre posts stand taken out of the purview of the Punjab Public Service Commission in the case of Deputy Superintendent of Police and the Punjab Subordinate Services Selection Board in the case of other non-gazetted ranks.

Whereas it further been decided that a Departmental Selection Committee consisting of Principal Secretary Home as Chairman, Secretary Sports and Director General of Police as members, will scrutinize and recommend the names of candidates for appointment to the posts of Deputy Superintendents of Police and the other Departmental Selection Committee consisting of Additional Director

General of Police, PAP, Jalandhar as Chairman, Deputy Inspector General of Police/Admn. (CPO), Director, Sports and Additional Secretary Home as members, will scrutinize and make recommendations for appointment to the non-gazetted posts.

And whereas, it has been further decided that definition of outstanding sports persons for the purpose of newly created posts referred to above will be as under :—

For Deputy Superintendent of Police :

“Outstanding sports person” shall mean a person who has participated in Olympics, World Cups, Common-wealth, Asian, SAARC and SAF games; won any medal (Gold, Silver or Bronze) in Senior or Junior, International or National Championship in individual or team events.”

For non-gazetted officials and other ranks

“Outstanding sports person” shall mean a person who has participated in Olympics, World Cups, Common-wealth, Asian, SAARC and SAF games; won any medal (Gold, Silver or Bronze) in Senior or Junior, International or National Championship and won a medal (Gold, Silver or Bronze) in All India Police Games in individual or team events.”

S. K. SINHA

Dated, Chandigarh Principal Secretary to Govt. of Punjab
the 23rd January, 2004. Department of Home Affairs & Justice

(46) It thus, transpires from the above reproduced notification that 431 ex-cadre posts including 11 posts of DSPs were created in the Police Department (the object being to adjust 337 sports persons who were facing reversions on account of direction issued by the High Court), (ii) appointment against these posts were decided to be made in relaxation of all the relevant rules including Rule 6 of the Punjab Police Service Rules, 1959, (iii) these 431 ex-cadre posts were taken out of the purview of the Punjab Public Service Commission and Punjab Subordinate Services Selection Board, as the case may be

(iv) the Departmental Selection Committee consisting of Principal Secretary, Home as Chairman, Secretary, Sports and DGP, Punjab as Membes was constituted to scrutinize and recommend the nemes of the candidates for appointment as DSPs, there was another Committee constituted for appointment to the non-gazetted posts, (v) a new definition “outstanding sports persons” for the purposes of newly created posts was provided to which a detailed reference will be made in the later part of this judgment.

(47) On a comparison of the contents of the memorandum placed before the Council of Ministers and the decision taken thereupon vis-a-vis the contents of above reproduced Notification dated 23rd January, 2004 (Annexure R-1), it is clearly borne out that there are more than one-material inconsistencies between the decision taken by the Council of Ministers and the afore-mentioned Notification. The Council of Ministers had taken a decision to “amend” the Punjab Police Service Rules, 1959 whereas the Notification has “relaxed” some of the provisions of these Rules. What the Council of Ministers had approved was an act of subordinate legislation by invoking the powers under Article 309 of the Constitution which is of statutory in character. However, the Notification dated 23rd Janaury, 2004, as conceded by Shri Dweivedi also, is merely an executive action referable to Article 162 of the Constitution of India. We may mention here that the power to “relax the rules” is vested with the State Government under Rule 14 of the Punjab Police Service Rules, 1959 which could be invoked “for reasons to be recorded in writing” and obviously in relation to the posts which are governed by these rules. In their anxiety to fill up seven ex-cadre posts of DSPs, it appears to us that the Respondents themselves were not sure as to how to proceed with to secure a legal cover for their action.

(48) We have already pointed out that there were four outstanding sports persons in the rank of DSP who were facing reversion on account of the directions issued by the High Court and as per the information which the D.G.P. sent to the State Government, two of them were Olympians, one Common Wealth player and the fourth one was also of international stature. The “Departmental Selection Committee” constituted,—*vide* the afore-mentioned notification dated 23rd January, 2004 held its meeting on 5th February, 2004 and scrutinized the credentials of these four D.S.Ps. and found that all of

them “fulfilled the criteria” and were suitable for appointment against the newly created posts. Pursuant to these recommendations, Sarvshri Gurmeet Singh (731/PAP), Harpreet Singh (761/PA), Kuljit Singh (772/PAP) and Narinder Singh (709/PAP) continued to hold the rank of D.SP.s. Obviously, seven posts remained vacant.

(49) The D.S.C., however, further decided that “to promote sports and sports persons”, the seven newly created posts may be filled from “outstanding sports persons by advertising in the newspaper”. It was pursuant to this decision that seven ex-cadre posts of DSPs came to be advertised in the newspaper “The Tribune” on 7th February, 2004 whereby the “outstanding sports persons” were advised to come present along with their sports credentials and other certificate on 13th February, 2004 at Punjab Bhawan, Sector 3, Chandigarh. On that day, 50 persons are stated to have appeared, out of whom 28 were found ineligible and the remaining 22 candidates were asked to come for interview on 17th February, 2004. However, another advertisement was also directed to be issued for those candidates who could not come on 13th February, 2004 as “they were participating in sports activities at far away places” and they were directed to be present on 17th February, 2004. It is out of these candidates that on 17th February, 2004, the private Respondents No. 4 to 10 were selected and after dispensing with the requirement of their antecedent verification and/or medical examination, all of them were offered appointments,—*vide* orders dated 24th February, 2004 on similarly worded terms and conditions, a few of which being relevant, are reproduced below :—

- “2. Your services will be governed by the Punjab Police Service Rules 1959, as amended from time to time, and other rules/orders of the State Government.
6. Your seniority will be fixed under the rules/instructions on this subject.
7. Your appointment is subject to the following conditions:—
 - (i) That you will acquire no right of confirmation merely by completing the period of probation. Confirmation will take place according to turn on seniority, depending upon the availability of permanent posts and satisfactory record of service.

- (ii) That you may be liable to serve at any place whether within or out of the State of Punjab, on being ordered to do so by the competent authority as provided for under the service rules and you may be transferred by the Government to any post, whether included in any service or not on the same terms and conditions as are specified in rule 3.17 of the Punjab CSR Vol-1, Part)-I.
 - (vi) That in other matters not specifically enumerated in these conditions, you will be governed by the Punjab Civil Service Rules and by such other conditions/ instructions/rules/standing orders as may be in-force from time to time and/or as may be amended/framed by the Government from time to time.
8. Your appointment is further subject to your medical fitness by a Board to be constituted by the Director, Health and Family Welfare, Punjab, Chandigarh, who is being requested for this purpose.
9. Your appointment is further subject to verification of your character/antecedents by the concerned District Magistrate.”

(50) This takes us to first limb of submissions, namely, the definition and/or categorisation of “outstanding sports persons”. The main thrust of argument on behalf of the Petitioners is confined in a narrow compass. According to them, the definition and/or criteria of “outstanding sports person” is tailor-made and militates against Articles 14 and 16 of the Constitution of India. According to them, the definition of “outstanding sports persons” was crafted in such a fashion that Respondents Nos. 9 and 10 (S/Shri Bikram Inder Singh Chahal and Gulzar Inder Singh Chahal) could become eligible while one of them is stated to be son of the Media Advisor of the Chief Minister, Punjab, the other happens to be son of a Senior Superintendent of Police, who, it was argued, has a direct say in the corridors of power. It is averred that the definition of “outstanding sports person” suffers with inherent arbitrariness and causes hostility amongst unequals due to its brazen effort to bring them at par.

(51) In the gamut of the whole factual backdrop, the main plank of further attack upon the selections by Shri M.P. Goswami, learned counsel representing the Petitioner in PIL rests upon the following additional submissions :—

- (a) Purity in public administration is the moto of his PIL whereas the selection in question is merely a subject. “Existence of a power” and the manner in which it is exercised, is yet another facet of this PIL.
- (b) How the trustees of peoples rights under our Constitution, in total ignorance of the obligatin cast upon them have misused their official position is yet another aspect exposed in this PIL.
- (c) The bone fides of the Petitioner cannot be doubted as he approached the Court at the very stage of advertisement, namely, before the selection process could be started. He had neither any knowledge nor any averments were made in advance that the selection process was meant to select the kith and kin of those who are in power. The subsequent selections, in fact, have fortified what was merely apprehended by the petitioner at the time of filing of the PIL.
- (d) It is only in a PIL that the mechanism, methodology and colourable exercise of power in relation to appointments in public employment can be gone into. The unsuccessful candidates who participate in such mechanism become themselves party to the fraudulent procedure in their attempt to take advantage thereof. The judicial review of such procedure at their instance is thus always prohibited on account of more than one principles in law.
- (e) The famous four doctrines, namely, estoppel, abandonment, acquiesance and waiver are not invokable in a PIL whereas the unsuccessful candidates who have competing claims can be uprooted on any one of these objections.
- (f) The Council of Ministers in its meeting held on October 17, 2003 had merely decided to adjust those sports persons who are already serving in the Police Department on

promotional posts but were facing their reversions due to implementation of the judgement and directions dated 21st April, 1998 issued by this Court in CWP No. 13788 of 1997 and thus, no decision was taken by the Council of Ministers to fill up the 11 posts of DSPs. However, the bureaucracy at the command of influential persons like the father of one of the selected candidates, who is a Media Advisor to the Chief Minister/Govt. of Punjab deliberately twisted the decision of the Council of Ministers and raised an alarm by creating a false panicky situation showing as if there was a direction from the Court to make recruitments in a time-bound manner. This not only amounts to colourable exercise of power, it is a glaring example of committing fraud upon the powers of Council of Ministers.

- (g) The term "ex-cadre" has been used as a device for recruitment only as the State itself has come up with a stand before the Court that on their recruitments, the selected candidates have become members of the service of DSPs and their postings, confirmation, seniority and consideration for future promotions in IPS shall be at par with other members of the service who are holding the cadre posts.
- (h) The Govt. of Punjab has constituted a Public Service Commission under Articles 315 and 316 of the Constitution of India which consists of a Chairman with at least 7 members. Lacs of rupees are spent out of the State exchequer in paying salary and/or other perks to these members and/or in running the day-to-day affairs of the Commission. If the government officers, namely the executive functionaries of the State are capable enough to make recruitments against prime posts like the DSP, then where lies the legal necessity of constituting or retaining a Public Service Commission ?
- (i) Recruitment to the posts of DSPs are governed under the Statutory Rules known as Punjab Police Services Rules, 1959 and direct recruitment of DSPs under these rules is permissible only through the State Public Service Commission. Rule 6 thereof, however, has been relaxed

only to defraud the general public and to capitulate the occasion for illegitimate entries into the "cadre" of the persons like Respondents No. 9 and 10.

In support of his afore-said submissions, Shri Goswami has placed reliance upon the judgments of the Apex Court in (i) **Dr. M.A. Haque v. Union of India (14)**, and (ii) **N. Mohanan v. State of Kerala (15)**, wherein their Lordships held that "recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in its breach and if disregard of the rules and by-passing of the Punjab Service Commission are permitted, it will open a back door for illegal recruitment without limit.

He also referred to a Division Bench judgment of this Court in **Bhagar Singh v. State of Haryana (16)**, to contend that once the conditions for appointment and procedure for that purpose has been prescribed in the statutory rules framed under Article 309 of the Constitution, the Government has no power to tinker with the eligibility condition by way of an administrative decision and/or instructions.

Shri Goswami has made a pointed reference to what their Lordships of the Supreme Court directed in **Krishan Kumar Yadav v. State of Haryana (17)**, on having found that selections in that case were vitiated by fraud, nepotism, favouritism and arbitrariness.

(52) Shri H.S. Mattewal, learned Senior Counsel appearing for the Petitioners in CWP No. 3603 of 2004, contends that the criteria laid down by the Selection Committee is a total farce, misleading and bogus instrument, capable of manipulations to any extent. He contends that since the recruitment was confined to the **outstanding sports persons of the State of Punjab only** it was well within the knowledge of the members of the Selection Committee that there is no Olympian in Punjab State who is still within the eligible age group to compete for these posts of DSPs. Thus, out of the total 50 marks of the criteria, only 15 were actually kept for sports achievements. He further argued that this Court may find out from the original record and it would come out to be true that the Selection Committee laid

(14) 1993 (2) S.C.C. 213

(15) 1997(2) S.C.C. 556

(16) 1996(2) S.C.T. 103

(17) 1994 (4) S.C.C. 165

down the criteria after it had received applications from the eligible sports persons in response to the first advertisement and that it was a totally tailor-made criteria fabricated for the convenience of 2-3 applicants for whom this entire fraudulent exercise had been undertaken. He further contends that since each and every candidate was required to be a graduate failing which he was ineligible, the 10 marks which the Selection Committee has used only for the award of minimum qualifications and not the higher qualifications and since each candidate was bound to secure minimum 5 marks under the head of academic qualifications, in sum and substance there were only 5 marks for the so-called educational achievements. According to him, against the 15 marks (sports achievements) + 5 marks (educational qualifications) = total 20 marks, there were 15 marks earmarked for general knowledge and personality thereby giving an absolute sweeping discretion to the members of the Selection Committee to eliminate and/or select any candidate they liked. This, according to Shri Mattewal, is per-se arbitrary and in the teeth of Article 14 and 16 of the Constitution of India. He contends that those who are close to the political power in the State and who have the required reach in the corridors of power, have manipulated the selections of their kith and kin by dictating their terms to the 3 members of the Selection Committee, who by virtue of the plum postings given to them, were not only obligated to the political authority of the State but have acted in a totally pliable manner. According to Shri Mattewal, the haphazard manner in which marks have been allocated to the candidates who were just 22 in number, further speaks with full voice as to how the members of the Selection Committee were sitting with close mind and pre-determined results. He has laid much emphasis on various government circulars, particularly a memo dated 10th February, 2004 issued by the Chief Secretary, Punjab referring to a complete ban imposed on recruitments to any post in the Govt. of Punjab for a sufficiently long period and this ban continued even after the impugned recruitments. According to Shri Mattewal, firstly the ban qua the recruitments to the posts of DSPs were never relaxed and if at all relaxed, there is not even a whisper what to talk of acceptable explanation coming forth from the State Govt. as to what compelling circumstances made an exception for carrying out the impugned recruitments. According to Shri Mattewal, the record of the Sports Department is being deliberately withheld from the Court as in the

case of sports persons, the Sports Department being the parent department, has not only shown deep concern with regard to the plight of the sports persons but also disowned the fraudulent selections of the persons who have nothing to do with sports and yet have usurped their quota. According to him, the impugned selections are also impaired in law for the reason that no sports expert was associated as a member of the selection committee and the three bureaucrats who had no specialised knowledge of sports and/or its related activities, have made the impugned selections, Shri Mattewal has placed reliance upon the judgment of the Apex Court in **Dr. K.C. Sahu v. State of Orissa (18)**, to contend that “if the selection criteria is neither incorporated in the Rules framed under Article 309 of the Constitution nor such Rules supplemented by the Government by issuing administrative instructions laying down the selection criteria, the members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the Rule Making Authority to provide the basis for selection.”

(53) Shri T.S. Dhindsa, learned counsel appearing for the Petitioners in CWP No. 3662 of 2004, on the other hand has contended that the Petitioner in his case has been treated ineligible by the Selection Committee on a wrong premise that he is a Golfer and “golf” is not one of the recognised games. He however, has placed on record a communication dated June 5, 2003 of the Government of Punjab which clearly shows that “golf” is one of the games recognised by it.

(54) Shri Gaurav Chopra, learned counsel for the Petitioner in CWP No. 3384 of 2004, has mainly emphasised on the anomalous definition of “outstanding sports person” viz the criterion laid down by the Selection Committee. According to him, the criteria laid down by the Selection Committee is inconsistent with the definition of the “outstanding sports person” inasmuch as if a sports person has won more than one championships he has been granted the marks at par with a sports person who has won merely one such medal. According to him, it amounts to hostile discrimination as unequals cannot be treated as equals.

(55) Shri Rakesh Dwivedi, learned Senior Counsel representing the State of Punjab, led the attack on behalf of the Respondents. In addition to his submissions that :—

- (i) PIL is not maintainable in service matters : he argued that ;
- (ii) the unsuccessful candidates cannot question composition of the Selection Committee and/or the criteria laid down by it as they themselves took a chance for their selection;
- (iii) in none of the Writ Petitions, validity of the Notification dated January 23, 2004 was under challenge which the Court cannot examine *suo-motu*;
- (iv) there is no material and/or averments in relation to violation of Articles 14 and 16 of the Constitution;
- (v) non-compliance of the Punjab Police Service Rules, 1959 is legally misconceived as rule 6 thereof stood relaxed by the Council of Ministers for which the State Govt. is competent to do so under rule 14 of these Rules;
- (vi) the Notification dated 23rd January, 2004 is well protected by Section 2 of the Police Act, 1870 ;
- (vii) the allegation of treating unequals as equals is legally misconceived ;
- (viii) no material irregularity has been committed by the non publication of the advertisement in newspapers having all India circulation ;
- (ix) two Respondents, namely, Respondents No. 9 and 10, whose eligibility is being attacked on the ground that they played in the category of sub-junior only and thus were not outstanding sports persons, is factually incorrect ;
- (x) the selection criteria fixed by the Selection Committee is fair, reasonable and transparent ;
- (xi) there is nothing per-se illegal in non-allocation of marks for higher academic qualifications ;
- (xii) the criteria was not laid down by the Selection Committee after the start of selection process; “sports persons” includes ex-sports persons ;

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- (xiii) interview was not farce ;
 - (xiv) there was no ban on recruitment as the Cabinet took decision to create 431 ex-cadre posts in the Police Department as subsequent to the decision taken by the Cabinet sub-committee regarding imposition of ban ;
 - (xv) there was no legal obligation to involve a sports expert as member of the Selection Committee ;
 - (xvi) in response to the Court questions, it can be demonstrated that the Notification dated 23rd January, 2004 is in consonance with the decision taken by the Council of Ministers and that some of the questions raised by the Court are beyond the pleadings of the parties.

(55-A) Reliance was placed by Shri Dweivedi upon the judgment of the Apex Court in **Ran Singh Malick v. State of Haryana (19)**, to contend that there is no fetter on the powers of the State Government to create ex-cadre post and that going by the normal connotation "a cadre would ordinarily mean the strength of a Service or a part of the Service so determined by the Government, constituting the post therein."

He also referred to the judgment of the Apex Court in **O.P. Singla and another versus Union of India and another (20)**. In support of his contention that normally an ex-cadre post means a post outside that cadre or post comprised in a Service. It would be anomalous to treat the post in the Service as an ex-cadre post merely for the reason that the post is temporary. Therefore, all posts in the service, whether permanent or temporary, are generally regarded as cadre posts."

(55-b). Shri Dwivedi then relied upon a judgement of the Hon'ble Supreme Court in **Sandeep Brar and another versus State of Punjab (21)**, to emphasize that it is the function of the Executive to lay down procedure for admission to reserved categories "and not a function of the High Court in directing that different procedure than the one notified by the State Government be followed while making such admissions."

(19) 2002 (3) S.C.C. 182

(20) 1984 (4) S.C.C. 450

(21) AIR 1983 S.C. 1313

In support of validation of the notification dated 23rd January, 2004 (Annexure R-1), Shri Dwivedi has relied upon the judgment of the Hon'ble Surpeme Court in the case of **State of Andhara Pradesh versus K. Jayaraman and others (22)**, to say that in the absence of an averment on behalf of the petitioners that the aforementioned notification is violative of Articles 14 and 16 of the Constitution of India, this Court suo motu cannot go into its validity.

He then referred to yet another judgment of the Apex Court in **Bank of Baroda versus Rednam Nagachaya Devi (23)**, to submit that there is a presumption of constitutionality attached with the notification dated 23rd January, 2004 (Annexure R-1) and the burden to prove contrary lies upon the petitioners who are required to raise specific pleas and grounds and to prove that the same violates Article 14 or 16 of the Constitution of India and that in the absence of specific pleadings, the Court cannot suo motu proceed to decide the question of violation merely because general importance of the question had not received proper consideration.

(55-c) Refuting the allegation of treating unequals as equals, Shri Dwivedi on the strength of judgment of the Apex Court in **Reserve Bank of India versus Peerless General Finance and Investment Company Ltd. (24)**, argued that "equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rationale relation to the object intended to be achieved by the law."

He also relied upon the judgment of the Hon'ble Supreme Court of India in **State of Kerala versus Kumari T.P. Roshana and another (25)**, to submit that "every inconsequential differentiation between the two things does not constitute a vice of discrimination, if law clubs them together ignoring venial variances. Article 14 is not a voodoo which visits with invalidation every executive or legislative fusion of things or categories whether there are no pronounced inequalities. Mathematical equality is not a touchstone of constitutionality.

(22) 1974 (2) S.C.C. 738

(23) 1989 (4) S.C.C. 470

(24) 1996 (1) S.C.C. 642

(25) 1979 (1) S.C.C. 572

(55-d) Justifying the selection criteria and the making system adopted by the Selection Committee, Shri Dwivedi referred to the judgment of the Apex Court in **Kiran Gupta versus State of U.P. (26)**, wherein their Lordships held that "there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends upon several factors and the question of permissible percentage of marks for an interview test has to be decided on the facts of each case. xxx xxx xx where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions, the question of higher percentage of marks for interview does not arise."

In this regard, reference was also made to the Apex Court judgment in **Lila Dhar versus State of Rajasthan (27)**, as well as in **R. Chiterlekha and another versus State of Mysore (28)**.

(55-e) While taking the plea of estoppel against the writ petitioners who applied and appeared for interview and thus took a chance for their selection, Shri Dwivedi has placed reliance upon the Apex Court judgment in **Chander Prakash Tiwari and others versus Shakuntala Shukla and others (29)**, wherein their Lordships held as follows :—

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

35. In that view of the matter, while we are not in a position to record our concurrence with the applicability of the doctrine of estoppel by conduct, by reason of the decisions as cited from the Bar, we do feel it required to lend our concurrence to the submissions of Dr. Dhavan, on that score as noticed above."

(26) 2000 (7) S.C.C. 719

(27) 1981 (4) S.C.C. 159

(28) 1964 (6) S.C.R. 368

(29) 2002 (6) S.C.C. 127

(56) Supporting the arguments put forward by Shri Rakesh Dwivedi, Shri Rajiv Atma Ram, learned Senior Counsel representing one of the selected candidates has contended as follows :—

- (i) even if the appointment is against a ex-cadre post, the incumbent can become member of the cadre ;
- (ii) Article 16 of the Constitution is couched in negative language, therefore, while it prohibits certain things, it need not be interpreted as if it imposed any positive obligation upon the State ;
- (iii) the appointing authority is well within its right to delegate its powers upon a Departmental Selection Committee to frame the criteria ;
- (iv) once all the candidates were “outstanding sports persons”, the Selection Committee was required to merely assess their suitability ;
- (v) since it was a case of selection by way of interview only and there was no written test, there was no obligation on the Selection Committee to restrict the marks for interview/ viva voce not beyond 12.5% as laid down by the Apex Court ;
- (vi) there is nothing wrong with the criteria merely because marks for post-graduate qualifications have not been provided ;
- (vii) Respondent No. 10 - Gulzar Inder Singh Chahal had actually played Cricket.

(56-a) Shri Rajiv Atma Ram, learned Senior Counsel, further relied upon a Full Bench judgment of this Court in **Daljit Singh Minhas and another versus State of Punjab and another (30)**, to contend “that the State being competent to choose source of recruitment and there is nothing like mandatory requirement of a public advertisement in press for direct recruitment, there is no violation of Article 16 of the Constitution in the case in hand.

He also relied upon **Uma Shanker Sharma versus Union of India (31)** to contend "that mere inclusion in a sports team was taken as sufficient compliance of the eligibility condition for recruitment even if such player had not actually participated in the game.

(56-b) Shri Rajiv Atma Ram also referred to the judgment of Apex Court in (i) **Pragya Kumar versus Chief Justice of Calcutta High Court (32)**, and (ii) a Division Bench judgment of this Court in **Amar Singh and another versus State of Punjab (33)**, to contend "that the appointing authority was competent to delegate its powers in relation to framing of the selection criteria to the departmental selection committee." Reliance was also placed upon the Apex Court judgment in **Anzar Ahmed versus State of Bihar (34)**, in support of the contention that where the selection is to be made only by way of interview and there is no written test, there can be no restriction on the marks kept for viva voce test.

(57) Shri G.K. Chatrath, learned Senior Counsel representing Respondent No. 4 came up with the following submissions :—

- (i) the executive is competent to exclude certain posts from the ambit of Article 320 of the Constitution and for that purpose the Punjab Govt. has already framed the Punjab Public Service Commission (Limitation of Functions) Regulations, 1955 ;
- (ii) there is nothing illegal in the constitution of the Departmental Selection Committee which has been constituted by designation and not by name.

(58) Sarvshri Ashok Aggarwal and P.S. Patwalia, learned Senior Counsel, representing Respondents No. 7 and 9, respectively, have also taken some what similar pleas and have further added that the power to create posts is well within the domain of the State and in the absence of any grievance made by any candidate that he could not apply on account of short period, this Court would not like to

(31) AIR 1980 S.C. 1457

(32) AIR 1956 S.C. 285

(33) 1983 (3) S.L.R. 264

(34) JT 1993 (6) S.C. 168

venture into this academic issue and that the recruitments were for the post of DSPs in Police Department, therefore an expert was required from the Police Department only and the DGP, Punjab, himself being the member of the Selection Committee, was the best person to assess their suitability in this regard.

(59) Dr. Balram Gupta, learned Senior Counsel representing Respondent No. 8 and Shri Toor, the learned counsel appearing for Major R.S. Ahluwalia have also adopted a somewhat similar line of action and have attempted to demonstrate that there is “no element of arbitrariness in the criteria” laid down by the Selection Committee. Same are the arguments raised by Shri Deol, learned counsel representing Respondent No. 5.

(60) According to the notification dated 23rd January, 2004, reproduced above, an “outstanding sports person” means a person who has participated in the Olympics, World Cups, Common-wealth, Asian SARC and SAF Games, Similarly, a person who has won any medal (Gold, Silver or Bronze) in senior or junior international or national championships in individual or team events, is also an outstanding sports person. It would, thus, emerge that a person who has participated in Olympics and the other who has won a Bronze medal in any national junior championships, both are outstanding sports person. The definition has been cleverly in such a guarded language that participation in a junior national championship and winning stray medal therein keeps you within the elite class of “outstanding sports persons”, no matter that for years together you had nothing to do with any kind of sports activity. Strangely, a singular event, even with a total lack of aptitude for any kind of sports activities, keeps one at par eligible to fall within the category of outstanding sports person. In our view, in the absence of further guidelines or restrictions, which are completely absent from the notification dated 23rd January, 2004, the criteria and/or deifinition of outstanding sports person is capable of absolute misuse, can lead to disastrous results and can be successfully used as a tool to side-line and hence humiliate and insult the genuine sports persons instead of promoting their cause. The later part of this judgment demonstrates this conclusion of ours. Normally, it is for the subject experts to lay down the guidelines and/or parametres to determine the standards in relation to their subject matter. It is obviously for the sports experts to venture into and find out as to

whether winning of a medal in a junior national championship or participation in Olympics/World Cups can by any means be treated at par or not. However, going by the prudence of even a common person who has been have no doubt in our mind that winning of a medal in a junior national championship is not equivalent even to a degree with the standards of a sports person who has been selected for participation in the Olympics. Needless to say that even getting selected for competing in Olympics means that the sports person is capable of reaching somewhere near to the existing world record of that event and is thus a potential candidate to win a medal in Olympics. These are certainly not the parametres when young and budding players are selected for participation in the national level championship so as to groom them as the sports persons of outstanding merit who can bring laurels to the nation. The national championships are, in fact, the nurseries for nurturing the sports persons of extraordinary talent and capabilities who can boast of achieving milestones in Olympics. Bringing parity between them is a crude attempt to equate unequals.

(61) The word "outstanding" as defined in world Book Dictionary means, "standing out from others", "well known", "prominent". As per the Oxford Advanced Dictionary, it means "in a position to be ordinarily noticed", "attracting notice". It thus, depicts something which is extraordinarily distinguishable from others. The word "outstanding", therefore, insists upon a compulsory distinction between a "sports person" and an "outstanding sports person". In terms of superiority, there can be nothing beyond outstanding, namely, the best. At the cost of repetition, we may again refer to memo No. SR-8/93/A-8/23482 dated 15th October, 2003 of the Punjab Public Service Commission addressed to the Home Secretary of the State Govt. conveying that the criteria laid down for the outstanding sports persons was "vague, not well defined and that the same is prone to indistriminate use and gives a lot of discretion and unlimited and unchecked powers to the enforcing authority and that the laid down guidelines do not meet the requisite conditions for fair selections."

(62) The proceedings of the DSC in its meeting held on 13th February, 2004 reveal that the Committee itself acknowledged the fact that even though Rule 6 of the Punjab Police Services Rules, 1959 stood relaxed *vide* Govt. Notification dated 23rd January, 2004, the

qualificaitons as laid down in rule 7 thereof were required to be adhered to. In our view, some of the provisions contained in these Rules will have a direct bearing on the issue involved in this case, particularly, Rules 2(a)(b)(f), 3, 6, 7 and 14, which are reproduced as follows :—

“2.(a) “Commission” means the Punjab Public Service Commission;

(b) “direct appointment” means an appointment made otherwise than by promotion of an Inspector;

(f) “Service” means the Punjab Police service.

3. Number and character of posts—The service shall comprises of the posts specified in Appendix ‘A’ to these rules; Provided that nothing in these rules shall affect the right of Government to make additions to or reduction in the number of such posts, whether permanently or temporarily.

6. Method of recruitment—Recruitment to the service shall be made :—

(i) Eighty per cent by promotin from the rank of Inspectors and twenty per cent by direct appointment :

Provided that.....

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(2) Appointments by promotion shall be made by the Government from Inspectors brought on list ‘G’.....

(3) Direct appointment to the Service shall be made on the result of a competitive examination conducted by the Commission. The syllabus and rules relating to the examination will be framed by the Government in consultation with the Commission. The examination will include a viva voce test. Only those candidates will be interviewed for the viva voce test who obtain not less

than the minimum qualifying marks fixed by the Commission in the written examination. The Inspector General of Police, Punjab will be present at the interview and will be entitled to put questions to the candidate and to express his views to the Commission. A candidate position shall be determined by the marks obtained by him in the written examination and in viva voce test.

Provided that other things being equal, preference will be given to a candidate who has worked for the cause of national independence or has rendered some outstanding social or public service.

7. Qualifications—(1) No person shall be recruited to the Service by direct appointment unless :

- (i) He is no less than twenty one years and not more than twenty eight years of age of the first of February of the year in which appointment is to be made.
- (ii) He produces a certificate of physical fitness as prescribed by rule 3.1 of the Punjab Civil Services Rules, Volume-I, Part-I.
- (iii) He has a minimum height of 5'-7" and normal chest measurement of 33" with expansion of 1-1/2".
- (iv) He is a graduate of a recognised University and possess knowledge of both Hindi and Punjabi up to the Matriculation or its equivalent standard ;

Provided that the upper age limit prescribed in.....

Provided further that the physical standard.....

(2) No male candidate who has more than one wife.....

Provided that.....

- (3) (i) The Government shall notify to the Commission the number of vacancies to be filled by direct appointment during the year and the Commission will proceed to give publicity to the proposed appointments and invite applications. If applications are invited before the results

of the University Examinations have been notified candidates appearing, or who have appeared in the Bachelor of Arts or equivalent examination, will be allowed to submit provisional applications.

- (ii) The applications received will be referred for scrutiny to the Inspector General of Police, who may make such enquiries as he may think fit and shall thereafter return all the applications with his remarks, if any, to the Commission.
- (iii) The Commission will scrutinize all applications received and admit to the examination mentioned in sub-rule (3) of rule 6 all those candidates who are found to be eligible in accordance with these rules.
- (iv) Success in the examination will confer no right on any candidate to appointment. Unless Government is satisfied, after such enquiry as may be considered necessary, the candidate is suitable in all aspects for appointment to the Service.

14. General powers to relax rules.—Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons

(63). This takes us to the criteria laid down and purported to have been followed by the DSC while making the impugned selections for the seven posts of DSPs. The Committee was aware and conscious that “since the recruitment was being done to encourage sports and sports persons”, it, therefore, decided that at least 50% of the total marks should be awarded in favour of candidates, sports performance; 20% be kept for educational qualifications and 30% for general knowledge and personality. The Selection Committee further decided that since the definition of outstanding sports person given in the gazette notification dated January 23, 2004 “included various types of events, more weightage be given to the higher levels of a competition as compared to the lower levels.” It also decided “to give graded marks for educational achievements keeping in view the basic qualification

required according to the rules". The Selection Committee, accordingly, laid down the following criteria :—

(A) SPORTS ACHIEVEMENTS — 25 Marks

	Gold	Silver	Bronze	Participation
Olympics	25	22	19	15
Asian Games/Common	15	14	13	12
Wealth/World Cup				
SAF/SAARC & Others	12	11	10	09
National	09	08	07	

(B) EDUCATIONAL QUALIFICATIONS — 10 Marks

	1st Div.	2nd Dev.	3rd Div.
	10	07	05

(C) GENERAL KNOWLEDGE/PERSONALITY— 15 Marks

(64) On throwing a cursory glance over the above reproduced criteria, one finds apparently nothing objectionable on the assumption that the Selection Committee laid more emphasis on the sports achievements of the candidates, apart from giving due weightage to the educational achievements as well. However, a deep dive into the criteria unfolds the rule of mischief, enabling the Selection Committee to act with as much discretion as it wanted. The criteria consists of a total 50 marks, out of which 50% namely, 25 marks are earmarked for sports achievements. These 25 marks have been further segregated for various types for events. The maximum 25 marks are admissible only to that candidate who has secured a gold medal in the Olympics. How can that the Selection Committee consisting of highly responsible and senior functionaries of the State Government including the Secretary Sports be so naive as to show ignorance to the fact that ours is one of those unfortunate countries where after the 1980 Olympics, none, upto the age of 28 years as on February 1, 2004, namely, the maximum age limit prescribed for the selection in question, and/or otherwise, has won gold medal in Olympics ? So, there could be none to whom the Selection Committee could award 25 maximum marks

earmarked for sports achievements. Similarly, 22 marks were to be awarded to that sports person only who had won Silver medal in the Olympics. Obviously, no one was eligible within the prescribed age group who could have secured 22 marks so far as sports achievements are concerned. The same fate awaited a candidate expected to apply and secure 19 marks in sports achievements on the basis of a Bronze medal won by him in the Olympics. We may add here that this selection took place in the month of February, 2004 and by that time Major Rajyavardhan Rathore too had not achieved the rare fete of winning a Silver medal in the Olympics, 2004. That apart, it is a matter of common knowledge that no sports person in the country has ever won a Gold, Silver and/or Bronze medal in an individual event in the Olympics till Major Rathore restored the country's honour in the recent Olympics by winning the coveted Silver Medal. There could, however, undoubtedly be some candidates who might have "participated" in the Olympics and on this basis could claim the award of 15 marks in sports achievements. In the immediate next event, namely, Asian/Common-wealth/World Cup, the maximum marks allotted even for a Gold medals are only 15 whereas a Silver medalist, a Bronze medalist and a participant could be awarded 14, 13 and 13 marks respectively. Thus, acutally and effectually the marks allotted for the sports achievements were projected to be 25, in a totally farce and misleading manner.

(64-a). Coming to the award of 10 marks for educational qualifications, the criteria apparently suggests that a First Divisioner would get 10 marks. Second Divisioner 7 Marks and a Third Divisioner 5 marks. We may repeat here that the Selection Committee had decided "to give graded marks for **educational achievements** keeping in view the basis qualification required according to the rules". The word "rules" refers to the Punjab Police Service Rules, 1959. Rule 7 thereof perscribes qualifications for recruitment to the post of DSP and according to sub-rule (i) thereof a candidate is required to possess minimum educational qualification of graduation of a recognised University. In other words, unless one is a graduate, one is ineligible for recruitment to the service. Graduation being the minimum qualification, it would normally be expected that the marks earmarked for the "educational achievements" are to be awarded for the higher and/or superior qualifications over and above the minimum qualifications. However, the proceedings of the Selection Committee

produced before us tell a different story. While some of the candidates (selected or unselected) have been awarded marks for their higher qualifications, most of the candidates have been denied such marks. Importantly, all the candidates have been given marks for the minimum qualification of Graduation only, namely, a first class graduate has been given 10 marks, second class graduate 7 marks and third class graduate 5 marks. We fail to understand the object and/or any rationale behind award of marks for the minimum qualifications. Selection criteria is meant to determine "merit" of the candidates whereas minimum eligibility qualifications bring them within the zone of consideration. If they do not possess the minimum qualifications, they cannot be considered for the selection. This tailor-made criteria, however, appears to have been enforced like a rule of thumb apparently to give undue advantage to some candidates and/or to further minimise the role of "sports achievements" in overall merits.

(65) The manner in which the interview appears to have been conducted and the way marks were awarded to the candidates, appears to be nothing less than a blot and an eye opener as to how prime posts can be offered on a platter to those who matter by the powers that be. In all, 22 candidates appear to have been interviewed by the Selection Committee. The candidate at Serial No. 1 (Hitraj Singh) possesses academic qualification of B.A. (2nd division) and MBA (first division). In the column of sports achievements, it is stated that he participated in Asian Championship (Cycling). He has been awarded only 7 marks for educational qualifications and 9 marks in sports achievements. Obviously, no mark has been given to him for the post-graduate qualification of MBA with first division nor the 12 marks meant for participation in Asian/Common-wealth/World Cup are awarded to him. His personality and general knowledge has been assessed as "very poor/poor" by giving 5 marks and thus has been awarded total 21 marks. Had there been fair assessment by the Selection Committee, he ought to have been granted 10 marks (academic qualifications) + 12 marks (sports achievements) + 5 marks (GK/personality) = total 27 marks. The candidate at Serial No. 2 (Pardeep Singh Sandhu) too has been awarded 9 marks for sports achievements though he too is stated to have participated at the International level in Asian Championship (Cycling). At Serial No. 3 is one of the alleged "blue eyed boys" Gulzar Inder Singh Chahal, who, as per the interview sheet, did not produce any international certificate in sports

achievements yet has been awarded 12 marks as according to the Selection Committee, “he represented India in Lombard Cup Cricket Tournament in which 12 Cricket playing countries participated and the Indian team had won the cup”. The Selection Committee further declares that “since the Lombard cup is an international tournament, it should be equated with the SAF and SARC games which were also limited international competitions and that since India won the tournament, the team members may be considered to have won a gold in a limited international event.” The magnanimity of the Selection Committee for this candidate can be further seen by its remarks that “currently sports activities slow down by higher studies/injuries”. We may add here that the aforesaid alleged tournament was played by Gulzar Inder Singh Chahal in the year 1996 as a school student and thereafter his sports talent appears to have eclipsed. With the aid and assistance of his “very good GK” plus a bonanza of 10 marks, for being a graduate with **First Division**, has been given total 29 marks. The candidate at Serial No. 4, namely, Bikram Inder Singh Chahal, a very high profile, who has been categorised as an “outstanding sports person” because in schools he appears to have won bronze medal in a junior national championship. Since his “GK is very good” and he too has a **first division** in B.Com., the Selection Committee has awarded him total 25 marks. The criteria of “outstanding sports person” has been dealt with such arbitrariness that Gulzar Inder Singh Chahal, Serial No. 3, referred to above, has been able to secure 12 marks for sports achievement whereas Palwinder Singh Cheema (Serial No. 5) who is an Arjuna awardee, undoubtedly gold medalist in Commonwealth Games, Bronze medalist in Asian Games and was one of the hopes for the recently concluded Olympics to fetch a medal for India in wrestling, has been awarded only 15 marks in the sports achievements though he is lucky enough that his name finds mention in the final selection list. Candidate at Serial No. 7, Ravdip Singh Atwal is B.A. with L.L.B., yet has been given 7 marks for the educational achievements and he is at par with one Vishavdev Singh (Serial No. 8) who is a graduate with second division. There appeared one more candidate who could truly and genuinely be treated a sports person, namely, Ajay Raj Singh (Serial No. 13) who, as a member of the team, participated in 4x100 metres relay in the Sydney Olympics 2000 and achieved 6th position. He is a gold medalist in the national games, a silver medalist in the junior national championships and also silver

medalist twice in the South Asian Championships. The Committee had no discretion but to award him 15 marks for sports achievements. He is a graduate with third division, was given 5 marks for educational achievements. His personality did not favour with the Selection Committee and was judged as "very poor" with "poor GK" of such a level that he has been awarded 3 marks out of 15 meant for GK/personality test. Still he could secure only 23 marks though the last candidate selected has secured 24 marks. There is one candidate Aman Avasthi (Serial No. 19) who makes out a very interesting case. He is B.A. with third division but M.Sc. with 1st Class, yet he has been awarded 5 marks for educational achievements, 7 marks he got for sports achievements whereas due to "very poor personality" and "poor GK", he got 5 marks out of 15. Yet another candidate, Gagan Inder Singh (Serial No. 21), apparently an influential one supposed to have played in Lombard cup cricket tournament in the year 1996 which the Selection Committee took great pains to equate the same with SAF and SARC Games and then to treat him as the one who have won a gold medal in the international field. On the basis of his "very good GK", he got 8 marks out of 15, taking his total tally to 27. Needless to say that he is another "outstanding sports person" who had nothing to add to his distinguish sports career" after the afore-mentioned tournament. There is yet another candidate Major R. S. Ahluwalia (retd.)(Serial No. 22) whose candidature was rejected on 13th February, 2004 on the ground that he is over-age but after entertaining some representation made by him, he was not only found eligible on 17th February, 2004 but on the basis of the two gold medals won by him in national championship of Equestrian and with the assistance of his very good GK and personality, he too could secure 24 marks, the slot fixed for the last selected candidate.

(66) In the backdrop in which the selections have taken place, it needs a special mention here that out of the 7 selected candidates, only 2 candidates, namely Palwinder Singh Cheema and Manavjit Sandhu are credited with winning one or the other Asian/Common-wealth championships, participation in the Olympics including Athens Olympics-2004 and are fully devoted sports persons who have brought laurels to the nation. Without mincing words, we say that rest of the "outstanding sports persons" are mere part-timer without any contribution to the sports through which they want to cling to prime posts.

(67) During the course of hearing, a repeated request was made on behalf of some of the unsuccessful candidates that primarily it was the Sports Department, Government of Punjab, which expressed its concern and initiated steps to see that 337 sports persons recruited in different ranks in Punjab Police were not adversely affected while implementing the directions issued by this Court,—*vide* order dated April 21, 1998 in CWP No. 13788 of 1997 and that the decision taken by the Council of Ministers regarding adjustments of these sports persons too had actually originated from the Sports Department only, the functionaries of which, however, refused to become party to the latter exercise carried out in the Home Department for making back door entries to 7 posts of DSPs and that there was a strong dissension in the Sports Department for the reasons valid in law and with a view to facilitate the adjudication of the controversy in hand, the records of the Sports Department be summoned. Since, while issuing notice in these Writ Petitions, this Court had categorically directed that the “entire records” in relation to the selection and appointments of DSPs shall be kept in sealed cover and will remain in the custody of the Advocate General, Punjab, initially we had no reasons to doubt that the “entire records” would obviously include the records of the Sports Department as well. However, when the records were produced and unsealed in our presence, we found that the records of the Sports Department were not there. We also noticed a great reluctance on the part of the learned Senior Counsel representing the State of Punjab to produce these records, a detailed reference to which has been made in separate proceedings. It may, however be mentioned that after adopting one or the other delaying tactics, reluctance and/or lame excuses, some of the records of the Sports Department were produced before us. We have perused the same and have found that the Sports Department initiated the proposal in relation to the adjustment of 337 sports persons serving in the Police Department and that too in such a manner that they do not lose their seniority, pay, etc. The authorities in the Sports Department have been actively associated by the Home Department in carrying out the entire exercise inasmuch as even in the Departmental Selection Committee constituted for scrutinising and recommending the names of the candidates for appointment to the post of DSPs as also the Selection Committee constituted to scrutinise the names of the candidates for recruitment to the non-gazetted posts, which are incorporated in the Notification dated January 23, 2004, also included the Secretary, Sports Department and Director, Sports respectively as Members of the aforesaid Selection Committees.

(68). The original record of the Sports Department reveals that in one of the meetings, there prevailed disagreement amongst the authorities of the Police Department on one hand and the Secretary, Youth Welfare and Sports on the other hand, more so in relation to the fresh recruitments to the posts of DSPs. This led the Minister In-charge, Sports and Youth Welfare to put certain queries in his official note dated February 17, 2004. While we do not intend to reproduce all the queries, some of them which have a direct bearing on the merits of this case, were like :—

- (i) How many posts are going to be filled under this exercise ?
- (ii) Are we giving sufficient prescribed time for holding interview ?
- (iii) Can we appoint these DSPs direct or through PPSC ?
- (iv) What are the rules, regulations and precedents, etc. ?
- (v) How these posts have been taken out of the purview of the PPSC ?

(69) Pursuant to these queries, the Sports Department prepared a self-explanatory note which clearly indicates that the selection criteria laid down by the Departmental Selection Committee to which a detailed reference has already been made by us, was disapproved by the Sports Department. It also appears that the criteria for “outstanding sports persons” was also contrary to the viewpoint of the Sports Department. This further led the Minister In-charge, Sports Department to send yet another self-explanatory note to the Chief Minister, Punjab on February 21, 2004 in which, the Sports Department, in its own perspective, unhasitatingly expressed anguish at the manner in which DSPs were being recruited by the Home Department and stated that it was flouting the decision taken by the Council of Ministers, and expressed his sincere concern by advising that “this interview process be stopped and recruitment be made through the proper procedure or through the PPSC and after giving sufficient and due notice. Only those sports persons (at best 2 or 3) who could bring laurels to the country in international arena and who are continuing with their sports activities can be appointed as per rules”. The note further says that the manner in which selections were being made “would affect the morale of the

real sportsmen and youth of Punjab and also tarnish the image of the Punjab Government.....” and that “on the one hand we created posts for sports persons yet they are reverted. They are losing their seniority. On the other hand, we are trying to recruit people as DSPs whose sports credentials are doubtful, contrary to the spirit of the memorandum approved by the COM.”

(70) The viewpoint expressed by the Minister In-charge, sports Department, referred to above, however, was not agreed to by the Chief Minister as, according to him, the selection is to be done by the Home Department and that the reversion of sports persons recruited in Police Department has been taken care of and rest of the persons were recruited against “only the created ex-cadre posts.”

After going through the afore-mentioned record produced from the Sports Department, we are satisfied that only incomplete record, on selective basis, has been produced before us.

(71) The Government of Punjab in exercise of its powers under proviso to Article 309 of the Constitution of India has framed the Punjab Recruitment of Sportsmen Rules, 1988. Rule 2(d) of these rules defines “sportsman” whereas rule 3 provides that 3% of the vacancies to be filled in by direct recruitment in all the State Civil Services and posts connected with the affairs of the Punjab State shall be reserved for being filled in by recruitment of sportsmen, however, subject to certain conditions incorporated in the proviso to the aforesaid rule. Rule 4 mandates that no person shall be eligible for recruitment to a reserved vacancy of sportsman unless he possesses the minimum educational qualifications and experience, if any, prescribed by the Government for recruitment to such vacancy in the concerned service rules. For the purpose of these cases, the definition of “sportsman” defined in rule 2(d) being quite relevant, the same is reproduced below :—

“(d) “Sportsman” means a person of either sex who fulfils the following conditions, namely :—

(a) in the case of recruitment to a reserved vacancy in Class-I or Class-II posts :—

(i) that he belongs to the State of Punjab ; and

(ii) that he has won national championship in team or individual events while representing the State of Punjab in such sports events as have been conducted by such respective national federations as are affiliated to the Indian Olympic Association ;

(i) that he has won national championship in team or individual events which are organised by the Indian Olympic Association ;

or

(ii) that he has won first, second or third position in team or individual events and/or he has won Gold or Silver or Bronze Medals at International Sports meets, conducted by International Federations affiliated to the International Olympic Committee itself ;

(b) In the case of recruitment to reserved vacancy in Class-III posts :—

(i) that he belongs to the State of Punjab ; and

(ii) that he has won first, second or third position in team or individual events while representing the State of Punjab in the State Level Championship in any of the discipline affiliated to the Punjab Olympic Association organised by the State Level Federation. In case of Non-Olympic discipline as such as Cricket and Tennis, a winner should have attended any of the first three positions in a State Level Association affiliated to the concerned National Federation.

(c) In the case of recruitment to reserved vacancy in Class IV post :—

(i) that he belongs to the State of Punjab ; and

(ii) that he has attained the first, second or third position in a District Level Championship organised by the concerned District Level Association affiliated to the State Level Association in the respective discipline.

(72) It is patently clear from the above reproduced definition of “sportsman” that for recruitment to a vacancy in Class I or II posts (like DSP), a person shall be treated as eligible “sportsman” if “he has won championship in team or individual events while representing the State of Punjab.....” or “he has won national championship in team or individual events organised by the Indian Olympic Association” or “he has won first, second or third position in team or individual events and/or has won gold or silver or bronze medals at international sports meet conducted by International Federation affiliated to International Olympic Committee or by the International Olympic Committee itself”. Interestingly, on a mere participation in international sports events like Olympic does not make a person as eligible “sportsman” under the 1988 Rules but he has been made an “outstanding sports person” in the definition incorporated in the Notification dated January 23, 2004. In the general parlance, an, “outstanding sports person” should definitely have a superior and better achievements in comparison to a “sportsman”.

(73) At this stage, we may also mention that in our order dated May 17, 2004, we had directed the Government of Punjab to inform us about the total cadre strength of DSPs, the percentage of reservation provided for sportsmen in Class I and II services and as to how many sports persons have been recruited in the cadre of DSPs. In terms of these directions, a supplementary affidavit dated May 24, 2004 was filed by the Principal Secretary, Home, Government of Punjab informing that the total cadre strength of DSPs is 357 and that in terms of the Punjab Recruitment of Sportsmen Rules, 1988, referred to above, 3% reservation to the sports persons has been allowed against direct recruitment quota posts. Since out of the 357 posts of DSPs, 20% are to be filled up by direct recruitment, as such there are 71 posts of DSPs in the direct recruitment quota out of which roster points No. 11, 43 and 71 are earmarked for the sports persons. The affidavit further mentions that against the reservation of 3% posts for sports persons, referred to above, actually 5 posts have been filled up by appointing the sports persons, namely Gurpreet Singh Gill, Charanjit Kumar, Pargat Singh, Gaganjit Singh and Sunita Rani and that the appointment was also offered to Harbhajan Singh,—*vide* order dated February 7, 2002 but he declined to join. There can be no dispute that the above named persons have contributed a lot in the field of sports and they have been recruited through the regular channel pursuant

to reservation provided for sports persons under the 1988 Rules framed by the State Government in exercise of its powers under proviso to Article 309 of the Constitution of India. The fact, however, remains that there was no deficiency in the quota of sports persons in the cadre of DSPs.

(74) After giving our thoughtful consideration to the rival submissions and after going through the pleadings as well as the records which the State of Punjab has chosen to produce before us, and in view of what has already been observed, the following substantial issues do arise for our consideration :—

1. Is the Notification dated January 23, 2004 (Annexure R-1) and pursuant thereto the recruitment of seven posts of DSPs through the Departmental Selection Committee is contrary to the decision taken by the Council of Ministers in their meeting held on October 17, 2003 ?
2. Assuming that the decision to fill up seven posts of DSPs could be inferred from the decision taken by the Council of Ministers, were not the official Respondents still obligated in law to fill up these posts in accordance with statutory service rules of 1959 and through the regular mode of recruitment only ?
3. Is the definition of “outstanding sports person” as incorporated in the Notification dated January 23, 2004 is arbitrary and capable of misuse to any extent ?
4. What is an “ex-cadre post” and its legal status vis-a-vis the “cadre post” ?
5. Does the impugned selection suffers from arbitrariness, the malady of pick and choose and is an outcome of colourable exercise of power ?
6. Can the criteria laid down by the Selection Committee be termed as fair and just in the light of the fact that it was laid down after scrutinizing the applications received by the Selection Committee ?
7. What could be the consequences in law if the recruitments, in question, are found to have been made despite their being a blanket ban imposed by the State of Punjab on direct recruitment. ?

(75) In relation to issue No. 1, referred to above, we have consciously and purposefully narrated the whole genesis which made the Notification dated 23rd January, 2004 to see the light of day and pursuant to which the impugned selections have been made. We have absolutely no doubt in our mind that the proposal to create certain ex-cadre posts for direct recruitment in different cadres of Punjab Police which originated from the Sports Department but was penned down in the office of the DGP, Punjab who forwarded the same to the State Govt., was solely meant for creating certain posts to adjust 337 sports persons who had been promoted to different ranks at different points of time but were liable to be reverted in compliance of the directions dated 21st April, 1998 issued by the High Court in CWP No. 13788 of 1997. The proposal as to how many posts were required to be created, put up by the Additional Secretary, Home and approved by the Chief Minister, Punjab for its further placement before the Council of Ministers, also discloses the sole purpose of creating these ex-cadre posts, namely, to adjust the sports persons of Police Department who stood threatened through the orders of reversion. There was not even a whisper, direct or indirect, what to talk of an express proposal ever put up before the Council of Ministers to relax the 1959 rules so as to make direct recruitments by the two Departmental Selection Committees in different ranks of the Police Department. The decision taken by the Council of Ministers in their meeting held on 17th October, 2003 also does not indicate that they, in their afore-mentioned meeting, discussed and decided an issue beyond the agenda item contained in the memorandum placed before them. We are, therefore, of the view that "approval in principle" given by the Council of Ministers to the proposal of the Department of Home Affairs and Justice dated 15th October, 2003 regarding the "amendment" of Punjab Police Service Rules, 1959 and the "creation of additional posts" was for the limited purpose of adjusting the sports persons of the Police Department who were likely to be reverted as their promotions were beyond the maximum quota of the prescribed 10% under rule 13.8(2) of the PPR. We have no hesitation to hold further that the constitution of a committee of Officers by the Council of Ministers under the Chief Secretary, Punjab "to give a final shape to the amendments" and their further authorisation to the Chief Minister, Punjab "to approve the amendments recommended by the Officers Committee" was exclusively and specifically meant for the "amendments" in 1959 Rules which the Officers Committee was required to give shape. This authorization

either to the Officers Committee or for that matter to the Chief Minister, Punjab cannot be assumed to be having authorised them to take a decision contrary to the decision already taken by the Council of Ministers. In our constitutional scheme, the Council of Ministers is responsible to aid and advice the Governor in exercise of his functions in relation to a State. It is the Council of Ministers only who is answerable to the Legislative Assembly in furtherance of the political responsibility cast upon it. The theory of collective responsibility makes each Minister vicariously responsible to the Legislative Assembly for the acts of other members of the Council of Ministers as well. True it is that the Chief Minister heads them and presides over the Council of Ministers, nevertheless the Council of Ministers neither becomes defunct nor its decisions are rendered unconstitutional even if the same have been taken in the absence of the Chief Minister. In the light of this constitutional position of the Council of Ministers viz. the Chief Minister, the scope of "delegation" as contained in the decision taken by the Council of Ministers on October 17, 2003 is for a limited purpose to ensure true and correct implementation of the decision taken by the Council of Ministers and not to supplant and/or flout the same. Thus, merely because the recommendations made by the Officers Committee in its meeting held on November 10, 2003 which we have reproduced in earlier part of this judgment, have been approved by the Chief Minister, Punjab, it does not improve the case of the Respondents as the recommendations made by the Officers Committee are on the face of it contrary to what the Council of Ministers had decided on Agenda No. 213 in their meeting held on October 17, 2003.

(76). The Notification dated January 23, 2004 (Annexure R-I), upon which a lot of reliance has been placed by Shri Dweivedi, learned Senior Counsel appearing for the State of Punjab, has undisputedly been issued in furtherance of the decision taken by the Officers Committee in their meeting dated November 10, 2003 which was approved by the Chief Minister, Punjab on November 24, 2003. We have already held that the Council of Ministers in their decision dated October 17, 2003 never authorised them for what the Officers Committee, with the approval of the Chief Minister, Punjab, did subsequently. The irresistible conclusion will be that the Notification dated January 23, 2004, to the extent it runs contrary to the decision of the Council of Ministers, too lacks competence, has been issued without any authority in law and is a fraud upon the powers of the Council of Ministers.

(77) Regarding issue No. 2 proposed above, since we have already held that the Council of Ministers never authorised to make direct recruitments through a Departmental Selection Committee against the seven posts of DSPs and it had merely authorized the Departmental Selection Committee to scrutinise and recommend the case of only those sports persons of Police Department who were facing reversions in different ranks on account of a previous judgment of the High Court, we are not required to adjudicate upon issue No. 2.

(78) However, in the Public Interest Litigation, since one of the submissions pertains to the existence of power and the manner in which it is to be exercised as well as the purity in public employment, we deem it appropriate to make a brief reference to the scheme of public employment envisaged by our Constitution. Article 16(1) guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. This provision has already been held to be one of the facets of Article 14 which strikes at the very root of arbitrariness. To achieve the goal of equality in public employment, which has been guaranteed as a fundamental right, Part XIV of our Constitution has devised a complete mechanism in chapters I and II thereof. Chapter I deals with the post appointment issues, namely, the conditions of service of persons serving the Union or a State, tenure of appointees and/or bar against dismissal or removal of an employee by an authority subordinate to his appointing authority or his dismissal, removal or reduction in rank except after an inquiry is held and giving a reasonable opportunity of being heard to him, except in certain circumstances which are contained in proviso to Article 311(2).

(79) Chapter-II of our Constitution deals with pre-appointment stage. Article 315 creates Public Service Commission for the Union and one such Commission for each State. Article 316 provides the manner in which the Chairman and the other Members of the Public Service Commission shall be appointed whereas Article 317 injects independence amongst members of a Public Service Commission by ensuring that they can be removed and/or suspended only in certain exceptional circumstances. The prohibition imposed on the holding of office by members of the Commission when they cease to be such members, is another salutary provision to keep the members of the Commission away from their post tenure allurements, the laudable

object being that the Commission functions independently without local or extraneous considerations. Article 320 casts a duty upon the Public Service Commission "to conduct exercise for appointment to the services" and "also to assist the States in framing and operating schemes for any service as well as a duty is cast upon the State" to consult a Public Service Commission on all matters relating to methods of recruitment to civil services and civil posts, on the principles to be followed in making appointments to civil services and posts including promotions, etc. It is true that the word "shall" contained in Article 320(3) has been read as "may" for want of consequences in the event of its defiance. This restricted scope, however, pertains to the matters of competing claims. The political and executive authorities of a State while acting as the trustees of the public offices are obligated not only to discharge their duties in a fair and transparent manner, but are also accountable to the people of the State for each one of their actions. If there exists a jumbo sized Public Service Commission and its Chairman/Members are being provided all the perks and facilities at the cost of the State exchequer and when they themselves have not shirked away from discharging their constitutional obligations, there shall lie a very heavy onus upon the functionaries of the State Government to explain and disclose those extraordinary circumstances which compelled them not to entrust a recruitment to the Public Service Commission and to take the same from its purview and thereafter get the same carried out through its own executive functionaries. On our repeated queries, the learned Senior counsel for the State could give no satisfactory explanation as to why requisition to fill up these seven posts was not sent to the Commission at first place? The half hearted explanation which came forth was that the recruitments were decided to be made in a time bound manner so as to "promote the cause of the sports persons" and it was felt expedient to get the same done through a Departmental Selection Committee as the Commission might have consumed a reasonably long period. We are afraid that this explanation hardly inspires any confidence. There is nothing on the record of the State Government to show that even a simple query was ever sent to the Commission as to how much period it will take in making the recruitments. There is also nothing on record to suggest that a "special drive" to promote the cause of sports persons would have been defeated had the recruitments been made through the Commission. Needless to say that under the 1959 Rules, recruitment to the Punjab Police Service i.e in the rank of D.S.P. is

otherwise required to be made through the Public Service Commission in terms of Rule 6(3) thereof. While there appears to be nothing more than conjectures and surmises which do not lay foundation for a firm finding, however, allegations were made that the Commission having disapproved the criterion of “outstanding sports persons”,—*vide* its communication dated 15th October, 2003, could not have selected those candidates for whom this entire exercise was undertaken. Unfortunately, the authorities in the State of Punjab made no concerted efforts to dispel this impression. The fact that the Principal Secretary to the Chief Minister was made Chairman of the Selection Committee, a son of another Officer from the staff associated with the Chief Minister was selected in a manner which has been already explained explicitly and is suggestive of a total pick and choose policy, castigates upon the independence and fairness of the Selection Committee, if not its *bona fides*.

(80) It further appears to us that the artificial panicky sort of situation was deliberately got created in the records of the State Government by making a repeated reference to the Court proceedings in **HC Kuldip Kumar’s** case to which we have already referred to above and explained that the same had nothing to do with the direct recruitment of the the D.S.Ps. However, under the garb of this self-imposed crisis, a feeble attempt to justify the constitution of the Departmental Selection Committee and/or the hurried manner adopted by it in concluding the selection process, is sought to be justified. In other words, the pending litigation has been used as a tool in the mask of *bona fides*. We, therefore, do not hesitate in holding that where there exists no emergent situation and/or an imminent public interest to give a go-by to a well established procedure and practice in relation to recruitment to public employment, the State cannot run away from its constitutional duty “to consult” the Public Service Commission and any deliberate, motivated or flagrant defiance thereof alone will be sufficient to attribute motives and to annul such an action. In our composite constitutional scheme, the exercise of power by one authority has to be exercised with mutual respect and in such a manner that it does not transgress or infringe upon the powers of any other authority. A State, therefore, cannot be permitted to flout, ignore or defy the constitutional mechanism of Public Service Commission which is an expert body for making recruitments and that too in such a manner that it renders the Commission defunct and/or erodes its credibility as an institution.

(81) In relation to issue No. 3, referred to above, we have already emphatically held that the criteria of "outstanding sports person" laid down in the Notification dated January 23, 2004 (Annexure R-1) is capable of complete misuse and can act as a tool in the hands of the selecting authority to eliminate the claims of a genuine sports person like in the case in hand, it has already diluted the very "object of selection." We have also held that the aforementioned criteria treats unequals as equals and in the absence of further guidelines, which are completely missing in the Notification aforementioned, it can be twisted to accommodate undeserving and less meritorious candidates in the context of sports achievements. The selections in the case in hand are a burning example of lack of prescribed guidelines and consequential misuse of this criteria which is suited for tailor made selections and subserve the unethical principle of "you show me the man, I will show you the rules". That apart, an outstanding sports person. should be way above than an ordinary sports person. They are neither "part-timers" nor out for "certificate hunting". They do not play games to boost their service prospects, playing is a passion for them, they eat, drink and sleep the game and ready to die for the game while serving its cause. The great sports persons, therefore, are not those who encash isolated opportunities and barge into the list of medal hunters. Their food-steps tell the stories of the toil they put in to achieve every mile-stone and the pick of their careers symbolises them as the living legends and torch-bearers for the younger generations. Their activities, thus, are neither isolated nor secluded and have strong knots with their past and future. Contrary to these legitimate expectations, the ones who have been rewarded here are Bikram Inderjit Singh Chahal and Gulzar Inder Singh Chahal (Respondents No. 9 and 10), whose only claim to sports achievements arena is to have played cricket championship at sub junior or junior level in the year 1996. With the aid of media hype, cricket has already stolen the show and marched into the streets of even the remote rural areas thereby over-shadowing other games. The cricket players, young or old, are known to everyone. We can only feel pity upon those who played cricket for years together and yet could not make the grade in the State or National team. On the other hand, Respondents No. 9 and 10, claim to have played Lombard Cup, namely, a sub-junior or junior championship, had nothing to add to their credentials in the field of cricket thereafter. If they were young

players of such a high calibre and had potential to be included in the National team of junior/sub-juniors, just where did their talent disappear immediately thereafter is not known. Nothing has been placed on record that B.C.C.I, who is a repository of power in relation to cricket at the national level, has ever recognised the "Lombard Cup" championship or ever selected and sent any junior team to participate. There is yet another selected candidate who had won bronze medal in a junior level national championship and has no event to his credit thereafter. It is difficult to believe that by selecting such candidates, the State of Punjab has achieved the avowed object of "promoting sports and sports persons". The definition/criteria of "outstanding sports person", is, therefore, not only vague, wild and uncertain, it leads towards arbitrary and unequitable results and hence, suffers from the vice of arbitrariness and cannot stand up to the test of Articles 14 and 16 of the Constitution.

(82) This takes us to question No. 4, namely, what is an ex-cadre post and where does it stand *vis-a-vis* a cadre post. "Cadre" is a well defined connotation in the service jurisprudence. Invariably, a service and/or posts created in relation to the affairs of the Union and/or States, are governed by either the legislative enactments or the Rules framed by the subordinate legislation in exercise of its powers under proviso to Article 309 of the Constitution of India. In the Acts/Rules, as the case may be, the 'service' and the 'posts' which are governed by such Acts/Rules are defined. Since the posts are created for running an efficient administration, namely, in public interest, the total strength of such posts is also invariably reflected in the Acts/Rules governing such posts. The strength of "service" or the posts, namely, a part of 'service', along with their identified nomenclature as well as the mode of their recruitment and/or eligibility conditions required to be possessed to man the same, are normally known as the "cadre posts". However, in the administrative exigencies and to meet urgent requirements and/or to deal with a situation having arisen due to unforeseen circumstances, sometimes posts are created which appear to be similar to some existing cadre posts either due to their deceptive nomenclature or in the nature of the duties attached to such posts, which are known as the "ex-cadre posts". Since these posts do not form a part of the total strength of posts governed under the Act/Rules, as the case may be, obviously these posts are not treated as cadre posts and are thus strictly not governed by the Act/Rules meant for the

cadre posts. Normally, an "ex-cadre post" is a deminishing cadre and once the incumbent goes, the post also stands abolished. It is for this precise reason that the incumbent of an "ex-cadre post" is always an outsider to the "cadre" and does not have any right either for fixation of *inter se* seniority in the cadre nor can claim pay scale, promotions and other incidental perks admissible to the incumbents of the cadre posts for the obvious reason that both are not governed by the same set of Act/Rules.

(83) The immediate question which arises for our consideration is as to whether the seven posts of D.S.Ps can be termed as "ex-cadre posts" ? During the course of hearing and on a specific query by the Bench, Shri Rakesh Dweivedi, learned Senior Counsel for the State of Punjab, on instructions, stated at the Bar that according to the State Government, the incumbents of these seven ex-cadre posts of D.S.Ps shall be entitled to be posted against the cadre posts of D.S.Ps, their seniority will also be fixed *vis-a-vis* the holders of the cadre posts of D.S.Ps strictly in accordance with the provisions of the Punjab Police Service Rules, 1959, their confirmation will also take place against the permanent cadre posts and after the completion of the prescribed length of service and as per their seniority, they shall also be entitled to be considered for promotion to I.P.S under the I.P.S (Appointment and Promotion) Regulations, 1954. In other words, Shri Dweivedi fairly conceded that the posts in question are "ex-cadre" only for the limited purpose of recruitment and once the recruitments have been made, the incumbents stand inducted into the mainstream cadre and that there is nothing illegal *per-se* in the afore-mentioned recourse adopted by the State. We, however, do not appreciate the stand taken by the State of Punjab and reject the same outrightly. If the contention of Shri Dweivedi is taken to its logical end, either it amounts to a back-door and fraudulent entry of the newly recruited D.S.Ps into the main cadre and/or it amounts to adding seven more posts to the total cadre strength. If these posts are in addition to the cadre strength, there can be no escape but to fill up 75% of the newly created posts by promotion and rest of the posts by direct recruitment through the Public Service Commission as per the 1959 Rules. The Respondents cannot be permitted to have the cake and eat it too. Once they opted to be appointed against the ex-cadre posts and if their appointments were held to be valid in law as well, there is no question of their intruding into the cadre of D.S.Ps or to man the cadre posts.

The Notification dated January 23, 2004 (Annexure R-1) is crystal clear that the newly created posts are temporary in nature and the same not having been created as permanent posts, the question of confirming these D.S.Ps, by usurping the permanent cadre posts of D.S.Ps, does not arise? In our view, the expression "ex-cadre" has been used as a cloak to induct the private respondents into the cadre of D.S.P to give legitimacy to the bye-pass method adopted in their recruitments. This is totally impermissible in law and is wholly unfair to the existing members of the cadre. We, accordingly, hold that the incumbents of "ex-cadre posts" have no right in law to man the cadre posts as a matter of right or for fixation of their seniority *vis-a-vis* the cadre officers and/or to place them in the pipeline for future promotions alongwith the incumbents of the cadre posts.

(84) In relation to issues No. 5 and 6, which we take together, namely, as to whether the impugned selections suffer from arbitrariness, pick and choose and are the result of colourable exercise of power due to an unfair and unjust criteria laid down by the Selection Committee, it is suffice to refer to our findings in relation to the criteria laid down by the Selection Committee which we have dealt with elaborately in this judgment. While laying down a tailor-made criteria, only 15 marks were actually kept for the sports achievements which were at par with the 15 marks kept by the Selection Committee to its absolute discretion under the head of "General knowledge and personality". We have further demonstrated that the marks for educational achievements too have been allocated for the basic qualification only with a pre-determined objective as that could be the best method to help Gulzar Inder Singh Chahal and Bikram Inderjit Singh Chahal, who incidentally happen to be first class graduates. The selection criteria as applied by the Selection Committee, has brought disasterous results as most of those who have been selected, possess everything except a worth referable achievement in sports. It is conclusive from the record, including the proceedings of the Selection Committee held on February 13, 2004, that the criteria for selection was laid down after the receipt of applications on the aforementioned date and after the candidates "had been deputed for the conduct of final examination and checking of their sports/educational qualifications before the Commandant, 82 Batallion, P.A.P, Chandigarh and the officials of the Sports/Home Department." The fact that out of seven selected candidates, only two

are really outstanding sports persons whereas the remaining five have been picked up for whatever reason other than their achievements in sports, speaks largely that the selections are not based upon fair, just, transparent and objective assessment of *inter se* merit in sports achievements. We are also of the view that principles in relation to recruitment through interviews only as laid down by the Apex Court in **Anzar Ahmed or Kiran Gupta's cases** (*supra*) cannot be strictly applied in a selection like this which is claimed to be "special drive" to "promote sports and sports persons". In such like cases, the tools devised to select the candidates must be in furtherance of the very object of selection. As a result of our aforementioned conclusion, the impugned selections, including those of two real sports persons of outstanding merit, for whom we can only express our sympathies but cannot segregate them, are directly in the teeth of Articles 14 and 16 of the Constitution, lack fairness and transparency and cannot sustain either in law or in equity.

(84-a) Regarding issue No. 7, it has been feverishly argued by Shri H. S. Mattewal, learned Senior counsel for one of the Petitioners as well as by Shri M. P. Goswami, learned counsel appearing in the PIL that there was a complete ban on creation of new posts and recruitment against thereto which was imposed by the Cabinet Sub-Committee on April 24, 2002 and which was reiterated by the State Government through various circulars including the one dated February 10, 2004 of the Chief Secretary to the Govt. of Punjab, therefore, neither the posts in question could be created nor the impugned recruitments could have been made. Since, while adjudicating upon issues No. 1 to 6, we have held that the impugned selections are without any authority in law, an outcome of discriminatory and arbitrary criteria and are marred by nepotism and favouritism, there is no necessity for us to go into this aspect of the matter.

(85) Before parting with this judgement, we may observe that reservation of certain posts exclusively for outstanding sports person with an intent to "promote" and "recognise" the sports activities and/ or achievements, is undisputedly a noble cause. In a country like ours having a population of over one hundred crores, we have not been able to win a single gold medal in the history of Olympics in an individual event. Our performance in sports in the international arena is highly dismal and disappointing. It is not as if there is no borne

talent in sports in our country, unfortunately the poverty, backwardness and the struggle for survival fix the priority. In the fight for a bread, the sports are nothing less than dreams. Those hailing from the rural areas or from the middle class for that matter and are gifted as well as have a genuine flair for sports, need to be groomed and promoted for the cause of sports, since they are otherwise hesitant in coming forth due to lack of incentives. They do not get even proper diet what to talk of safe and respectable security for their future. Their social commitments and responsibilities compel them to withdraw themselves from sports activities. How to imbibe confidence in those talented young persons who are nipped in the bud only. The sports associations/ federations are making money, spending crores but not upon the sports and sportsmen. In a despairing and discouraging atmosphere where the sports activities have suicidal tendencies, the States with their constitutional obligation of recourse to welfare activities, are expected to come forward to cater to the cause of future sports persons, ensure their social security and responsibilities and provide them incentives so that they can completely devote themselves to sports only. Providing employment and that too against prime posts in the State is one of the formidable method which a State can adopt in the furtherance of the aforementioned cause. However, after cooking food for a sports person, if the opportunist executive of the State offers the same on a platter to an underserving person, who else than the State itself is responsible for digging out a graveyard for the sports and sports persons.

(86) For the reasons mentioned above, these writ Petitions are allowed, with costs quantified at Rs. 50,000/-, with the following directions :-

- (i) The Notification dated January 23, 2004 (Annexure R-1) to the extent it runs contrary to the decision taken by the Council of Ministers in their meeting held on October 17, 2003, is declared illegal and accordingly struck down.
- (ii) As a necessary corrolary of direction No. (i) above, the advertisement dated February 7, 2004, whereby seven ex-cadre posts of D.S.Ps to be filled up by the Departmental Selection Committee were advertised and the entire selection process pursuant thereto, is declared illegal and

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- consequently, the impugned selections and appointments of Respondents No. 4 to 10 as D.S.Ps against the aforementioned advertised posts are hereby quashed.
- (iii) The criteria-cum-definition of "outstanding sports person" laid down by the State of Punjab which was also included in the Notification dated January 23, 2004 (Annexure R-1), is declared to be arbitrary and discriminatory. Consequently, the same is struck down.
 - (iv) The selection criteria laid down for the impugned selections by the Departmental Selection Committee is also declared to be totally illegal, discriminatory and beyond the powers of Departmental Selection Committee, therefore, the selections based thereupon are declared to be suffering from inherent illegality also.
 - (v) The decision taken by the Council of Ministers in their meeting held on October 17, 2003 is declared to be meant only to the creation of 431 ex-cadre posts for the sole purpose of adjusting 337 sports persons of the Police Department who were in different ranks and were facing reversion on the implementation of directions dated 21st April, 1998 issued by this Court in C.W.P. No. 13788 of 1997. We further declare that the afore-mentioned decision taken by the Council of Ministers does not authorise and cannot be construed to have empowered the Departmental Selection Committee to fill up the left out ex-cadre posts created by the Council of Ministers by way of direct recruitment.
 - (vi) It will be open for the State of Punjab to consider and decide as to whether seven ex-cadre posts of D.S.Ps are to be merged in the existing cadre of D.S.Ps or are to be kept as ex-cadre posts only. If these posts are decided to be merged, it is directed that the same shall be filled up strictly in accordance with the provisions contained in the Punjab Police Service Rules, 1959. However, if the State Government decides to keep these posts as ex-cadre, then it shall objectively consider as to why these posts cannot be filled up through the regular mode of recruitment,

namely, Punjab Public Service Commission. We, however, further direct that irrespective of the mode of recruitment, the incumbents of these ex-cadre posts shall not be allowed either to man or to have fixation of seniority and/or claim for future promotions at par with incumbents of the cadre posts. They shall continue against these ex-cadre posts only.

- (vii) We also direct the State of Punjab through its Sports Department to lay down a fair, just, reasonable and objective criteria while defining the "outstanding sports person".

(87) Since Respondents Nos. 4 to 10 are the sole beneficiaries of these patently illegal and arbitrary selections, it is they who are liable to share the burden of costs, except the two of them, namely, Palwinder Singh Cheema and Manavjit Singh Sandhu, whom we have already noticed to be the genuinely outstanding sports persons and hence these two respondents are not burdened with costs. The remaining selected candidates, who are five in total, are accordingly directed to pay cost of Rs. 10,000 each which shall be deposited in the Punjab Legal Services Authority within a period of one month from today.

(88) Let a copy of this order be handed over to Shri Atul Nanda, learned Additional Advocate General, Punjab, for its intimation to the appropriate authorities concerned and for follow up action of the directions, as above.

R.N.R.