

declined by this Court. Such is not the situation in the present case. Consequently, the learned counsel can derive no advantage from this decision. Reference had also been made by the learned counsel to the decision in C.W.P. No. 12637 of 1993 (*Parinder Singh v. The State of Punjab*) decided on December 23, 1993. On a perusal of this judgment, we find that no reference has been made to the date on which the application had been despatched. It had only been observed that the application was received on August 16, 1993, while the last date for this purpose was August 5, 1993. It appears that it was a decision on its own facts and lays down no rule for general application.

(11) In view of the above, we answer the question posed at the outset in the negative. We hold that the mere fact that an application is received after the last date fixed for the purpose even though it had been despatched well in time and the candidate was not to blame, is no ground for excluding the candidate from consideration. Each case has to be examined on its own facts. So far as the present case is concerned, we are of the view that the petitioner was not responsible for the delay and no right having accrued to any other person, he is entitled to be considered for admission to the two institutes for which he had submitted his application forms.

(12) The writ petition is accordingly allowed. However, in the circumstances of this case, we make no order as to costs.

J.S.T.

Hon'ble R. S. Mongia & Jawahar Lal Gupta, JJ.

JASBIR SINGH,—*Petitioner.*

versus

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

C.W.P. No. 8928 of 1994

15th November, 1994

Constitution of India, 1950—Arts. 14 & 16—Punjab District Service Rules, 1974—Rule 4—Constitutional guarantee—Right to be considered—Selection Committee to act fairly and not arbitrarily—Competent Authority—Selection made by Selection Committee—Power of State Government to cancel the selections made—Validity of such orders.

Held, that in view of the provisions of Articles 14 and 16 of the Constitution, every authority including a Selection Committee is bound to act fairly and not arbitrarily. Every eligible person has a right to be considered on the basis of his qualifications and experience etc. While it is open to the authority to lay down the conditions of eligibility, it is the right of every person who fulfils the prescribed qualifications to be considered for recruitment to the post. His merit has to be evaluated on the basis of a criteria which should be uniformly applied to all the candidates.

Further held, that subject to the provision of a rule or order providing for a quorum, at least the majority of the members should be present and have to participate in the process of selection. In a case, where it is established that the majority of the members have not participated in the process of selection and that only one person has performed the task assigned to the committee, it shall not be possible to hold that the selection has been conducted by the committee. Such a selection would suffer from an obvious infirmity.

Further held, that it is physically impossible for any committee to properly assess the respective merits if as many as 240 or more candidates are interviewed in a day for 3 to 5 minutes each. Keeping in view the physical limitations of an individual it seems well-nigh impossible to accept that the committee could have actually interviewed such large number of candidates continuously for many days.

Further held, that A Chief Minister is the head of the Government. His word virtually binds every officer. When the Chief Minister desires that a Deputy Commissioner should accommodate or appoint a person, it cannot be interpreted to mean that his case "should be considered in accordance with the rules". An average officer may take the view that it is a command from a superior authority to a subordinate and has to be carried out. A spineless officer, and there may be many belonging to his class, is likely to treat the Chief Minister's endorsement as an order. He may feel duty bound to carry it out faithfully. Rarely, as in the present case, it may not be obeyed. The explanation of the Chief Minister that the representations at Annexures P-15 to P-27 were merely endorsed to the Deputy Commissioner "for taking appropriate action in accordance with law" cannot be easily accepted.

In our country, people are poor and even illiterate. Every one may not have the means or connections so as to be able to reach the Chief Minister or his Political Secretary. When the Chief Minister endorses applications of a few candidates, the interests of those who are unable to approach him, are likely to be jeopardised. This, if allowed to happen, would negate the Constitutional guarantee

enshrined in Articles 14 and 16 of the Constitution. It would result in manifest mis-carriage of justice. We cannot uphold it.

Further held, that the action of the Government in ordering an enquiry and setting aside the selections was not a usurpation of the functions of the statutory authority and it cannot be set aside on that ground.

Rajinder Sachar, Sr. Advocate with P. S. Teji, Advocate, for the Petitioner.

H. L. Sibal, and J. K. Sibal, Sr. Advocates with M/s R. K. Joshi, Addl. Advocate General, Punjab, M. L. Saggarr and A. I. S. Grewal, Advocates, for the Respondents.

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioners in these three Civil Writ petitions Nos. 4702, 6065 and 8928 of 1994, were candidates for the posts of Clerks in the office of the Deputy Commissioner, Mansa. They are aggrieved by the action of the State Government in ordering the cancellation of the selection and in not appointing them to the posts of Clerks for which they had been selected. The petitioners pray for the issue of an appropriate writ to quash the order by which the selections have been cancelled and to direct the respondents to appoint them as Clerks. Learned Counsel for the parties have referred to the pleadings in Civil Writ Petition No. 8928 of 1994. These may be briefly noticed.

(2) As a sequel to the creation of the Revenue District of Mansa, various categories of posts were sanctioned. The Deputy Commissioner issued an advertisement inviting applications for the Class-III posts of Clerks, Stenotypists and Senior Scale Stenographers. The applications had to be submitted by July 15, 1992. According to this advertisement, the eligible candidates were required to appear in the written and Punjabi typing test which was to be held from July 17 to 20, 1992. The test was 'cancelled till further orders'. On August 2, 1992 a fresh advertisement was issued by which applications were invited not only for the posts of Clerks etc. but also for certain additional categories of posts including those in Class IV. On September 15, 1992, the date for holding a screening test for the posts of Clerks was notified. The petitioner—Jasbir Singh appeared

in the test alongwith various other eligible candidates. All candidates who had secured atleast 50 per cent marks in the test, were called for interview. Thereafter, the result was prepared. The petitioner avers that he having secured good marks had been selected. However, the Chief Minister intervened and directed the Deputy Commissioner (Dr. Swaran Singh) to give letters of appointment to the candidates named in the eight lists, copies of which have been produced as Annexures P-5 to P-12 with the writ petition. Since these persons had not even applied for the posts and the process of selection had already been completed the Deputy Commissioner expressed his inability to appoint them. However, even the petitioner and the other selected candidates were also not appointed. Consequently, some of the selected candidates including the petitioner filed Civil Writ Petitions Nos. 5863, 6455 and 6456 of 1993. In response to the 'notice of motion' issued by a Bench, a written statement was filed by the respondents. In this written statement, it was *inter alia* pointed out that on receipt of certain complaints, a senior I.A.S. Officer (Mr. Rajesh Chhabra) had been appointed to hold an enquiry regarding the validity of selection which was in progress. The motion Bench disposed of the writ petitions on September 8, 1993 with the following observations :—

“After hearing counsel for the parties, we thought that two options could be given in the circumstances aforesaid (i) by giving a direction to the respondents to constitute a fresh selection committee which would interview the candidates, who had passed the written test and prepare fresh selection list, (ii) to direct the respondents to complete the enquiry expeditiously and thereafter to either accept the report and finalise the selection already made or if the findings are otherwise to have the new selection committee as already mentioned above, Ld. Counsel for the petitioners is unable to make any choice of these two options and we are of the view that at this stage a direction be given to the respondents to complete the enquiry expeditiously, within a period of two months and thereafter pass appropriate orders thereon. It is directed accordingly.

All the three writ petitions are disposed of as above.”

(3) According to the petitioner, the directions issued by the Bench were not complied with. He consequently filed a contempt

petition No. 1049 of 1993. It was dismissed. The petitioner alleges that Dr. Swaran Singh, the then Deputy Commissioner was transferred and his successor (Mr. Joginder Pal Singh Puri) "was again asked by the Chief Minister to issue appointment letters. The Deputy Commissioner wrote DO letter to the Commissioner, Ferozpur Division that selection has already been made and there is no infirmity in the selection and he may be allowed to issue appointment letters. The Commissioner forwarded the same to the Financial Commissioner, Revenue i.e. Respondent No. 1 who is the highest authority. The Financial Commissioner sought the approval of the Chief Minister but as the Chief Minister had already given the lists, he did not agree". All of a sudden, the Chief Minister cancelled the appointments on the ground that no "logical criterion" had been adopted for conducting the selections. The decision was published in a Newspaper on February 24, 1994. A copy of the news item has been appended with the writ petition as Annexure P-13. According to the petitioner, the appointing authority in the case of Clerks, Assistants, Stenotypists and the Superintendents, is the Deputy Commissioner. His orders could not be changed by any other authority. It was only because the persons recommended by the Chief Minister had not been appointed that the selection conducted by the Deputy Commissioner had been cancelled. Aggrieved by the action of the respondents, the petitioner has approached this court through the present writ petition. The action of the respondents in cancelling the selection and in not issuing the appointment letters to the selected candidates has been challenged as being arbitrary, *mala fide*, violative of Articles 14 and 16 of the Constitution and the principles of natural justice.

(4) The writ petition had been filed on July 7, 1994. It had come up for hearing before us on July 8, 1994. Initially, the petitioner had impleaded the State of Punjab through the Financial Commissioner (Revenue) and the Deputy Commissioner, Mansa, as respondents. However, at the stage of motion hearing, he made an oral prayer for impleading Mr. Gurmit Singh (Political Secretary to the Chief Minister, Punjab), who had signed two of the lists, copies of which have been produced as Annexures P-5 and P-6, as a respondent. By our order dated July 8, 1994, we had allowed the request of the learned counsel and directed that Mr. Gurmit Singh be impleaded as respondent. A written statement on behalf of respondents Nos. 1 and 2 was filed by Mr. Joginder Pal Singh Puri, IAS, Deputy Commissioner, Mansa. Mr. Gurmit Singh, respondent No. 3 filed a separate affidavit.

(5) In the written statement filed on behalf of respondents Nos. 1 and 2, it has been *inter alia* pleaded that for recruitment of clerks in the office of the Deputy Commissioner, a written test was held in the year 1992 and the candidates who had secured 50 per cent or more marks were called for interview. Before the result could be declared, the entire selection process for filling-up the posts of clerks and other categories was "made subject matter of enquiry as some serious irregularities had been alleged in the selection of candidates including the petitioner. Till the competent authority was fully satisfied on the basis of findings of enquiry officer that the selection process had been carried out according to established procedures, rules and instructions, it had every right to withhold issue of appointment orders. The mere recommendation by the Departmental Selection Committee of a candidate for a particular post does not vest in him/her any right of appointment....." It has been stated that the enquiry was finalised in the month of December 1993 and it was *inter alia* found that no proper criterion had been adopted, the members of the Selection Committee were not properly associated by the Deputy Commissioner and that "the three members of the Departmental Selection Committee have been silent spectators in the process....." In view of these findings of the Enquiry Officer, the Government had declared the selection to be *null and void*. The suggestion that the new Deputy Commissioner had been posted with the directions to issue appointment letters to the persons mentioned in the lists has been denied by Mr. Puri. According to the respondents, the State Government is competent to go into the legality and propriety of the selections made by subordinate officers and the orders of cancellation had been passed on the basis of the report of the Enquiry Officer. It is stated that "no ulterior motive can be attributed to the cancellation of the selection". The averments in the petition regarding the intervention of the Chief Minister and his insistence that the persons mentioned in the lists (copies of which have been appended as Annexures P-5 to P-12) be appointed, have been denied as being "motivated, scandalous and irresponsible". It has also been alleged that the allegations have been made "at the instance of some politicians to undermine the popularity and dignity of the Chief Minister....." The allegation that the action of the respondents is arbitrary, unfair, violative of the principles of natural justice or of Articles 14 and 16 of the Constitution, has also been denied. It has been highlighted that the selection lists alleged to have been prepared on February 10, 1993 by Dr. Swaran Singh were handed over to the new Deputy Commissioner on May 29, 1993. It has also been pointed out that there were complaints dated November

15, 1992, January 11, 1993, March 5, 1993, April 30, 1993, June 2, 4 and 10, 1993 by different persons/organisations questioning the validity of the selection. It was on the basis of these complaints that an enquiry had been ordered by the Government on July 6, 1993 and Mr. Rajesh Chhabra, IAS was appointed as the Enquiry Officer. His report was accepted by the State Government,—*vide* its order dated February 17, 1994. By this order, the selections made during the tenure of Dr. Swaran Singh for the posts of Senior Assistants, Senior Scale Stenographers, Stenotypists, Clerks, Drivers, Peons, Sweepers, Mali-cum-Chowkidar and Water Carriers were cancelled and the Deputy Commissioner was directed to make fresh selections for the various Class III and IV posts in the District.

(6) The case had come up for hearing before us on August 10, 1994. On that date, written statement was not filed by Mr. Gurmit Singh. The case was, consequently, adjourned to August 16, 1994. We had also directed Mr. Gurmit Singh to be personally present in Court. Learned Council appearing for the State was directed to produce the original record. Mr. Gurmit Singh had, accordingly, filed an affidavit. In his affidavit, it has been averred that he could verify the factual position regarding the signatures on the lists appended as Annexures P-5 and P-6 after seeing the original documents. The respondent points out that the Chief Minister is too busy dealing with the Government work. He is also the President of the Punjab Pradesh Congress and has to look after the affairs of the party in the State. Since he is also a member of the Congress Working Committee, he has to visit Delhi quite often in connection with the Congress Party work at the all India level. Hundreds of thousands of people come to meet the Chief Minister for seeking redressal of their grievances. It is not possible for the Chief Minister to meet everybody. He, being the Political Secretary to the Chief Minister, the people meet him and convey their grievances either orally or in writing. As a Political Secretary, it is his duty to listen to the grievances of the Public including those of the members of Legislative Assemblies, Panchayat Samitis etc. According to the respondent, his job is "to see the persons and to listen to their complaints, grievances or their needs so that the grievances be looked into by the authorities concerned". He further states that his "general instructions are that whenever a complaint comes to him about anything or any grievance is put before him by any body whether in the matter of employment or in the matter of roads, village paths, irrigation matters or revenue matters and so on, he should mark the same to the proper authorities or give it to the persons concerned who can deal with them so that if the grievance

is legitimate, the same is removed. The deponent never asks any authority concerned to act in a particular manner. The matter is forwarded to the authorities concerned to deal with the same and to do justice. It is for the concerned authorities to see that if the grievance is legitimate, the same may be removed. The deponent has been instructed by the Chief Minister not to interfere in the work of any statutory body or legal authority". Many people belonging to the various strata of Society come seeking employment. He forwards their cases to the concerned authorities for consideration on merit. Regarding the eight lists produced as Annexures P-5 to P-12 with the writ petition, the respondent has averred that he could make a proper reply after seeing the original documents. He, consequently, prayed that the original record may be shown to him so as to enable him to file a proper reply.

(7) Since Mr. Gurmit Singh was personally present in court on August 16, 1994, we considered it appropriate to show him the original lists as prayed for by him and to record his statement. Accordingly, he was examined by us. He was also cross-examined by the learned counsel for the parties. After recording his statement, we had considered it appropriate to even examine Dr. Swaran Singh. Accordingly,—*vide* our order of even date, we had directed him to be present before us on August 17, 1994. His statement was recorded on different dates of hearing. Reference to the oral and documentary evidence which came on record during the proceedings of the case, shall be made at the appropriate stage. It may, however, be noticed that the recording of the statement of Dr. Swaran Singh was concluded on August 24, 1994. On the request of counsel for the parties, the case was adjourned to September 5, 1994, for arguments.

(8) On September 2, 1994, Civil Misc. application No. 8439 of 1994 was filed by the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure. It was prayed that Sardar Beant Singh, Chief Minister, Punjab be impleaded as respondent No. 4. It had come up for hearing before us on September 3, 1994. Notice of the application was given to the learned counsel for the respondents for September 5, 1994. It was ordered to come up for hearing with the main case. On September 5, 1994, separate replies were filed on behalf of the respondents to this application. Arguments in the case were partly heard. The case was adjourned on the request of the counsel to September 12, 1994 and then to September 19, 1994. On September 18, 1994, the petitioner filed

another misc. application No. 9155 of 1994 in which it was averred that he had "got certain documents/applications on which Sardar Beant Singh had passed certain orders under his signatures and sent the same to the Deputy Commissioner, Mansa during the process of selection of Class IV and III employees". Alongwith the application, the photo copies of 13 applications/representations were produced. On these applications, Sardar Beant Singh, Chief Minister, Punjab had made endorsements viz. "To accommodate" or "For appointment". The applications were marked to the Deputy Commissioner, Mansa. This application came up for hearing before us on September 19, 1994. The original documents, copies of which had been produced as Annexures P-15 to P-27, were produced by the learned counsel for the petitioner and were ordered to be kept in a sealed cover. Notice of the application was given to the learned counsel for respondents Nos. 1 and 2 for September 26, 1994. Reply on behalf of respondent No. 1 was filed by Mr. Amrik Singh Pooni. An affidavit dated September 22, 1994 was also filed by Mr. Beant Singh, the Chief Minister. Then, the petitioner made a prayer for summoning the Chief Minister by filing Civil Misc. application No. 9557 of 1994. These applications were to be considered by us alongwith the main case. Misc. application No. 9819 of 1994 was filed by the respondents under Section 340 of the Code of Criminal Procedure for prosecution of Dr. Swaran Singh, for fabricating the endorsements on the original lists produced on the record during the evidence. These are the pleadings.

(9) Learned counsel for the parties have been heard. Mr. Rajinder Sachar, learned counsel for the petitioner has very adroitly contended that the Chief Minister wanted the Deputy Commissioner to 'accommodate' or 'appoint' his favourites. Having failed, he had ordered the enquiry and then the cancellation of the entire selection. The action is vitiated by *mala fides*. He has further argued with reference to Rule 4 of the Punjab District Service Class III Rules, 1976 that the action of the State Government in cancelling the selection made by the competent authority, was without jurisdiction. Learned counsel submits that whenever the rule confers a power on a particular authority, such power can be exercised by that authority alone and none else. Accordingly, it has been contended that the action of the State Government in cancelling the selection was wholly without jurisdiction. It has been further submitted that the enquiry conducted by Mr. Chhabra to determine the legality and propriety of the selection was wholly extraneous to the issue involved in the case and once the action was found to be tainted with *mala fides* or lacking in jurisdiction, no

other matter could be taken into consideration to up-hold the action of the State Government. It was also contended that even if some defect was found in the process of interview, the competent authority could have interviewed the candidates afresh and the State Government could not have ordered the cancellation of the selection.

(10) On the other hand, Mr. H. L. Sibal, learned counsel for the respondents has equally dexterously contended that there is overwhelming evidence on record to show that the selection conducted by the committee was not fair and proper. It was dubious. The Government had received a letter dated May 30, 1993 from Mr. Puri and certain complaints raising doubts about the fairness of the process of selection. It had consequently ordered an enquiry and it was only as a result of the findings recorded by the Enquiry Officer that the selection was cancelled. He referred to the evidence to show that the selection was not fair and proper. That being so, Mr. Sibal urged that the question of *mala fides* did not arise. In any case, Mr. Sibal submitted that the Chief Minister had no personal interest in the appointment of anyone and the mere endorsements made by him on certain letters, were no orders. Accordingly, the learned counsel urged that the charge of *mala fides* levelled by the petitioner was wholly untenable. He proceeded to give reasons in detail so as to persuade us to hold that the selection was dubious and had been rightly cancelled by the State Government. He also submitted that Dr. Swaran Singh had committed various irregularities in the process of selection. He had made false statement before this Court and fabricated evidence to support his stand. He, thus, deserved to be prosecuted.

(11) After hearing counsel for the parties, we find that the primary questions which arise for consideration are :—

- (i) Was the selection conducted under the Chairmanship of Dr. Swaran Singh, fair and proper ?
- (ii) Were the orders for the holding of an enquiry and the cancellation of selection passed on account of the *mala fides* of Mr. Beant Singh, the Chief Minister ? and
- (iii) Is the action of the Government in ordering the cancellation of selection without jurisdiction ?

(12) Before proceeding to consider the respective contentions of the counsel for the parties, it is apt to notice briefly the sequence of events as disclosed by the pleadings and the other evidence in so far as it is relevant in respect of the selection for the posts of Clerks. The posts were advertised in the year 1992. The eligible candidates were required to appear in a screening test which was held from October 7, 1992 to October 10, 1992. All candidates who had secured 50 per cent or more marks in the written test, were to be called for the interview. A total of 1,350 candidates had qualified the test. The interviews had commenced on December 9, 1992. These were continued on December 10, 11, 14 and 15, 1992. On December 14, 1992, Dr. Swaran Singh, the Deputy Commissioner who was the Chairman of the Selection Committee had left Mansa at 9 A.M. for Village Gurne Kalan and other places and returned to Mansa at 5 P.M. The selection list is alleged to have been prepared on February 10, 1993. On April 24, 1993, Mr. J. P. S. Puri was appointed as Deputy Commissioner in place of Dr. Swaran Singh. He assumed charge of the office on May 2, 1993. On May 3, 1993, Dr. Swaran Singh addressed a Demi-official letter to the Chief Secretary, a copy of which has been produced on record as Ex. C-18. In this letter, Dr. Swaran Singh *inter alia* mentioned that "the select lists of the eligible candidates have been finalised and alongwith the undersigned have been signed by the other members of the Departmental Selection Committee.....I have also signed the assessment proforma of each candidate appeared in the interview before the Departmental Selection Committee. Because of the verbal orders of the Government, the appointment letters to the selected candidates could not be issued". This letter appears to have been received in the office of the Chief Secretary on May 11, 1993. It was marked by him to the Financial Commissioner (Revenue). While this letter was still under process, on May 29, 1993, Dr. Swaran Singh handed over the record relating to the selection for various posts except that in respect of the posts of Stenotypists to Mr. Puri. On the next day, Mr. Puri addressed a D.O. letter dated May 30, 1993 to the Chief Secretary. A photo copy of this letter has been produced on the record by Mr. Sibal alongwith the relevant notice etc. A perusal of this letter shows that Mr. Puri pointed out that Dr. Swaran Singh had handed over the final selection lists of candidates in respect of various categories of posts at 10 A.M. on May 29, 1993. Each page of the selection lists had been signed by Dr. Swaran Singh and was dated February 10, 1993. A forwarding note had been attached which purported to have been signed by Dr. Swaran Singh on February 10, 1993. The other members of the selection committee viz. the General Assistant to the Deputy Commissioner, the

District Social Welfare Officer and the District Sainik Welfare Officer had also signed it but not put any date. The selection lists in respect of the posts of Peons, Safai Sewaks, Mali-cum-Chowkidars and Chowkidars had been signed by Dr. Swaran Singh and were dated February 11, 1993. As in the case of other posts, the members of the selection committee had signed the forwarding notes without putting any date. It was further pointed out that there was no indication on the file as to why "no action was taken to process the recommendations of the District Departmental Selection Committee after 10th February, 1993 or 11th February, 1993. There is considerable delay between 10th February, 1993/11th February, 1993 and 29th May, 1993 and this remains unexplained as per record handed over to me on 29th May, 1993". Mr. Puri further mentioned that "in order to remove any fear of uncertainty and apprehensions, both justified and unjustified, necessary advice and guidance may please be given whether the final selection lists for the above mentioned posts dated 10th February, 1993 and 11th February, 1993 handed over to me personally by Dr. Swaran Singh, IAS should be acted upon or not". He also referred to the fact that Civil Writ Petition No. 5863 of 1993 had been filed in which it had been averred that the petitioners were in the list of selected candidates. Mr. Puri observed that "it is quite apparent that there has been a deliberate leak of the final selection list by some officer/official at some level to the above petitioners in order to embarrass the position of the Government". He also observed that "besides the Civil Writ Petition which contains 13 pages, there are 12 annexures running into 25 pages. The petitioners must have come to know about their names in the final selection list well before 17th May, 1993 due to the connivance of some officer/official at some level".

(13) This letter appears to have been received by the Chief Secretary on June 2, 1993 who made the following endorsement thereon :—

"Please have it examined and take appropriate action. C.M. must be apprised of it as R.M. (Revenue Minister).

Sd/-

F.C.R.

2.6.93"

On June 4, 1993, the then F.C.(R) made the following endorsement on this letter :—

“Reference D.O. letter No. 1/Special/Secret, dated 30th May, 1993 from Shri J. P. S. Puri, I.A.S., D.C. Mansa.

The matter has been discussed by me in a meeting with Dr. Swaran Singh, former D.C. Mansa, Shri J. P. S. Puri, I.A.S., present D.C. Mansa and Additional Secretary, Revenue. Thereafter, the matter has been discussed by M.S.R.R. in a meeting held yesterday with C.S., F.C.R., L.R. and D.C. Mansa. Then the matter was discussed by the above participants with C.M. in the afternoon. It was decided that the matter regarding recruitment of staff for District Mansa would be enquired by an officer to be appointed by the Chief Secretary.

Sd/-

F.C.R.

4.6.1993”

C.S. (cover).

(14) It, thus, appears that the matter was discussed in a meeting which was attended amongst others by Dr. Swaran Singh and Mr. J. P. S. Puri. It is also clear that the Minister of State for Revenue was also present. Thereafter, the matter was discussed even with the Chief Minister. It was decided that the matter regarding the recruitment of staff be enquired into by an officer to be appointed by the Chief Secretary.

(15) On June 9, 1993, the file was received in the office of the Chief Secretary who passed the following order thereon :—

“Are there any written complaints as indicated by M.S.R.R.? These may be placed on record, if any.

Sd/-

F.C.R.

9.6.93”

It appears that the matter was examined in the office at different levels and on June 25, 1993, the F.C.(R) made the following note :—

“Noting from page 8 may be perused for facts of the case. Details of complaints received against Dr. Swaran Singh, I.A.S., are summarised as under :—

Sr. No.	Date of receipt of complaint and particulars of complaint	Allegation in brief	Action taken
1	2	3	4
1	Dy. No. 6595 dated 28-10-1992. Shri Sukhjinder Singh, S/o Sári Balkaran Singh, r/o Batala Road, Gurdaspur	One Shri Bharpur Singh, an employee of the office of D.C. Mansa was telling the candidates that the following amount be paid to him for selection/appointment to the posts indicated below : (a) Peon Rs. 30,000/- (b) Clerk/Steno-typist Rs. 70,000/- (c) Senior Asstt./ Steno-grapher Rs. 1,00,000/-	The complaint is addressed to Chief Secretary, Punjab, with a copy of Shri Swaran Singh, D. C. Mansa, Commissioner, Ferozpur, FCI, Punjab, O.M., Punjab, and P.M., New Delhi. A copy of the complaint was forwarded to the Commissioner, Ferozpur Division Ferozpur, for necessary action and report. Report from the Commissioner says that the Commissioner has filed the report after examination. The Commissioner has been asked to intimate whether any official named Bharpur Singh has been working in the office of D.C. Mansa. The report is till awaited from him despite reminder.
2	Dy. No. 7423 dt. 10-12-92. A prominent Social worker of Distt. Mansa & Bhatinda	The following amounts for selection/appointment to the various posts have been alleged to be taken :—	A copy of the complaint was forwarded to the Commissioner, Ferozpur Division, Ferozpur, for sending report in respect of the irregular purchase of furniture by the D.C. Mansa. Report from Commissioner is yet to

1	2	3	4
		(a) Clerk Rs. 60,000/-	be received. This is a pseudonymous complaint.
		(b) Assistant Rs. 1,00,000/- Purchase of furniture for the office of D.C. Mansa without following proper procedure has also been alleged.	
3	Dy. No. 2645 dt. 21-6-93. The members of Social Reforms Sabha, Mansa	Money changed hands in the selection of can- didates for the posts advertised by the D.C. Mansa. Over six months have passed but no app- ointment order has been issued though the procedure of se- lection stood com- pleted.	A copy of the complaint has been sent to the Com- missioner, Ferozepur Division, Ferozepur, for necessary action and re- port. This is a very recent complaint, received more than a month after the transfer of Dr. Swaran Singh from the post of D.C. Mansa.

The position stated above may be reported to C.S. Punjab. In addition, if MSRR has any other complaint(s) in his office they may also be reported to the C.S. who will get the whole matter enquired as mentioned in my note dated 4th June, 1993.

MSRR

Sd/-
25.6.1993"

(16) In the meantime, Mr. J. S. Kang, Minister of State for Revenue sent a note dated June 23, 1993 to the Chief Minister wherein he observed that certain corrupt practices of Dr. Swaran Singh, former Deputy Commissioner, Mansa had been brought to his notice. He also mentioned that certain persons had met him in deputations. Various applications and documents indicating that the Deputy Commissioner, Mansa had misused his official position for extraneous considerations had also been received by him. In this note, irregularities relating to selections, collection of money for Red Cross and misuse thereof, construction of hall for the Zila Parishad, purchase of furniture, Gypsies (Geeps), collection of money on account of the visit of the Chief Minister and antedating of selection lists etc. after the passing of the orders of transfer, were pointed out. He desired that these matters be brought to the notice of the Enquiry Officer. The Chief Minister endorsed this note to the Chief Secretary. On June 24, 1993, the Chief Secretary asked the Secretary (Personnel and General Administration) to discuss the matter with him. Thereafter, it appears that the file was marked to the Joint Secretary.

(Personnel). On July 2, 1993, Mr. J. S. Kang, Minister of State for Revenue, sent another note to the Chief Secretary indicating that he had received certain complaints. He expressed certain reservations about the validity of the selections conducted by Dr. Swaran Singh. A specific reference was made to a letter dated February 22, 1993 received from Commissioner, Ferozepur Division (which included District Mansa) in which it had been observed that no selection had been made for any of the categories of posts. In view of this fact, Mr. Kang expressed an apprehension that Dr. Swaran Singh may have antedated the selection lists for extraneous considerations. On July 6, 1993, the Joint Secretary (Personnel) proposed that the complaints mentioned in both the files be referred to Mr. Rajesh Chhabra, Secretary, Irrigation and Power, for enquiry. This was approved by the Chief Secretary on July 6, 1993.

(17) Mr. Rajesh Chhabra conducted the enquiry and submitted his report to the Chief Secretary on December 2, 1993. In so far as the selection for various posts is concerned, the findings recorded by Mr. Rajesh Chhabra may be summarised as under :—

- (i) there was no clear cut decision “as to how many marks would be awarded for the essential educational qualifications, additional educational qualifications, sports, NCC and other such like activities.”
- (ii) the three members of the selection committee “were blank about the interview marks. All three have stated that they were not consulted or given any directions about the marks to be allotted in the interview and thus entire procedure has been done by the Deputy Commissioner alone”.
- (iii) the candidates were to be categorised as A(+), B(+) etc. There was no formula for conversion of Grades into actual marks and the three members of the Departmental Selection Committee were blank about it.
- (iv) A candidate had been initially graded as B(+ +). Later on, it was revised to A+. The members of the selection committee and Dr. Swaran Singh “could not explain the criteria and therefore, it is impossible to judge absolutely the procedure adopted for the selection of candidates”.
- (v) The former Deputy Commissioner (Dr. Swaran Singh) “told me that the selection had been made on percentage of marks obtained by the candidates, as far as the educational qualifications are concerned. However, award sheet was blank about the division obtained by the candidates. It

was not clear whether candidates selected were 1st Divisioners or 3rd Divisioners. Thus, while educational qualification was one of the criteria for selection, good Academic record was not given any merit (weightage). As such the selection suffers from serious flaw”.

(vi) the former Deputy Commissioner did not hand over the interview record of the Stenotypists to his successor upto November 17, 1993. Dr. Swaran Singh mentioned that the record was mixed up with his private papers. On a perusal of the interview sheet, it was “apparent that no proper criteria of selection of Stenotypists has been followed. It is also not clear as to how many marks were awarded for educational qualification, typing test and for the interview.....”

(vii) Except the Deputy Commissioner, the other members of the selection Committee had not signed the interview sheet. In fact, they were only associated “with the interview and gradation and marks have been totally given by the former Deputy Commissioner himself. It is because of this that they could not explain the criteria adopted for grading and allotment of marks to the candidates”.

(viii) Shri Mast, a member of the selection committee stated that “he was made to sign this list on the 5th of May 1993, three days after the Deputy Commissioner had relinquished the charge. The list was prepared hurriedly and he alongwith other members of the Departmental Selection Committee were forced to sign the list and in the hurry in May 1993, it was forgotten whether on 10th February 1993, Shri Mast was G.A. to D.C. (General Assistant to the Deputy Commissioner) or DTO (District Transport Officer). The other two members Shri Makhan Singh and Shri Shangara Singh also stated in the same manner”. They had merely signed the note recorded by Deputy Commissioner and “no list was shown to them”.

(ix) the Deputy Commissioner could give no satisfactory answer as to why even the candidates for the posts of Peons were graded as A(+) etc. and were not given interview marks straightway.

(18) He also recorded his findings with regard to the other matters. In view of the above, he concluded that the selections had been made only by the former Deputy Commissioner and that the other members of the Departmental Selection Committee were silent spectators. Accordingly, he recommended that the entire

selection "be declared *null* and *void* and the Deputy Commissioner, Mansa, may be asked to hold fresh selection of the candidates".

(19) This report was examined. The F.C.(R),—*vide* his note dated January 24, 1994 observed that he agreed with the recommendation of the office that the report of Mr. Chhabra be accepted and that the selections made by the former Deputy Commissioner, Mansa, be declared *null* and *void*. He further observed that the present Deputy Commissioner be directed to hold fresh selection. The recommendation of the F.C.(R) was approved by the Minister (Mr. Jagir Singh—who appears to have replaced Mr. Kang) on January 28, 1994 and by the Chief Minister on February 10, 1994. Thereafter, the Government issued the order dated February 17, 1994 informing the Deputy Commissioner, Mansa that the recommendations made "in enquiry report had been accepted by the Government and the selections made by Dr. Swaran Singh, former Deputy Commissioner, Mansa, have been declared *null* and *void*". Mr. Puri was directed "to make selections of candidates of Class III and IV employees afresh in the newly created Mansa District according to rules and Government instructions".

(20) It is in the background of this sequence of events that the respective contentions raised by the learned counsel for the parties have to be considered and examined.

(21) The first question that arises for consideration is—Was the selection conducted under the Chairmanship of Dr. Swaran Singh, I.A.S., the then Deputy Commissioner, Mansa, fair and proper? It has been strenuously urged on behalf of the respondents that the selection was unfair. On the other hand, Mr. Sachar has urged that we need not go into this question, as according to him, the action of the Government in ordering the probe and cancelling the selections is vitiated by the '*mala fides*' of the Chief Minister.

(22) It is true that if the plea of '*mala fides*' is up-held, the action of the Government in quashing the selections may be vitiated. However, it is equally important to ensure that the selections are not made arbitrarily. The whole Society has an interest in the purity of administration which to a very considerable extent depends upon selection of suitable and deserving persons for manning the civil posts. The bureaucracy may be accountable to the Government in so far as its efficiency and implementation of its policies are concerned. However, in regard to the lawfulness of their actions, the bureaucrats are answerable to a court. In the present case, we have not only examined the record relating to selections but even

recorded the statement of Dr. Swaran Singh, the Chairman of the Selection Committee. In this situation, we do not think it would be proper to accept the contention of Mr. Sachar that the validity of selection may not be gone into and to push the matter under the carpet. We consider it appropriate to examine the contention of Mr. Sibal that the selection was dubious and pronounce upon it. We, accordingly, proceed to do so.

(23) Admittedly, the posts in the office of the Deputy Commissioner are a part of the Punjab District Service Class III. The recruitment to the service is governed by the provisions of Punjab Civil Services (Class III) Rules, 1976. Rule 2(f) defines the "Recruiting Authority" to mean "the Punjab Subordinate Services Selection Board constituted by the Government or any other authority authorised by the Government to perform the functions of the said Board". Rule 4 prescribes the authorities which can make appointments to different posts and provides as under :—

APPOINTING AUTHORITY :

"4. Appointments to posts in Service shall be made—

- (a) in the case of Superintendents and Assistant Superintendents by the Commissioner of the Division ; and
- (b) in the case of other posts in the Service by the Deputy Commissioner concerned."

Presumably, in view of the fact that the Subordinate Services Selection Board had not been constituted in the State of Punjab, the Government issued an order on March 9, 1990 constituting the Departmental Selection Committee at the District Level for recruitment of all categories of Class III and IV posts. This committee was to consist of :—

- | | |
|---------------------------------------|--|
| (i) Deputy Commissioner | Chairman. |
| (ii) General Assistant to D.C. | Member (while making recruitment of ministerial/other categories of Class III and IV employees). |
| OR | |
| District Revenue Officer | Member (while making recruitment of Patwaris and Kanungos). |
| (iii) District Sainik Welfare Officer | Member (Representative of Ex-service-men). |
| (iv) District Welfare Officer | Member (Representative of the Scheduled Castes). |

(24) It was further provided that the Additional Deputy Commissioner will act as Chairman in the absence of Deputy Commissioner. This order is clearly referable to the provision contained in Rule 2(f) which defines the 'recruiting authority'.

(25) It also seems clear to us that in view of the provisions of Articles 14 and 16 of the Constitution, every authority including a Selection Committee is bound to act fairly and not arbitrarily. Every eligible person has a right to be considered on the basis of his qualification and experience etc. While it is open to the authority to lay down conditions of eligibility, it is the right of every person who fulfills the prescribed qualifications to be considered for recruitment to the post. His merit has to be evaluated on the basis of a criteria which should be uniformly applied to all the candidates.

(26) We are also of the opinion that when the task of making selections is assigned to a committee, the obvious purpose is to bring the collective wisdom of the members to bear upon the matter. It may be that in a given case, all the members of the Selection Committee are unable to be present. Subject to the provision of a rule or order providing for a quorum, at least the majority of the members should be present and have to participate in the process of selection. In a case, where it is established that the majority of the members have not participated in the process of selection and that only one person has performed the task assigned to the committee, it shall not be possible to hold that the selection has been conducted by the committee. Such a selection would suffer from an obvious infirmity.

(27) What is the position in the present case ?

(28) As already noticed, we had examined Dr. Swaran Singh who was working as Deputy Commissioner, Mansa and was the Chairman of the Selection Committee at the relevant time. It is the admitted position that the eligible candidates for the posts of Clerks had appeared in a screening test held from October 7, 1992 to October 10, 1992. All candidates who had secured 50 per cent or more marks in the screening test were called for interview. A total of 1,350 candidates had qualified the test. It is also the admitted position that the interviews were held on December 9, 10, 11, 14 and 15, 1992. On December 12 and 13, 1992, the offices were closed. Furthermore, it is also not disputed that a total of 300 candidates had been directed to appear on December 9, 1992 for interview out of

whom about 240 persons had actually appeared before the committee. Similar was the position on December 10, 1992. On December 11, 1992, the number of candidates who had appeared for interview was 280. On December 14, 1992, 250 candidates had appeared for interview. On the last day viz. December 15, 1992, only 80 candidates had appeared out of the total of 115 who had been called for interview. It, thus, appears that 1090 candidates out of a total of 1,350 had appeared for interview. According to Dr. Swaran Singh, each candidate had been interviewed, on an average, for 3 to 5 minutes. Before grading each one of the candidates after the interview, the members of the Selection Committee had discussed the matter for about a minute. Though initially, it was suggested by Dr. Swaran Singh that the interviews used to commence at 9 A.M. but on being confronted with the notice informing the candidates about the interview it was admitted by him that the interviews could have commenced at 10 A.M. Thus, it was sought to be projected that each candidate had been fairly assessed at the time of interview.

(29) It is true that while considering a case like the present one, it may not be possible for the court to insist upon mathematical exactitude. The case has to be examined broadly. Even then, it appears difficult to accept that the committee could have interviewed 240 or more candidates in a day as Dr. Swaran Singh would wish us to believe. To illustrate, on December 9, 1992, 240 candidates were admittedly interviewed. Assuming the average time to be 3 minutes per candidate (though Dr. Swaran Singh suggested that it ranged from 3 to 5 minutes) it would take at least 720 minutes viz. 12 hours to interview the 240 candidates. Furthermore, it has also been asserted by Dr. Swaran Singh that the members of the committee used to discuss the matter for about a minute before grading each candidate. This would take another four hours. Thus, the committee should have worked continuously from 10 A.M. on December 9 to 2 A.M. on December 10, 1992. Similar would be the position on the three subsequent days. In fact, on December 11, 1992, the number of candidates was 280. In this situation, it does not appear to be reasonably possible to accept the assertion of Dr. Swaran Singh. In our view, it is physically impossible for any committee to properly assess the respective merits if as many as 240 or more candidates are interviewed in a day for 3 to 5 minutes each. Keeping in view the physical limitations of an individual, it seems well-nigh impossible to accept that the committee could have actually interviewed such large number of candidates continuously for many days. The committee could not have properly judged the respective merits of as

many as 240 or more candidates in a day. We have reservations and feel that an effort has been made to show that the candidates had been properly interviewed.

(30) Dr. Swaran Singh was also confronted with certain documents relating to the selection. For the present, reference may be made only to documents relating to the selection for the posts of clerks. He was shown the interview proforma of one Mr. Jagsir Singh, a candidate belonging to the category of Scheduled Castes. This candidate is a mere matriculate and had secured 50 marks out of 100 in the written test. At the time of interview, he was graded as 'B'. Dr. Swaran Singh admitted that his grading appeared to have been changed from a mere B to B++. He also admitted that there was an overwriting in respect of the marks awarded to him for the interview. Over digit 5, 0 has been written and he had been awarded 10 marks. As against this, one Rawel Singh, who is also a member of the Scheduled Castes, had secured 78 marks in the written test. He is a graduate. At the time of interview, he was graded as 'B' and awarded 5 marks. It was further admitted that Rawel Singh who had secured 83 marks (78 + 5) in the aggregate, was not selected whereas the name of Jagsir Singh who had secured only 60 marks (50 + 10) was included in the select list. The proforma of Subhash Raj was also shown to Dr. Swaran Singh. He had been graded as A+ and had been awarded only 10 marks. As against this, Jagsir Singh who had been graded as B++ had also been awarded 10 marks. Similar was the position in case of another candidate viz. Mr. Kiran Kant who had been awarded 10 marks in spite of the fact that he had been graded as B++. The witness tried to explain this by saying that "the marks were given by all the members whereas the grading was initially done by one member. The gradation which was done by one member was not changed in this case after discussions though the same had been changed in some cases". After seeing various proformas and the select lists, the witness had to admit that 20 candidates who had secured lesser marks than Mr. Rawel Singh had been selected even though all of them belonged to the category of Scheduled Castes.

(31) This is not all. Mr. Sibal produced before us the interview proformas of the various candidates for the posts of clerks. On a perusal thereof, we find that the interview proformas have been initialled/signed only by Dr. Swaran Singh and not by any other member of the Selection Committee. The gradation in respect of the selected candidates appears to have been altered in a number of cases.

The alteration is in the same ink as has been used by Dr. Swaran Singh for awarding marks and signing the proformas. In case of members of Scheduled Castes alone for which 26 candidates had been selected, it appears that alteration has been made in as many as 18 cases. It further appears that certain candidates who were graded as A+, were given 10 marks and others with the same grading were awarded 11 or 12 marks. Similarly, even those candidates who had been graded as B++ had been awarded 8 or 10 marks. It is also the admitted position that Rawel Singh who should have been at Sr. No. 6 in the merit list with a score of 83 marks was not even included in it while others who had secured as low as 60 marks had been selected.

(32) Similarly, on an examination of the interview proformas relating to the candidates from the general category, it *prima facie* appears that the grading of candidates has been altered in a majority of cases. In case of Kamlesh Rani, grading appears to have been changed from 'C' to 'A'. In the case of candidates at Sr. Nos. 6, 12, 13, 14, 15, 23, 26 and 28 of the selection list, the grading appears to have been changed from --B to ++B. In fact, it appears that the grading has been altered in as many as 25 cases out of 33. Still further, there is no uniform pattern for the conversion of grades into marks. As in the case of members of reserved category, as also in case of candidates from the general category, it is apparent that those who were finally graded as B++, have been awarded 8 or 10 marks. A candidate like Suresh Kumar whose name appears as Sr. No. 17 in the merit list, has been graded as 'A' but was awarded only 7 marks. As against this, Gurdip Singh whose name appears at Sr. No. 16 in the merit list, has been graded as B+ and awarded 7 marks. Some of the candidates who have been graded as 'A' have been awarded only 8 marks. Jagtar Singh whose grading was changed from 'B' to 'A' (Excellent) has been awarded 14 marks. Even in the case of candidates belonging to the category of Sportsmen for whom four posts had been reserved and that of Ex-servicemen for whom 10 posts had been reserved, the position appear to be almost similar.

(33) When examined by us, Dr. Swaran Singh had categorically stated that "before grading the candidate after the interview, the selection committee discussed the matter for about a minute or so". However, when cross-examined by Mr. Sibal, the witness tried to explain the matter by saying that "the marks were given after discussion by all the members whereas the grading was initially done by one member". The questions that arise are :—

- (i) If marks were awarded after discussion, why were the candidates 'Graded' or why did Dr. Swaran Singh change the 'grading' ?

(ii) who were present ?

(iii) why were the proformas not signed/initialled by all the members ?

These questions remain unanswered. Dr. Swaran Singh tried to explain it by saying that "after the gradation was given, the performance of the candidates was discussed by the members and after discussions, the gradation used to become insignificant and marks were allocated on the basis of performance". The explanation seems to be too tenuous. If it were really so, there was no point in grading the candidates. Marks could have been allocated straightway. Still further, there would have been no need to alter the gradation. Even the marks should have been written in the same ink in which the candidate's gradation was recorded. In view of the fact that the gradation has been altered and the marks allocated in the same ink as used by Dr Swaran Singh for signing the proformas, we are unable to accept the explanation given by the witness. Moreover, we find no uniformity in the award of marks. In fact, the action seems to be wholly arbitrary and unfair. A candidate graded as 'A' has been awarded 7 marks while another with a lower Gradation of B++ has been allotted 10 marks. How ? There is no satisfactory answer.

(34) Dr. Swaran Singh stated before us that "we had allocated marks for different levels of gradation.....Each member of the Selection Committee knew as to what was the criteria of selection. The same was discussed before the commencement of the interview". He was asked if there was any record to support this assertion. He admitted that "no record of any such discussion or the criteria (as finally fixed) was kept. The facts on record clearly show that no criteria for 'grading' or "allocation of marks" had been laid down. We cannot accept the ipse-dixit of Dr. Swaran Singh.

(35) It also deserves mention that during the course of cross-examination, it was stated by the witness that "the interviews for the posts of clerks must have been held on 9th, 10th, 11th, 14th and 15th December, 1992 as 12th and 13th December, 1992 were holidays being Saturday and Sunday". The witness was confronted with the Log Book of his official Car No. PB 31-0001. A perusal thereof shows that on December 15, 1992, Dr. Swaran Singh had left Mansa at 9.00 A.M. for Village Gurne Kalan etc. and returned to Mansa at 5.00 P.M. On this date about 300 candidates had been called for interview and about 250 had actually appeared. Since Dr. Swaran Singh was away

for almost the whole day, he could not have participated in the interviews. A perusal of the proformas produced before us shows that in cases of certain candidates, the date of interview has been mentioned as 14th December, 1992. On a random check up, we find that this date has been mentioned in the case of various candidates like Sukhmandar Singh s/o Gurdev Singh, Saroj Kumar, Shamshad Ali, Jagjit Singh, Jyoti Ram, Kulwant Singh s/o Shri Nichhatar Singh, Karam Singh s/o Budh Singh and Kiranjit Singh s/o Piara Singh. The proformas show that the date was crossed out and the gradation was given to the candidates. However, in each of these cases, the marks have been allocated by Dr. Swaran Singh. Nothing has been produced by the petitioners to show that the candidates summoned for interview on December 14, 1992, were actually called upon to appear on some later date. In any case, it is clear that Dr. Swaran Singh having remained on tour from 9.00 A.M. to 5.00 P.M. could not have interviewed the candidates on that date and yet the marks have been allocated by him. Similarly, even in case of selection for the other posts, when Dr. Swaran Singh was admittedly not present on certain dates and the interview had been conducted by Dr. Sankaria, the Additional Deputy Commissioner, the marks have been awarded by Dr. Swaran Singh. How could he have judged the respective merits of the candidates? We find no explanation whatsoever.

(36) This is not the end of the matter. In his letter dated May 3, 1993 as already noticed above, Dr. Swaran Singh has categorically stated that "the select lists of the eligible candidates have been finalised and alongwith undersigned have been signed by the other members of the Departmental Selection Committee". Even during his examination in court. Dr. Swaran Singh stated that "the selection lists were signed by all the members of the Selection Committee on February 10, 1993". However, the assertion of Dr. Swaran Singh is clearly belied by the record. We have perused the selection lists. These are signed only by Dr. Swaran Singh. These do not bear the signatures of any of the other members of the selection committee. The witness also asserted that merit lists showing the *inter-se* position of all the candidates in respect of all categories of posts had been prepared and signed by all the members of the selection committee. Mr. Sibal disputed this. He asserted that there was no merit list on the record. Dr. Swaran Singh was shown the record. Even after examining it, he could not produce any merit list or show anything which may indicate even the preparation thereof. The record further shows that a covering letter had been put on the selection list. The covering letter purports to have been signed by Dr. Swaran Singh on February 10, 1994. The members of the Selection Committee have

only signed the letter without indicating any date. Thus, it is apparent that the assertion made by Dr. Swaran Singh probably with a view to show that all the members of the Committee had participated in the process of selection, is belied by the record.

(37) Dr. Swaran Singh also stated before us that "selection process in respect of all the posts advertised" by him "had been completed on February 10, 1993. The selection lists were signed by all the members of the Selection Committee on February 10, 1993". It is so?

(38) *Vide* letter dated May 3, 1993, Dr. Swaran Singh had informed the Chief Secretary that he had "handed over the complete record with regard to these selections" to Mr. J. P. S. Puri. However, at the time of his examination in court, he stated that Mr. Puri had assumed charge of the post and that he "had handed over the entire record of the proceedings of the selection in question to Mr. J. P. S. Puri on May 29, 1993". When further questioned, he admitted that the record relating to the selection of Stenotypists was handed over by him in November 1993. The relevant record was produced by the learned counsel for the respondents. In the beginning of the file, there is an acknowledgement dated May 29, 1993 by Mr. Puri, which reads as under :—

"Received final Selection Lists of Senior Assistants (7), Clerks (78), Senior Scale Stenographers (2), Stenotypists (8) and Drivers (7) of different categories which were handed over personally by Dr. Swaran Singh, Director Scheduled Castes and Backward Classes Welfare, Punjab, Chandigarh, formerly Deputy Commissioners, Mansa on 29th May, 1993 (F.N.). The selection lists are signed by Dr. Swaran Singh in his capacity as Deputy Commissioner-cum-Chairman. District Departmental Selection Committee, Mansa on 10th February, 1993 while the forwarding letter is signed by the Chairman, District Departmental Selection Committee, Mansa on 10th February, 1993 and other members of the District Departmental Selection Committee, namely GA to DC, District Social Welfare Officer and District Sainik Welfare Officer, Mansa, without date.

No waiting lists for the above categories of posts were handed over. Marks obtained by each candidate have not been indicated against his/her name".

Dated : 29th May, 1993 (F.N.).

Sd/-
(J. P. S. Puri),
I.A.S.
D. C. Mansa

(39) If the selection lists had been actually prepared on February 10, 1993, we see no reason which may have prevented Dr. Swaran Singh from handing over the record to his successor on May 3, 1993. His explanation that Mr. Puri had refused to accept it, does not appear to be worthy of credence. Surely, if Mr. Puri could accept the record of selection on May 29, 1993, we see no reason for him to refuse to do so on May 3, 1993. Still further, if Mr. Puri had actually refused to accept the record as alleged by Dr. Swaran Singh, it is not understood as to why he did not mention this fact in his letter dated May 3, 1993. Dr. Swaran Singh tried to explain it by saying that initially, Mr. Puri had agreed to take over the entire record and it was only after he had despatched the letter that Mr. Puri had "refused to take over the record". Had it been so, Dr. Swaran Singh would have surely written to the Government. He did not. His explanation that he had made a verbal complaint to the Chief Secretary and in view thereof he had not sent any written communication, appears to be an afterthought. The enquiry report of Mr. Chhabra makes a mention of the statement of Mr. Mast that the lists had been prepared hurriedly and that the signatures had been obtained on May 5, 1993. This appears to be the correct position.

(40) Taking the totality of circumstances into consideration, we are satisfied that :—

- (i) the merit of the candidates was not properly assessed ;
- (ii) no criterion for award of grades or conversion thereof into marks was laid down ;
- (iii) the final selection list was prepared by Dr. Swaran Singh only and was not the result of assessment by the members of the committee. Their participation in the process of selection is highly doubtful ; and
- (iv) the statement of Dr. Swaran Singh in various respects as noticed above, is not supported by the record.

(41) Accordingly, we are of the view that the selection for the posts of clerks was not fair and proper. The conclusion recorded by Mr. Rajesh Chhabra about the fairness of the selection is correct and the Government was justified in accepting it. We, thus, answer the first question in the negative.

(42) However, before parting with this point, we do feel that in view of the prevailing situation, the Government should devise a method to restore the confidence of the public in the functioning of Bodies entrusted with the job of selection. The modern technology

permits the use of audio and video tapes. If this gadgetry is employed, neither the authorities concerned nor the courts would be required to guess. Everything would be properly documented. It would be possible for any one to see or hear. This would exclude the fears of arbitrariness and infuse the much needed confidence in the minds of people.

Re : Q. No. (ii) :

(43) Mr. Sachar has vehemently contended that the Chief Minister had ordered a probe and cancelled the selections because persons recommended by him had not been selected. According to the learned counsel, the Chief Minister had ordered the Deputy Commissioner, Mansa, to 'accommodate' or 'appoint' various persons. He had also given the Deputy Commissioner 9 lists of persons who had to be appointed. Since the Deputy Commissioner had refused to oblige the Chief Minister, he was left with no alternative but to devise a method to cancel the selections. According to the learned counsel, the dominant purpose of the Chief Minister in ordering the enquiry was to have the selections scrapped as his recommendations had not been accepted.

(44) On the other hand, Mr. Hira Lal Sibal, appearing for the respondents has submitted that the endorsements made by the Chief Minister on various applications are not orders. These were not sent officially to the Deputy Commissioner. The Chief Minister had only desired that the authority should consider the matter in accordance with the rules and the law. As for the 9 lists produced with the writ petition, it has been submitted that the Political Secretary had forwarded these lists for the consideration of the Deputy Commissioner and that he was not bound to appoint them. Mr. Sibal has vehemently contended that neither the Chief Minister nor the Political Secretary had any personal interest in any of the candidates. Consequently, the suggestion on behalf of the petitioner that the dominant purpose for ordering an enquiry was to scrap the selection, cannot be sustained. It is further submitted that the question of dominant motive can arise only if the dominant purpose is unlawful. Since the purpose of the enquiry was not unlawful, the dominant purpose is not relevant. Counsel for both the sides have referred to various decisions and the observations of certain jurists.

(45) Even though Dr. Swaran Singh has alleged that the lists, copies of which have been attached with the writ petition as Annexures P-5 to P-12, were handed over to him by the Chief Minister himself, it is admitted by the respondents that the lists had been sent by

Mr. Gurmit Singh, the Political Secretary to the Chief Minister. It is also not disputed by the Chief Minister in his affidavit that the endorsements on the various applications, copies of which have been produced as Annexures P-15 to P-27, are in his hand and bear his signatures. The suggestion that the lists were handed over to Dr. Swaran Singh by the Chief Minister himself, has been denied by him in his affidavit. It has been further mentioned that he has been in public life for the last nearly 50 years and is the President of the Punjab Pradesh Congress Committee and a member of the Congress Working Committee. Because of this wide public contact, the number of people who try to meet him and ventilate their grievances is very enormous. As a Chief Minister "one has to be responsive to public grievances and aspirations.....People from all sections of Society in order to get relief in basic matters approach various functionaries in the State including the Chief Minister for satisfaction of their aspirations and needs". According to him, it is an "essential feature of Democracy that people interact with their representatives and Head of Government in connection with their individual and common needs and demands.....They give their oral and written representations for consideration which have to be processed by the concerned authorised persons for an appropriate action". According to the Chief Minister, many people present written applications pertaining to their demands which cannot be examined by the Chief Minister himself personally or even with the aid of his personal staff because of sheer volume of numbers and paucity of time. Whenever such representations are made personally, effort is made that the person is helped to meet the departmental official concerned who is legally authorised to take further action in the matter. *It is in this context that the representations Annexures P/15 to P/27 were endorsed to Deputy Commissioner, Mansa for taking appropriate action in accordance with law (emphasis supplied).* Many a time no record of such application or endorsement is kept. These endorsements do not represent any Government orders giving command to the Deputy Commissioner, Mansa to make appointments against the rules. It may well be that certain persons may not be eligible for the post for which they are applying and may not have even applied for such a post in the prescribed time. Therefore, these endorsements are in the nature of only forwarding of the applications of the concerned persons to the Deputy Commissioner, Mansa, for further consideration". It has also been averred that on account of heavy official commitments, the Chief Minister is not able to meet the public. His staff "is, therefore, authorised to forward such representations or applications to the concerned departments or officials for taking appropriate action in accordance with law". Lastly, it has been stated that every order issued by the Government" is a formal order as provided in the Constitution

of India and the Rules of Business”.

(46) The question that arises for consideration is—Was it right for the Chief Minister to make endorsements as in the present case ?

(47) In the 13th Century, Bracton in his treatise wrote—‘Quod Rex non debet esse sub homine, sed sub Deo et Lege’ (that the king should not be under man but under God and the law). The Chief Minister may not be under any man in the State. He is still ‘under God and the law’. By his oath, the Chief Minister owes “true faith and allegiance to the Constitution of India” and is bound to “do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill will”. He cannot show a favour without violating the oath. It may be expedient for the Chief Minister to be popular. Truly, he is not expected to isolate himself from the multitude of masses. But in his effort to be popular, the Chief Minister cannot yield to unreasonable expectations and say goodbye to the principles. He cannot allow the sweet seducing charm of popularity to cloud his judgment. He is sworn to do right to all manner of people. This oath is not a mere ritual. Whatever the price, the Chief Minister must live by his oath.

(48) What has the Chief Minister done in the present case ? To examine this issue, let us have a look at one of the documents. One, Baldev Singh submitted a representation to the Chief Minister stating that he belonged to a poor family and his old parents were dependent upon him. He had learnt from “reliable sources” that recruitment to the posts of clerks was going on in the office of the Deputy Commissioner, Mansa. He sought the help of Chief Minister. On October 21, 1992, Mr. Beant Singh directed the Deputy Commissioner “to accommodate” him. In this representation, it was not stated that the applicant had applied for the post of a clerk. It was also not alleged that his claim was not being considered. Still the Chief Minister desired that the Deputy Commissioner should accommodate him. Even in other representations, which were either addressed to the Chief Minister or to the Deputy Commissioner, similar endorsements have been made. In the representation at Annexure P-21, the endorsement is “For appointment”.

(49) A Chief Minister is the head of the Government. His word virtually binds every officer. When the Chief Minister desires that a Deputy Commissioner should accommodate or appoint a person, it cannot be interpreted to mean that his case should be considered in

accordance with the rules. An average officer may take the view that it is a command from a superior authority to a subordinate and has to be carried out. A spineless officer and there may be many belonging to his class, is likely to treat the Chief Minister's endorsement as an order. He may feel duty bound to carry it out faithfully. Rarely, as in the present case, it may not be obeyed. The explanation of the Chief Minister that the representations at Annexures P-15 to P-27 were merely endorsed to the Deputy Commissioner "for taking appropriate action in accordance with law", cannot be easily accepted.

(50) It can happen that a citizen may have a *bona fide* complaint against an officer. He may approach a senior officer, a Minister or even the Chief Minister for the redressal of his grievance. It would be perfectly legitimate for the authority to forward the representation to the officer concerned for his comments or other appropriate action in accordance with the rules. However, when a positive direction for accommodating or appointing the person concerned is given, it cannot be said that the officer was being asked to act in accordance with the rules. This is all the more so when the direction is given by the Chief Minister in his own hand and under his own signatures.

(51) In our country, people are poor and even illiterate. Every one may not have the means or connections so as to be able to reach the Chief Minister or his Political Secretary. When the Chief Minister endorses applications of a few candidates, the interests of those who are unable to approach him, are likely to be jeopardised. This, if allowed to happen, would negate the Constitutional guarantee enshrined in Articles 14 and 16 of the Constitution. It would result in manifest mis-carriage of justice. We cannot up-hold it."

(52) Mr. Sibal says that such endorsements are a necessity in democratic set up. He has also suggested that these are merely intended to 'satisfy' the people who approach the Chief Minister but the officer is still bound to act in accordance with the rules. We are unable to accept this submission. Firstly, it is well to remember that no one however high can act in violation of the law. Secondly, the moral fibre can only percolate from the top to the bottom. If the action of the Chief Minister, which is surely based on populist considerations is up-held, there would be nothing to stop the members of the Cabinet and other including the bureaucrats from issuing similar directions. Such a course of action would be wholly illegal. We also cannot accept the contention of Mr. Sibal that the Chief Minister was merely trying to 'satisfy' the persons and that he did not really want the Deputy Commissioner to accommodate or appoint those

whose applications he was forwarding to him. Had it been really so, the Chief Minister would have only forwarded the representations for "appropriate action". He did not do so.

(53) We are of the view that the Chief Minister cannot direct the Deputy Commissioner or any competent authority to accommodate or appoint the persons who merely submit representations seeking appointments. This would not be legally permissible or morally desirable. We cannot put our seal of approval on such an action. We, consequently, record our dis-approval of the action of the Chief Minister.

(54) At this stage, it is also appropriate to deal with the lists, copies of which have been produced as Annexures P-5 to P-12 with the writ petition. These lists bear different captions. The list at Annexure P-5 is—"Regarding recruitment of clerks and Assistants in the office of D. C. Mansa". The names of 11 persons are mentioned for the posts of clerks and 1 for that of Senior Assistant. Similarly, the list at Annexure P-8, is—"Regarding recruitment of clerks in the office of D. C. Mansa". The names of 31 persons are mentioned in this list. Similar is the position with regard to the other lists which relate to different categories of posts. Significantly, in the list at Annexure P-8, the names of two persons viz. Smt. Narinder Kaur and Shri Baldev Singh, appear at Sr. No. 10 and 18 respectively. Their applications, copies of which have been produced as Annexures P-22 and P-15 respectively had been endorsed by the Chief Minister to the Deputy Commissioner.

(55) Even though. Dr. Swaran Singh has categorically stated before us that these lists were handed over to him by the Chief Minister and the State Minister for Revenue, Mr. Gurmit Singh, respondent No. 3 had stated that the lists were sent by him. He was examined by us in Court. He stated that many people came to see him in connection with the selection in question. Some people used to come with chits and others with applications. He used to get the names of the persons, who had some grievances, typed through his Stenographer and send the lists so prepared to the concerned authorities. He even produced the chits and the applications. These lists were prepared after every two or three days on the basis of the chits/ applications and were sent to the Deputy Commissioner, Mansa. Sometimes, lists were handed over to an officer who may have visited Chandigarh in connection with some meeting. No date was put on the lists. These lists were prepared by him on his own and "not at

the instance or direction of any body else". He admitted that he had "no authority under any law or executive order from the Chief Minister or any body else to prepare any such list and forward the same to the concerned authority". He also admitted that he had never "checked up whether the concerned authority has looked into the grievances of the persons mentioned in the lists so prepared by" him and sent to the concerned authority. He also stated that "no indication with regard to the grievance of the individual was given in the list sent" by him. He admitted that two lists which were taken on record as Ex.C-1 and C-2 bore his signatures and that the lists had been sent to the Deputy Commissioner prior to the selection. After it was repeatedly put to him as to for what purpose, the lists had been sent to the Deputy Commissioner, he could only say that the Deputy Commissioner was expected to take 'appropriate action'. He further stated that lists copies of which had been produced as Annexure P-5 to P-11 had been sent by him. However, list at Annexure P-12 had not been sent by him. He also produced some of the chits/applications to indicate that some of the lists sent by him had been prepared on the basis thereof. He was careful enough to state that he "had never brought it to the notice of the Chief Minister that he had prepared any list and the same had been sent to the Deputy Commissioner, Mansa". He claims to have never asked the Deputy Commissioner as to whether any action had been taken on the lists sent by him and that no assurance had been given by him to any of the persons that his work would be done.

(56) Mr. R. K. Joshi, learned Additional Advocate General, Punjab, cross-examined the witness. Mr. Gurmit Singh stated that he had never interfered with the process of selection by the Deputy Commissioner and that he had never telephoned any Deputy Commissioner or given in writing that a particular person should be appointed. He was also cross-examined by his own counsel, Mr. H. L. Sibal. He stated that his duty as a Political Secretary was to listen to the grievances of the persons who visited the office/residence of the Chief Minister during his absence. He also stated that the Deputy Commissioner, Mansa, never had any talk with him regarding the lists for recruitment to the posts of clerks etc. He sought to clarify that "the instructions from the C.M. are that the work which has to be done should be lawful". He conceded that no complaint had been received by him regarding the selection.

(57) He was also cross-examined by Mr. P. S. Teji, learned counsel for the petitioner. The witness stated that he was under the direct control of the Chief Minister and worked according to his instructions.

In reply to a question by the court, he stated that it was not within the knowledge of the Chief Minister that he had sent the lists to the concerned authorities. He also stated that the lists had not been seen by the Chief Minister. He denied the suggestion that the lists had been prepared at the instance of the Chief Minister or that he had ever asked the Deputy Commissioner to make appointments out of the lists sent by him. He also denied the suggestion that Dr. Swaran Singh had been transferred only because he had not selected persons out of the lists sent to him.

(58) This is briefly his statement.

(59) Who is a Political Secretary ? One who keeps the political secrets of the Chief Minister ? There is nothing to indicate as to why this post was created. It is paid for by the tax payer and appears to be one of the later additions to the bureaucratic empire. According to Mr. Sibal, even a clerk is not bound to obey him and yet Mr. Gurmit Singh keeps on sending lists to different officers. Though Mr. Gurmit Singh stated before us that he had no authority under any law or executive order from the Chief Minister or any body else to prepare any list for onward transmission to the concerned authority and that the fact of his having forwarded the lists was not within the knowledge of the Chief Minister, yet we think that this claim has to be taken with a pinch of salt. This is so because the record shows that the names of some of the persons viz. Narinder Kaur and Baldev Singh, whose applications had been forwarded by the Chief Minister clearly find mention in the list at Annexure P-8 forwarded by Mr. Gurmit Singh. Still further, the Chief Minister in his affidavit has categorically stated that his staff is "authorised to forward such representations/applications to the concerned departments or officials for taking appropriate action in accordance with law". In our view, there is an effort on the part of the Chief Minister to justify the action of Mr. Gurmit Singh. We have reservations about the right of Mr. Gurmit Singh to send lists to various officers as also the truthfulness of his statement when he said that the lists were forwarded only for appropriate action and that the factum of his sending the lists was "not within the knowledge of the C.M....." In any event, Mr. Gurmit Singh himself admitted that he had no executive or legal authority to forward any list. He still did so. His action was clearly wrong.

(60) Mr. Justice Sahyasachi Mukharji in *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and others* (1), had lamented the

“steady decline of public standards or public morals and public morale”. His Lordship was pleased to observe as under :—

“This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the Courts should not and cannot remain mute and dumb.”

(61) If the ‘menace’ of “a steady decline of public standards or public morals” has to be checked and the ‘public life’ is to be cleansed, the holders of public offices must resist the temptation of satisfying people. Principles are more important than popularity and must be up-held.

(62) Even though, we have found that the Chief Minister Mr. Beant Singh and his Political Secretary, Mr. Gurmit Singh did not act within the limits of law while forwarding the applications/ lists to the Deputy Commissioner, yet the question that remains is— Was the impugned action actuated by *mala fides* ?

(63) Mr. Sachar vehemently contended that the cut off date for determining the dominant purpose of the Chief Minister in ordering the enquiry is June 4, 1993. According to the learned counsel, the enquiry had been initiated only as a result of the bias of the Chief Minister as his recommendations had not been accepted by the Deputy Commissioner. Learned counsel referred to the decisions of the Apex Court in *Dr. Partap Singh v. State*, A.I.R. 1964 S.C. 72 and *The State of Punjab and another v. Gurdial Singh and others* (2), and contended that oblique motive would always ‘pollute’ the decision. Learned counsel also referred to certain passages in Wade’s *Administrative Law* and Prof. De Smith’s commentary on “Judicial Review of Administrative Action”. According to the counsel, the dominant purpose in ordering an enquiry was not to determine the fairness of the selection but to have an excuse to cancel the selections. The claim of Mr. Sachar was vehemently controverted on behalf of the respondents by Mr. Sibal.

(64) It is not disputed that the Chief Minister was not personally interested in the persons whose applications had been endorsed by him to the Deputy Commissioner. There is not even an averment to suggest that any of the applicants was even remotely related to him. Dr. Swaran Singh during the course of his statement had undoubtedly alleged that sometime in the second week of March 1993, he was summoned by the Chief Minister through a wireless message to see him at Chandigarh. He has further stated that the Chief Minister had asked him "as to why persons mentioned in the lists handed over to him were not appointed". During the course of examination, he was asked about the date when he was called by the Chief Minister. He was unable to give it. He, however, proceeded to state that he had been called "before the selections were actually made and also after the selections were made". Even if it is assumed that Dr. Swaran Singh was not trying to improve upon his earlier statement, the fact remains that he is totally vague about the date on which he may have been called. Had he indicated the exact date, the factual position could have been verified.

(65) The evidence on record also appears to belie the suggestion made on behalf of the petitioner. It is the pleaded case of the petitioner that on the transfer of Dr. Swaran Singh, his successor was "again asked by the Chief Minister to issue appointment letters". We have the letter dated May 30, 1994 written by Mr. J. P. S. Puri on record. A perusal of this letter shows that besides asking for guidance Mr. Puri had observed in his letter that "in order to avoid embarrassment to the State Government in the High Court, it is requested that a decision may please be taken for early implementation of the recommendations of the District Departmental Selection Committee, Mansa, for the recruitment of candidates for the above posts." Surely, if the Chief Minister was really interested in the appointment of persons whose applications had been endorsed by him and if Mr. Puri had been directed by the Chief Minister to issue appointment letters to the candidates recommended by him, he would not have sought a direction from the Government regarding the early implementation of the recommendations of the District Departmental Selection Committee. It also deserves notice that,—*vide* letter dated June 3, 1993, the Commissioner, Ferozepur Division had conveyed his own views to Mr. Puri and desired that "the selection made by the District Departmental Selection Committee, Mansa, headed by the previous Deputy Commissioner should be honoured and the selection should be made public and the appointment letters be issued". It is likely that he would not have done so in case the Chief Minister was really piqued by the action of Dr. Swaran Singh.

(66) We cannot also forget that it is very easy to level allegations. However, the plea of *mala fides* cannot be sustained on the basis of mere probabilities. Mr. Puri in his letter dated May 30, 1993, had pointed out the factual position in considerable detail. In particular, he had mentioned that the selection lists had been signed only by Dr. Swaran Singh and that "the forwarding note has been signed by Dr. Swaran Singh on 10th February, 1993 while G.A. to D.C. District Social Welfare Officer, District Sainik Welfare Officer, the other members of the Departmental Selection Committee, Mansa, have signed it without any date". He had further mentioned that there was "no indication on the file.....as to why no action was taken to process the recommendations of the District Departmental Selection Committee after 10th February, 1993 or 11th February, 1993." He had also mentioned that "it is quite apparent that there has been a leak of the final selection lists by some officer/official at some level..... in order to embarrass the position of the Government." Besides this, as already noticed, there were complaints regarding the selection. At least two of these complaints had been received on October 28, 1992 and December 10, 1992. A reference to these complaints appears in the note of the Financial Commissioner (Revenue) which has been referred to above. There was an allegation that Rs. 60,000 were taken for selection as clerk. The letter of Mr. Puri and the two complaints could have created a suspicion in the mind of the Chief Minister regarding the fairness of the selection. It is also important to notice that on June 4, 1993, which should be the cut of date according to Mr. Sachar, the Minister of State for Revenue, the Chief Secretary, the Financial Commissioner (Revenue), the Legal Remembrancer and the Deputy Commissioner, Mansa, were present in the meeting when the decision to enquire into the matter was taken. There is not even a suggestion of bias or *mala fides* against these persons.

(67) There is another fact which deserves notice. The petitioner had admittedly filed Civil Writ Petition No. 6455 of 1993 which was disposed of by the Division Bench,—*vide* its order dated September 8, 1993. At the time of the hearing of the petition, one of the options given by the Bench was to issue "a direction to the respondents to constitute a fresh selection committee which would interview the candidates who had passed the written test and prepare fresh selection lists". Learned counsel for the petitioner did not accept this offer. If the petitioner really felt that the enquiry had been ordered on account of extraneous considerations and that he was meritorious enough to be selected, there was nothing which could have prevented him from either challenging the enquiry or accepting the option given to him. He did not do so. As a result, the Bench gave a direction to the respondents to complete the enquiry expeditiously. That having

happened, the petitioner has now chosen to allege that the enquiry was ordered on account of the *mala fides* of the Chief Minister.

(68) Taking the totality of the circumstances into consideration, and the evidence on record, we are not satisfied that the Chief Minister was personally interested in the selection or appointment of persons whose applications had been forwarded by him to the Deputy Commissioner or that on the failure of Dr. Swaran Singh to select and appoint them, he was looking for an excuse to scrap the entire selection. On a perusal of the evidence on record, we are satisfied that even on June 4, 1993, the Chief Minister could have entertained a doubt regarding the propriety of the selection. The subsequent events have proved that his doubts were well-founded.

(69) Consequently, we answer the second question in the negative and hold that the impugned action was not actuated by any *mala fides* of the Chief Minister. The enquiry was not ordered to wreak vengeance against any officer. It had been ordered to find out the truth about the fairness of the selection.

Re. Q. No. (iii) :

(70) It was then contended by Mr. Sachar that the action of the Government in cancelling the selection was without jurisdiction. According to the learned counsel, under Rule 4, the power of appointment vested in the Deputy Commissioner. He alone was entitled to exercise this power and it could not be interfered with by any other authority including the Government. The claim made on behalf of the petitioner was controverted by learned counsel for the respondents.

(71) We have already noticed the relevant provisions of the Rules. Rule 2(f) defines the 'recruiting authority' to mean the Punjab Subordinate Services Selection Board or "any other authority authorised by the Government to perform the functions of the said Board". Under Rule 4, appointments to posts in the service have to be made by the Deputy Commissioner. Admittedly, the committee had been constituted by the Government to conduct the selections. On April 26, 1993, the Government had passed an order transferring Dr. Swaran Singh from the post of D.C. Mansa. On May 3, 1993, Mr. J. P.S. Puri had assumed the charge of the office of the Deputy Commissioner. The record relating to the selection (except for the posts of Stenotypists) was handed over by Dr. Swaran Singh to Mr. Puri on May 29, 1993. On the very next day, Mr. Puri addressed a communication to

the Chief Secretary. In this letter, Mr. Puri had made a specific reference to the fact that the selection lists had been signed by Dr. Swaran Singh only. The forwarding note had been signed by the other members "without any date". He further noticed that "there is no indication on the file handed over to" him personally by Dr. Swaran Singh on 29th May, 1993 at 10 A.M. as to why no action was taken to process the recommendations of the Departmental Selection Committee after 10th February, 1993 or 11th February, 1993. There is considerable delay between 10th February, 1993/11th February, 1993, and 29th May, 1993 and this remains unexplained as per record handed over to me on 29th May, 1993". The officer sought the advice and guidance of the Government as to whether or not the final selection lists be acted upon. He also pointed out that the selection lists appear to have been deliberately leaked to the candidates. It is, thus, clear that the Government had not intervened *suo motu* or ordered that the selection lists be quashed. In fact it was the Deputy Commissioner, Mansa himself who had sought the advice of the Government. As such, it appears to us that the Government had not usurped the functions of the statutory authority but had intervened only when the Deputy Commissioner himself had expressed certain reservations in the matter and sought guidance. Still further, it is also clear that the Deputy Commissioner was present in the meeting held on June 4, 1993 when the decision to order an enquiry was taken. He expressed no reservation about the validity of the enquiry at any stage.

(72) It further appears to us that according to rule 2(f), the function assigned to the District Selection Committee is similar to that performed by the Subordinate Services Selection Board. It is charged with the duty to make selections for different posts. The recommendations made by this authority have to be considered by the appointing authority prescribed under Rule 4 *viz.* the Deputy Commissioner. However, the Deputy Commissioner had not accepted the recommendations purportedly made by the Committee. The matter may have been different if the Deputy Commissioner had accepted the recommendations and issued the letters of appointment. However, he had not done so. On the contrary, he had himself asked for guidance. In this situation, we cannot say that the action of the Government was without jurisdiction.

(73) Irrespective of the facts of the present case, it can happen that the Government may receive complaints of favouritism or nepotism in the process of selection against the member/s of a committee constituted by it. If on a preliminary examination, the complaints

create doubts, the Government is not expected to be a silent spectator. It cannot be helpless. It shall be duty bound to intervene and ensure that selections are made only on merit. This is precisely what appears to have happened in the present case.

(74) Accordingly, we hold that the action of the Government in ordering an enquiry and setting aside the selections was not a usurpation of the functions of the statutory authority and it cannot be set aside on that ground. We answer the third question accordingly.

(75) Mr. Sachar also contended that even if some defect was found in the process of interview, the entire selection could not have been cancelled. We cannot accept this submission. As already noticed, the Bench which decided the earlier bunch of petitions including the one filed by the present petitioner, had given an option for *de novo* interviews. This was not accepted. Accordingly, the Government was directed to complete the enquiry expeditiously and pass suitable orders. If on consideration of the enquiry report, the Government has now decided to cancel the entire selection, it would not be fair to interfere with the order of the Government. It is likely that the Government may have considered it appropriate to give an opportunity to such candidates as may have now become eligible to compete for the posts. In any case, a considerable time has elapsed since the selection had been made. During this interval, a number of persons may have acquired the requisite qualifications. They should get a chance to compete. We, therefore, reject the contention raised by the learned counsel.

(76) No other point was urged.

(77) This brings us to the consideration of Misc. applications which had been filed during the pendency of this petition and had been ordered to be heard with the main case.

(78) The first application is Civil Misc. Petition No. 8439 of 1994. In this application, a prayer has been made for impleading Mr. Beant Singh, the Chief Minister as respondent No. 4. Since Mr. Beant Singh has already filed his affidavit, it does not appear to be necessary to implead him as a party at this stage. Accordingly, we dismiss this application.

(79) Civil Misc. application No. 9155 of 1994 has been filed by the petitioner for permission to place the documents (Annexures P-15

to P-27) on record. We have already taken these documents into consideration. It is allowed.

(80) Civil Misc. application No. 9557 of 1994 had been filed by the petitioner for summoning the Chief Minister for examination in court. In view of the fact that a detailed affidavit had been filed by the Chief Minister, we were *prima facie* of the view that it may not be necessary to summon the Chief Minister for examination in court. During the course of hearing, nothing was pointed out to show that the averments in the affidavit required further elucidation. Accordingly, we dismiss this application also.

(81) Civil Misc. application No. 9891 of 1994 was filed by the respondents under Section 340 of the Code of Criminal Procedure to order prosecution of Dr. Swaran Singh. Even though in the application, it had been prayed that Dr. Swaran Singh be prosecuted "for fabricating false evidence and purgery", yet at the hearing of the case, the prayer was confined to the charge of fabrication of evidence alone.

(82) After hearing learned counsel for the parties in this behalf, we are not satisfied that a *prima facie* case for ordering prosecution has been made out. We, accordingly, decline the prayer.

In view of the above, we hold that :—

1. The Selection conducted under the Chairmanship of Dr. Swaran Singh was not fair and proper.
2. The action of the Chief Minister in ordering the enquiry did not suffer from the vice of *mala fides*. It had been ordered to find out the truth about the fairness of the selection.
3. The action of the Chief Minister in making endorsements on the applications/representations, was wrong and we cannot approve of it. Similarly Mr. Gurmit Singh, Respondent No. 3 had no authority to forward the lists to the Deputy Commissioner.
4. The action of the Government in cancelling the selection was not contrary to the rules or without jurisdiction.
5. There is no reason to interfere with the decision of the Government to hold *de novo* selection.

(83) As a result of the above conclusions, we find no merit in these writ petitions. These are dismissed. However, in the circumstances of these cases, we make no order as to costs.

S.C.K.

Before Hon'ble Ashok Bhan, J.

SURJIT KAUR,—Petitioner.

versus

SURJIT KAUR AND OTHERS,—Respondents.

C.W.P. No. 17087 of 1994.

January 16, 1995.

Constitution of India, 1950—Arts. 226/227—Election—Recount of votes—Interim order of High Court enabling petitioner to make representation before Deputy Commissioner—Deputy Commissioner ordering recount without taking any evidence and without affording opportunity of hearing to elected candidate—Such order is liable to be set aside—Deputy Commissioner ordered to decide application for recount after hearing petitioner keeping in view law laid down by Supreme Court in Satya Narain Dudhani's case.

Held, that the Deputy Commissioner without taking any evidence and even prior to the filing of the written statement, ordered the recount presumably with the impression that the High Court in C.W.P. 15125 of 1994 had directed him to order a recount as and when a representation is filed before him claiming a recount. High Court in its order has only directed that the petitioner may file a representation to the Deputy Commissioner claiming a recount, who may consider the same and decide before the election of the Chairman. Block Samiti, Sunam, District Sangrur takes place. This did not imply that the Deputy Commissioner could dispose of the application for recounting the votes summarily without affording proper opportunity to the petitioner. From the perusal of the orders Annexure P-7 and P-8 it is evident that the petitioner had not been afforded any opportunity before ordering the recount of votes.

(Para 6)

Further, held that the impugned orders are liable to be set aside. The case is remitted back to the Deputy Commissioner, Sangrur, to re-decide the same keeping in view the law laid down by the Supreme Court in Shri Satyanarain Dudhani's case.

(Para 7)