

this issue has been decided by Division Bench of this court in **The District Red Cross Society, Sirsa versus Radha Kishan Rajpal & another** (3). In view of the Division Bench Judgment which is binding upon this Court, this preliminary objection is not valid.

(11) For the above reasons, this petition is allowed. Respondents are directed to pay the salary to the petitioner for the period with effect from 1st November, 1994 to 10th February, 2005. She is also entitled to leave encashment as is permissible to the Haryana State Government employees as well as gratuity and Provident fund in accordance with the rules and Payment of Gratuity Act, 1972. Provident fund and Gratuity will carry statutory interest. Since the salary and leave encashment has been illegally withheld by the respondents, petitioner is also entitled to interest on the sum payable at the rate of 6 per cent per annum after expiry of one month from the date of retirement i.e. 10th February, 2005 till the amount is actually paid. Respondents are also restrained from effecting any recovery from emoluments of the petitioner on account of alleged excess payment. Let all the claims be settled and paid within period of three months from today.

R.N.R.

Before Rajesh Bindal, J

JAGJIT SINGH AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

C.W.P. NO. 7561 of 2006

11th October, 2007

Constitution of India, 1950—Art. 14, 16(1) and 226—Punjab Panchayat Samitis and Zila Parishads Service Rules, 1965—Rls.4 and 6—Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—S.33—Appointment of petitioners on various posts in Zila Parishads and Panchayat Samities against vacancies meant for physically handicapped persons—

Irregularities, illegalities, favouritism in process of selection—Termination of services—Appointment of ineligible candidates—Violation of provisions of 1995 Act and 1965 Rules—Sufficient material on record showing illegalities, irregularities conducted in process of selection—Once in large number of appointments, illegalities and irregularities and reasons for favouritisms proved the only possible conclusion is to set aside entire process of selection—No illegality by respondents in terminating services of all the candidates appointed in the process—Petitions dismissed.

Held, that the illegalities in the process of selection is fortified from the fact that even the advertisement was not in conformity with the Rule 6 of the 1965 Rules, according to which for non-technical post, the prescribed age is 18 to 30 years whereas for technical post, it is 18 to 33 years on the first date of January of the year immediately preceding the last date fixed for submission of applications whereas in the advertisement the age was mentioned as 18 to 35 years as on 1st August, 2001 as against 1st January, 2001. This shows that the entire process was conducted and concluded in so much of hurry that even relevant Act and Rules were not consulted.

(Para 24)

Further held, that there is clear violation of Section 33 of the 1995 Act where it is specifically provided that reservation of 3% vacancies for the disabled persons are to be divided amongst three different categories to the extent of 1% each. However, a perusal of the advertisement in pursuance to which the selections in question were made, no such bifurcation of vacancies was made and the majority of the selected candidates are from one or the other category.

(Para 25)

Further held, that in case of number of selected and appointed candidates, the documents annexed with the applications bear the date after the last date of receipt of applications, which clearly is a case of interpolation and tampering with the record whatever available of the eligible candidates

on the last date for receipt of applications. In totality the entire process of selection does not inspire confidence.

(Para 27)

Further held, that various aspects of selection starting from issue of advertisement in violation of provisions of the 1995 Act and the 1965 Rules, the receipt of applications (incomplete, after the last date fixed for receipt thereof), appointment of ineligible candidates (qualification wise, age wise), selection of large number of candidates in excess of the advertised vacancies, clearly show that there is sufficient material on record to hold that entire selection process was far from fair. No illegality has been committed by the respondents while terminating the services of all the candidates, who were appointed in the process. Once in the case of number of selected and appointed candidates, illegalities, irregularities and reasons for favoritisms are available the only possible conclusion is to set aside the entire process of selection.

(Para 35)

Vivek Sharma, Advocate, for the petitioners in C.W.P. No. 7561 of 2006.

J. S. Manipur, Advocate, for the petitioners in C.W.P. Nos. 7039 of 2004, 6981 of 2005 and 7389 of 2006.

T. P. Singh, Advocate, for the petitioners in C.W.P. No. 14791 of 2005.

B. R. Mahajan, Advocate, for the petitioner in C.W.P. No. 10790 of 2005.

Gopal Mahajan, Advocate, for the petitioner in C.W.P. No. 14495 of 2002.

Ravinder N. Sharma, Advocate, for the petitioner in C.W.P. No. 16140 of 2002.

Ranbir Singh Rawat, Advocate, for the petitioners in C.W.P. Nos. 8366, 8351, 10298 of 2005 and 5634 of 2006.

None for the petitioners in C.W.P. Nos. 17404 of 2002, 7726 of 2005, 5653, 6840, 6899 and 14740 of 2006.

Lekh Raj Sharma, Additional Advocate General, Punjab and D.V. Sharma, Senior Advocate with Harit Sharma, Advocate for the respondents.

Arihant Jain, Advocate for respondent No. 3 in C.W.P. Nos. 8366 and 14791 of 2005 and for respondent No. 4 in C.W.P. No. 8351 of 2005.

RAJESH BINDAL, J.

(1) This order will dispose of bunch of cases bearing Civil Writ Petition Nos. 14495, 16140, 17404 of 2002, 7039 of 2004, 6981, 7726, 8351, 8366, 10298, 10790, 14791 of 2005, 5634, 5653, 6840, 6899, 7389, 7561 and 14740 of 2006 as common questions of law and facts are involved.

(2) The challenge in the bunch of these petitions is to the orders passed by the respondents terminating the services of the petitioners, who were employed on various posts, namely-Veterinary Pharmacist, Clerk, Beldar, Boatman, Peon, Mali-cum-Chowkidar, Water Carrier and Sweeper against the vacancies meant for physically handicapped persons.

(3) The facts are extracted from Civil Writ Petition No. 7561 of 2006.

(4) Briefly the facts are that Director, Rural Development and Panchayat, Punjab issued advertisement inviting applications for completing the backlog of vacancies reserved for physically handicapped persons lying vacant for various posts in the Zila Parishads and Panchayat Samities in the State of Punjab. The advertisement was published in the newspaper on 8th September, 2001. The last date for receipt of applications was 17th September, 2001. The application on prescribed form was to be accompanied by requisite documents and demand draft for the amount prescribed. The applications were necessarily to be sent by registered post. The text of the advertisement is extracted below :—

**“Director, Rural Development and Panchayat Department,
Punjab. S.C.O. No. 49, Sector 17-E, Chandigarh.**

Applications are invited to clear the backlog of the vacant posts meant for handicapped persons in the Zila Parishad and

Panchayat Samities in the State of Punjab in the following different categories, as per the *pro forma* given below :—

S. No.	Name of Post	No. of Posts	Category	Essential Educational qualification
1	Clerk	9	Handicap	Matric in second division or 10+2 (with Punjabi Subject) (a) In order to apply for the post of Clerk, the candidate would have to qualify the Punjabi Typing test at the prescribed speed. (b) Pay scale 3,120–5,160 (initial start Rs. 3,220).
2	Peon	13	Deaf and Handicap	The candidate should have passed up to middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).
3	Beldar	2	Deaf and Handicap	The candidate should have passed up to middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).
4	Mali-cum-Chowkidar	5	Deaf and Handicap	The candidate should have passed up to middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).
5	Water Carrier	6	Deaf and Handicap	The candidate should have passed up to middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).
6	Sweeper	6	Deaf and Handicap	The candidate should have passed upto middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).
7	Veterinary Pharmacist	8	Deaf and Handicap	Matric and should have undertaken one year training from Punjab Technical Institute, Amritsar. Pay scale 4,400–7,000.

8	Vaccinator	2	Deaf and Handicap	Matric and should have undertaken one year training from Punjab Technical Institute, Amritsar. Pay scale 4,400–7,000.
9	Road Guards	1	Deaf and Handicap	The candidate should have passed up to middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).
10	Boatman	1	Deaf and Handicap	The candidate should have passed up to middle standard/class with Punjabi subject. Pay scale 2,520–4,140 (initial start 2,620).

The application should be sent with attested copies of all the certificates/testimonials and two recent passport size photographs duly attested by a Gazetted Officer. The application should reach the office of Director, Rural Development and Panchayat Department, Punjab, S.C.O. No. 49, Sector 17-E, Chandigarh, up to 17th September, 2001. The applications received after prescribed date will be rejected. It is also made clear that neither the incomplete applications will be considered nor any information in this regard would be sent to the applicant.

Government/Semi, Government employees should send their applications through proper channel. They should send their applications complete in all respects within the prescribed time. They will be called for interview/written test etc. only if their applications are received through proper channel or they should have obtained No Objection Certificate from their concerned departments.

All the applications should be sent with bank draft of Rs. 100 (for general category) and Rs. 25 (for Scheduled Castes and Backward Classes) payable in the name of Director, Rural Development and Panchayat payable at Chandigarh.

The age of applicant should be in between 18 years to 35 years as on 1st August, 2001. Upper age limit would be relaxable for the candidate belonging to Scheduled Castes and Backward Classes and Ex-

servicemen as per the instructions of the Punjab Government. No TA will be given for the test/interview. Only those applications will be accepted which will be sent through registered post up to the last date. The applications will not be received by hand or by courier.

Director, Rural Development and Panchayat, Chandigarh.

PROFORMA FOR APPLICATION

1. Name of Post (in capital letters)
2. Name of the candidate (in capital letters) PHOTO
3. Name of the father (in capital letters)
4. Date of Birth
5. Place of birth (District & State)
6. Permanent Home Address

7. Address for Correspondence

8. Caste
9. Is the candidates belongs to Scheduled Caste/Backward Class/Ex-servicemen/ Freedom Fighter ?

(Attested copy of certificate should be enclosed as proof).
10. Qualifications

Sr. No.	Examination passed	Name of Board/ University	Year of passing	Total marks obtained	Division/ percentage
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11. Experience, if yes, then detail
alongwith certificate
12. Are you married/unmarried
13. Is Punjabi Subject has been passed in Matric
14. Certificate issue by District Medical Officer as
proof of Physical handicapped :—
15. Demand Draft No. _____ Dated _____
amount _____ Name of the Bank _____
I certify that the above information given by me is correct.

Dated : _____

Place : _____

Signature of the applicant”

(5) The candidates selected for various posts were issued appointment letters on 18th December, 2001. However,—*vide* memo dated 2nd August, 2002, Government decided to dispense with the service of the persons employed against the handicapped category in December, 2001 as various irregularities were found at the time of their appointments. The orders of termination were challenged before this Court. The issues were examined in Civil Writ Petition No. 13783 of 2002 (Kuldeep Singh *Vs.* The State of Punjab and others) decided on 15th March, 2004, whereby this Court, finding that the termination was made without issuing any show cause notice, set aside the order of termination with liberty to the respondents to take fresh action in the matter.

(6) Thereafter, on 13th August, 2004, show cause notices were issued to all the terminated candidates for opportunity of hearing before the Committee appointed for the purpose. Thereafter, again show cause notices were issued to the selected candidates on 15th February, 2006 pointing out various discrepancies and irregularities committed in the process of selection of the candidates for various posts and after hearing the candidates and considering objections raised by them,—*vide* order dated 22nd March, 2006 it was decided that the services of 42 employees, as mentioned in the order, be terminated. In the impugned order terminating the services of the candidates irregularities, illegalities, favouritism in the process of selection

and other reasons were mentioned in detail. The relevant extract thereof is as under :—

“Some Zila Parishads/Panchayat Samities pointed out the irregularities and illegalities in the appointments and therefore, the appointments were examined at the Government level and it was found that the selection committee had committed,— *vide* spread mischief which was all pervasive and had benefited unlawfully certain candidates and wrongfully deprived the legitimate candidates on their due rights. There was evidence that the applications of the candidates who was either did not apply or sent the applications under registered post by the due date were entertained and selected. Therefore, whole of the selection smacks of arbitrariness. Under the provisions of the persons with disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, 1% posts each or the categories of blind, deaf and dumb or orthopaedically handicap persons were required to be filled in. However, the provisions of the Act were not adhered to while issuing the advertisement and also making the appoints.

CLERKS :—In the case of Clerks, 9 posts had been advertised whereas 27 candidates have been selected and appointed. In this way, 18 candidates have been appointed in excess of the quota meant for handicapped persons. Besides only 3 posts fell to the share of orthopaedically handicap persons whereas 26 candidates were appointed out of the category of orthopaedically handicapped. Only 1 candidate belongs to the category of deaf and dumb.

The application of Prem Masih is unsigned. The date of demand draft has been mentioned but no number of the demand draft has been given. In the case of Gurinderbir Singh, the particulars of demand draft have not been given and the column has been kept blank which goes to show that he applied without bank draft. Moreover, the application does not bear any date. This leads to the conclusion that the application was entertained after the last date. Hakam Singh was appointed as a Clerk. He

is matric 3rd division as he secured compartment in 10+2. Therefore, he did not fulfill the requisite qualifications even. Pawan Kumar was over age, his date of birth being 22nd March, 1961. In the case of Ranjit Kaur, a cutting was made against the post for which she applied and after rubbing the name of the original post, the post of Clerk was inserted which is in a different handwriting. The application of Gurmukh Singh was entertained after the last date, as the date of bank draft is whereas the last date was 17th September, 2001. In the case of Ram Singh, in the application the date originally mentioned seems to be 19th September, 2001 and the figure 9 has been changed to '0' so as to make the application dated 10th September, 2001. In the case of Manjit Kumar, Gurmeet Singh, Kuldeep Singh, Subhash Kumar and Satinder Bir Singh, the date of bank draft is 17th September, 2001. The applications were required to be sent under registered post and under no circumstances the applications could have reached on or before 17th September, 2001, which goes to show that the applications were entertained after 17th September, 2001. In the case of Deepak Jindal, the date of bank draft is 23rd June, 2001 whereas the posts were advertised on 8th September, 2001. Therefore, the bank draft, which was submitted by him while applying under the general category candidates was attached with the application because the post was advertised on 8th September, 2001 and which clearly goes to show that he did not apply against the advertisement dated 8th September, 2001. In the advertisement, it was specifically mentioned that the candidates would have to pass the type test at the prescribed speed. Although, in the case of some candidates the type test papers are available in the record, but they have not been marked. In fact none of the candidates passed the type test at the speed of 30 WPM. A note to this effect has been given by the Chairman of the Selection Committee himself that majority of the candidates could not pass the type test as per the condition in the advertisement. A merit list of 27 Clerks has been prepared 8 candidates have secured 64 or above marks and the remaining 19 candidates have secured 63 marks each.

Out of the 8 candidates who have secured 64 or above marks, 5 candidates on the face of it are tainted candidates, 3 candidates are those who secured 64 or above marks whereas only 9 appointments were to be made. Therefore, under these circumstances, it is not clear that the deserving candidates had been ignored and undeserving candidates have been benefited. Therefore, it is not possible to separate the grain from the chaff.

VETERINARY PHARMACIST :—None of the candidates possess the requisite qualifications prescribed under the service rules as none of the candidates is in possession of Diploma in Veterinary Compounder. 8 posts were advertised. However, 22 appointments have been made. Thus, 14 appointments were made in excess of 3% quota meant for handicapped persons. The candidates who did not apply for the post of Veterinary Pharmacist or were under age or over age have been appointed. Gurmail Singh applied for the post of Electrician but he has been appointed as Veterinary Pharmacist. Prem Singh applied for the post of Clerk, but he has been selected and appointed as Veterinary Pharmacist, Bharpur Singh was under age as his date of birth is 18th October, 1983. Surinderpal Singh is over age.

No date has been mentioned in the application of Ram Singh. He has attached the bank draft dated 25th June, 2001 whereas the posts were advertisement on 8th September, 2001. Same is the case with Paramjit Singh and Sehdev Singh. The application of Sukhdev Singh and Gurinderpal Singh are dated 17th September, 2001 and in case these would have been sent under registered post, then these could not have reached on 17th September, 2001, which was the last date. Out of 22 candidates appointed as Veterinary Pharmacist, 18 candidates were awarded 65 marks each. 4 candidates secured 68 or above marks. Out of these 4 candidates 3 are clearly tainted candidates. Paramjit Singh secure 69 marks. His application is without date and bank draft of old advertisement has been attached. The handicapped category certificate is after the last date of application. He had applied for the post of Veterinary

Pharmacist and Peon. In the case of Sahib Dev Singh, who had 65 marks, bank draft is dated 25th June, 2001. In fact the applications were entertained after the last date. Under Rule 8(1A) of the 1965 Rules, in case of appointment by direct recruitment, written test was required to be conducted by the selection committee of the candidates and thereafter interview was to be held of the candidates who qualified the written test and whose names appeared in the merit list prepared by the selection committee or committee. Neither any written test was held for appointment as a Clerk nor for appoint of Veterinary Pharmacist, therefore, the appointment is against Rule 8(1A) of the 1965 Rules.

PEON :— In case of Peons, 13 posts were advertised whereas 33 candidates were appointed. Baljit Singh applied on 10th November, 2001 whereas the last date was 17th September, 2001. Gurbachan Singh was over age. Dharampal never mentioned the number of the bank draft. Kulwant Singh was over age and his application is also dated 27th September, 2001. In case of Gurdev Singh, the date of application and bank draft is 17th September, 2001, which is sent under registered as per the condition of advertisement could not have reached by the due date, he is the case with Janak Raj. The appointment of Peons have been made division wise. From Jalandhar division, out of 11 candidates, 10 candidates are from Gurdaspur district from where Shri Nirmal Singh Kahlon, the then Rural Development and Panchayats Minister belong. The Selection of Joginder Singh, Gurdev Singh and Satnam Singh on the face of it is tainted one as has been made clear above. Out of 33 candidates who have been appointed, 28 candidates have been awarded 12 marks each. Whereas 13 posts were advertised, Baljit Singh and Satnam Singh were awarded 14 and 13 marks, respectively, but selection of both of them is tainted. Baljit Singh applied on 10th November, 2001 whereas the last date was 17th September, 2001.

MALI-CUM-CHOWKIDAR :— Gurnaik Singh applied for the post of Peon and Water Carrier and did not apply for the post

of Mali-cum-Chowkidar, but he has been appointed as Mali-cum-Chowkidar. 5 candidates have been appointed as Mali-cum-Chowkidar. None of them applied for the post of Mali-cum-Chowkidar. All the 5 appointments have been made of the candidates belonging to Gurdaspur District.

WATER CARRIER :—6 posts of water carrier were advertised. However, 8 appointments have been made. Therefore, two appointments are in excess of the quota meant for handicapped persons. Manjit Singh was under age. Chattar Singh never applied for the post of Water Carrier. Even the number and date of the bank draft has not been mentioned by him. Krishan Chand had applied for the post of Water Carrier under general quota vacancies *vide* application dated 25th June, 2001. However, he never applied in response to the advertisement dated 8th June, 2001. But on the basis of an application dated 20th November, 2001, he has been selected and appointed as water carrier. This clearly shows to be a case of favouritism. Out of 8 appointments, 7 appointments were made of the candidates belonging to Gurdaspur District.

SWEEPER :—6 appointments of Sweepers have been made of the candidates who did not submit the applications by due date or their applications were incomplete or were ineligible. Lakhwinder Singh and Jhirmal Singh did not attach the handicapped category certificate particulars of bank drafts were not mentioned. Rajwinder Kaur never applied for the post of Sweeper, she applied for the post of Peon and her application is dated 17th September, 2001 and which could not have reached on 17th September, 2001 under registered post.

BELDARS :—2 posts of Beldars were advertised but 5 were appointed. The bank draft in the case of Victor Masih is dated 16th June, 2001 whereas the posts were advertised on 8th September, 2001. In case of Sukhbir Singh, the attestation of the certificate attached with the application are dated 17th September, 2001 from Kala Afgana. A DDR No. 15 dated

18th October, 2001 has also been attached with the application showing that he has lost his original 8th class certificate as well as the original handicapped certificate issued by the office of the Civil Surgeon, Gurdaspur. In the above application dated 17th September, 2001, DDR dated 18th October, 2001 could not have been attached, which clearly shows that the applications were entertained after the last date. In the case of Jasbir Singh, the handicapped category certificate is dated 20th September, 2001 whereas the last date of submissions of the application was 17th September, 2001. Besides this, he did not mention the name of the post for which he applied but with a different handwriting and different ink, the name of the post has been mentioned. Naib Singh applied for the post of Veterinary Pharmacist. However, by making a cutting and by adding the name of the post as Beldar, he has been appointed as Beldar. In the case of Avtar Singh, no original application is available in the record. However, a photocopy is available in the record. The said application has been addressed to the Chairman, Departmental Selection Committee regarding interview. 2 passport size photographs which were required to be attached duly attested by the gazetted officer are not attested.”

It is this order and similar other orders passed by the authorities, which are impugned in the present bunch of petitions.

(7) I have heard Sarvshri Vivek Sharma, J. S. Manipur, T. P. Singh, B. R. Mahajan, Gopal Mahajan, Ravinder N. Sharma, Ranbir Singh Rawat, Advocates, learned counsel appearing for the petitioners and Lekh Raj Sharma, Additional Advocate General, Punjab, D. V. Sharma, Senior Advocate with Harit Sharma, Advocate and Arihant Jain, Advocate for respondents.

CONTENTIONS OF COUNSEL FOR THE PARTIES :

(8) The primary contentions raised by various learned counsel for the petitioners are that termination of services of the petitioners at the relevant time was nothing else but a *malu fide* exercise of authority by the persons, who had come in power in February, 2002 after change of Government in general elections. As the petitioners were selected by the earlier

Government, it was decided by the subsequent Government to dispense with their services without their being any good reason for the same. The language of the show cause notice issued to the petitioners and the impugned orders passed terminating their services are almost verbatim, meaning thereby that the respondents were determined to dispense with their services. Proper opportunity of hearing was not granted to the petitioners. The impugned orders are non speaking as no good reasons for dispensing with the services of the petitioners are forthcoming. As per Rule 4 of the Punjab Panchayat Samitis and Zila Parishads Services Rules, 1965 (for short "the 1965 Rules") appointing authority in case of employees of a Panchayat Samiti is the Panchayat Samiti concerned and in case of employees of a Zila Parishad is the Zila Parishad concerned but in the present case the termination orders have been passed by the Director-cum-Special Secretary, Department of Rural Development and Panchayats Department, who is incompetent. No enquiry whatsoever was conducted before termination of the services of the petitioners.

(9) Still further it is submitted that in case there were certain allegations of favoritism or irregularities against certain selected candidates. each case should have been examined separately. Services of only tainted candidates should have been dispensed with and no blanket order should have been passed terminating the services of all the candidates en-block. The 1965 Rules were framed under the Punjab Panchayat Samitis and Zila Parishads Act, 1961. The Act having been repealed by the Punjab Panchayati Raj Act, 1994 (for short "the 1994 Act") the Rules framed thereunder cannot be relied upon now for the purpose of dealing with the cases of the petitioners. As regards the selection and appointment of Veterinary Pharmacist is concerned, additional contention was raised to the effect that relaxation in the qualification was granted,—*vide* order dated 1st March, 2002. Accordingly, on that ground their selection cannot be faulted with.

(10) The judgments in **U.N. Pandey versus Eastern Coalfields Ltd. & others (1)**, **Inderpreet Singh Kahlon & others versus State of Punjab & others (2)**, **Chandra Parkash Tiwari & versus Shakuntala Shukla (3)**, **Virendra Chawla versus The Chandigarh**

(1) 2000(2) S.L.R. 35

(2) 2006(2) R.S.J. 492

(3) 2000(2) S.C.T. 1093

Administration & another (4) and State of Karnataka & others versus C. Lalitha (5) were relied upon by learned counsel for the petitioners.

(11) Learned counsel appearing in Civil Writ Petition No. 14495 of 2002 raised an additional argument that the show cause notice was not even served upon the petitioner. Accordingly, petitioner was not able to file any reply thereto.

(12) On the other hand learned counsel appearing for the respondents contested the petitions tooth and nail and submitted that there are glaring illegalities, discrepancies and irregularities in the process of selection which is nothing else but a result of favoritism. While referring to certain examples mentioned in the show cause notice as well as impugned order, it was, *inter alia*, contended that incomplete applications lacking particulars, requisite certificates and demand drafts etc. were entertained. As per advertisement applications were required to be sent by registered post, however, this condition was not adhered to. Many applications were entertained after the last date of receipt of applications. Certain appointed candidates were either under age or over age, accordingly, ineligible for appointments.

(13) In case of many candidates, applications were not on the formats prescribed in the advertisement. The demand drafts annexed with the applications were of the dates when even the advertisement had not been issued or of a date beyond the last date for receipt of applications.

(14) The advertised vacancies were beyond available vacancies as **per cadre strength**. Further the selection and appointments were made even beyond advertised vacancies.

(15) The terms of the advertisement with regard to age were not in conformity with Rule 6 of the 1965 Rules. According to which for non-technical post, the prescribed age is 18 to 30 years whereas for technical post, it was 18 to 33 years on first day of the January of the year immediately preceding the last date fixed for submission of applications whereas in the advertisement published on 8th September, 2001, age was mentioned as

(4) 1984(1) S.I..R. 452

(5) 2006(2) R.S.J. 19

18 to 35 years as on 1st August, 2001. It was further argued that the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the 1995 Act") had been completely ignored, which provide as to how 3% vacancies reserved in the handicapped quota are to be bifurcated amongst various categories. The Director, who had made earlier selections was found guilty of committing gross irregularities and illegalities in the selection process and enquiry is going on against him. Further in terms of the 1965 Rules, the competent authority for appointment to various posts in Zila Parishad is the Zila Parishad concerned and is Panchayat Samiti concerned in case of employees of a Panchayat Samiti. Without there being any decision of the Government to centralize the selection, even the appointments were made by the authority, who was not competent to make the same. Further, it is submitted that from the facts it can very well be inferred that effort was to give appointments to certain favourities. The show cause notices were issued to all the candidates by registered post.

(16) Still further the contentions is that where large scale discrepancies, illegalities and irregularities are found in the process of selection, even the show notice is not required to be issued as selection itself is vitiated. He relied upon **Jammu & Kashmir Public Service Commission versus Farhat Rasool (6)**, **Dhananjay versus Chief Executive Officer, Zila Parishad, Jalna (7)**, **Kendriya Vidyalaya Sangathan & others versus Ajay Kumar Das & others (8)**, **Union Territory of Chandigarh versus Dilbagh Singh & others (9)** and **Union of India & others versus O. Chakradhar (10)**. Summing up the arguments, he submitted that in the present case perusal of show cause notices, impugned orders and the original record, which were produced in the Court, shows that the large scale bungling and irregularities were committed in the process of selection. Under these circumstances the respondents had no choice whatsoever except to terminate the services of all the candidates selected in the process as it cannot be said that even the selection of the candidates where no discrepancy could be found in the process of selection were meritorious

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- (6) 1996(2) S.C.T. 170
 - (7) 2003(1) S.C.T. 822
 - (8) 2002(2) S.C.T. 1058
 - (9) 1993(1) S.C.C. 154
 - (10) 2002(3) S.C.C. 146

as compared to other applicants for the posts. Learned counsel prayed for upholding of the impugned orders of the termination.

(17) Having heard learned counsel for the parties and perusing the pleadings various issues raised in the petitions are summed up in the succeeding paras.

DISCREPANCIES FOUND IN THE RECORDS PRODUCED BEFORE THIS COURT :

VETERINARY PHARMACIST

As far as Veterinary Pharmacists are concerned, number of posts advertised were 8. As against this 22 candidates were selected. Meaning thereby 14 candidates in excess of the posts advertised were selected. The discrepancies found in the records produced in the selection process with regard to selected candidates, are as under :---

- (i) Gurmail Singh son of Roop Singh applied for the post of Electrician as is evident from the top of application available at page 59 of the record produced before this Court. However, with a different pen, ink and handwriting 'Vet Pharma' is added by putting '/' after the word Electrician. Even a perusal of the application form of this candidate shows that the same is different than the application form prescribed in the advertisement. As per advertisement, a bank draft of Rs. 25 was to be annexed alongwith application. However, application does not mention any particulars about the demand draft or the date thereof.
- (ii) As regards Prem Singh son of Jaswant Singh, whose application is available at page 119 of the record shows that initially, he applied for the post of Clerk, however, later on word 'V. Pharmacist' was also added by different pen and handwriting on the application.
- (iii) The case of Ram Dass son of Prem Nath is even more glaring. In this case the date of application form, which is available at page No. 150, is not mentioned. Certificate

of his being handicapped is dated 20th November, 2001. The last date for receipt of applications was 17th September, 2001. Another fact, which shows that the application is entertained after the date is that number and date of demand draft mentioned in application is in a different ink and that too is 25th June, 2001, when even the advertisement for the posts had not been issued, which was published on 8th September, 2001.

- (iv) In case of Bharpur Singh son of Gurcharan Singh, the date of birth of the candidate is mentioned as 18th October, 1983 on the application, which is available at page No. 166. As per the advertisement, the age of candidate had to be between 18 to 35 years as on 1st August, 2001 and on that date this candidate had not even completed 18 years of age. Even on the date of application, he was below 18 years of age.
- (v) In case of Surinderpal Singh son of Naurang Singh, date of birth mentioned in the application, which is available at page No. 215, was 14th November, 1965. So, on the cut of date for consideration of eligibility i.e. 1st August, 2001, he was beyond 35 years of age as he had completed age of 35 years of 14th November, 2000.
- (vi) In case of Paramjit Singh son of Kulwinder Singh, a perusal of the application, which is available at page 94 of the record shows that date on the application is not mentioned. The demand draft annexed with the application is dated 25th June, 2001 when the posts had not even been advertised. The disability certificate annexed is issued by a private doctor.
- (vii) In case of Sahibdev Singh son of Sewa Singh, a perusal of application, which is available at page 112 of the record shows that application does not contain any date. Further demand draft enclosed with the application is dated 25th June, 2001 when even the post was not advertised. Further after application of fluid on the column of post applied, by

overwriting it was mentioned 'Veterinary Pharamcist'. The application filed by this candidate is also on a format different than the application prescribed in the advertisement.

(viii) In cases of Sukhdev Singh and Gurinder Pal Singh, the dates of applications itself are 17th September, 2001, which was last date for receipt of applications. Even the demand draft annexed with the application of Gurinder Pal Singh was dated 17th September, 2001. As per the terms of the advertisement, application was to be sent by registered post. When the demand draft was dated 17th September, 2001, there is no possibility of despatch and receipt by registered post on the same date.

(ix) In case of Jatinderpal Singh son of Harbans Lal, the application of which is available at page No. 100, he applied for the post of Veterinary Pharmacist or Peon (Sewadar).

(18) In the case of Veterinary Pharmacist, it is noticed that all the selected and appointed candidates did not have the basic qualification. The relaxation in the qualification was granted much after the date of selection,— *vide* order dated 1st March, 2002, which cannot be permitted as the same was nothing else but an effort to justify the illegal selections already made.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found	Candidates who were lacking basic qualification on the date of application
Veterinary Pharmacist	8	22	14	10	8

BELDAR :—As far as post of Beldar is concerned, number of posts advertised were 2. As against this 5 candidates were selected. Meaning thereby 3 candidates in excess of the posts

advertised were selected. The following discrepancies were found in case of the selected candidates :—

- (i) As far as Victor Masih is concerned, he was not eligible as disability pointed out in the certificate attached with the application was only 25% whereas it was required to be 40%. The demand draft is dated 16th June, 2001. The format of the application is different as compared to what was required in the advertisement issued. The last date for receipt of application was 17th September, 2001 whereas the disability certificate appended with the application was dated 7th November, 2001.
- (ii) In case of Sukhbir Singh, the date of demand draft is purposefully not mentioned though the amount thereof is mentioned. However, the factum that the application was entertained after the last date of hearing is evident from the fact that certificates attached with the application were attested on 17th September, 2001. It is further evident from the fact that a copy of DDR dated 18th October, 2001 is annexed with the application showing the loss of the original certificates. This left nothing for imagination and it was clearly evident that application was entertained after the last date fixed for receipt of applications.
- (iii) In case of Jasbir Singh, the certificate of his being handicapped annexed with the application is dated 20th September, 2001 showing the disability to the extent of 25%. Accordingly, he was neither eligible nor the application was complete on the last date fixed for submission of applications.
- (iv) In case of Naib Singh son of Raj Singh, a perusal of the application shows that he had applied for the post of Veterinary Pharmacist, however, after deleting the same 'Beldar' was mentioned with a different handwriting and ink.

- (v) In case of Avtar Singh, it is only photocopy of application which is on record. It does not bear any signature. Photographs annexed with the application are not attested.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Beldar	2	5	3	5

SWEEPER :—As far as posts of Sweepers are concerned, number of posts advertised were 6. Selected candidates are also 6. The followed discrepancies were found in case of the selected candidates :—

- (i) In case of Rajwinder Kaur, she applied for the post of Peon (Sewadar). After deleting the same, 'sweeper' (Safai Sewak) was mentioned. The demand draft annexed with the application was dated 17th September, 2001, which could not be despatched & received in the office on the same date.
- (ii) In case of Lakhwinder Singh, application is not on the format prescribed in the advertisement. It is not accompanied by any document or requisite demand draft. Even the certificate of his being handicapped was not accompanied with the application. A perusal of the file shows that disability certificate dated 5th August, 2004 is on record.
- (iii) In case of Jhirmal Singh, after application of fluid in the column requiring mentioning of post, 'sweeper' has been mentioned. Application is not accompanied by the disability certificate and further no details of bank draft etc. are mentioned.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Sweeper	6	6	—	3

BOATMAN :—As far as posts of Boatman is concerned, number of post advertised was 1, as against this 1 candidate was selected. The following discrepancies were found in case of the selected candidate :—

The date of birth of the selected candidate, namely, Balbir Singh is 22nd November, 1963. The maximum age for eligibility was prescribed for the general category candidate was 35 years as on 1st August, 2001. Meaning thereby, he was over age on the cut of date.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Boatman	1	1	—	1

PEON :—As far as post of Peon is concerned, number of vacancies advertised were 13. As against this 33 candidates were selected. Meaning thereby 20 candidates in excess of the posts advertised were selected. The following discrepancies were found in case of the selected candidates :—

- (i) In case of Baljit Singh, the application is dated 10th November, 2001 without containing any particular about the demand draft etc., whereas cut of date for receipt of application was 17th September, 2001. Accordingly, application itself was not within time.

- (ii) In case of Satnam Singh and Joginder Singh, the disability was 16% and 22% respectively whereas the minimum required was 40%. Accordingly, both of them were not eligible.
- (iii) In case of Gurdev Singh, application is dated 17th September, 2001 accompanying demand draft of the same date, whereas application had to be sent by registered post. Meaning thereby application could not possibly be despatched and received by registered post on the same date. Further, even the application did not have the photographs of the candidate annexed therewith.
- (iv) Even in case of Jhirmal Singh, the disability certificate required to be attached with the application is dated 8th November, 2001, whereas last date was 17th September, 2004. Meaning thereby his application was not complete and he was not eligible to be considered against the post meant for physical handicapped person.
- (v) In case of Jagrup Singh, though column No. 11 of the application requiring mentioning of experience was left blank. However, file contains two certificates of experience dated 12th October 2000 certifying the experience from 1st April, 1994 to 1st August, 2000 and another certificate issued on 22nd November, 2001 certifying experience from 1st April, 2001 to 30th September, 2001 in the subsequent certificate, the date of the certificate as well as experience mentioned therein is clearly after the cut of date prescribed for receipt of applications.
- (vi) In case of Jamaldin, the application is on a format different than what was prescribed in the advertisement issued.
- (vii) In case of Janak Raj, the bank draft annexed with the application was dated 17th September, 2001. As per the terms of the advertisement, application was to be sent by registered post. When the demand draft itself was

dated 17th September, 2001, there is no possibility of dispatch and receipt by registered post on the same date.

- (viii) In case of Gurcharan Singh, the date of birth of the candidate is 9th April, 1963. The maximum age for eligibility was prescribed for the general category candidate was 35 years as on 1st August, 2001. Meaning thereby, he was over age on the cut of date.
- (ix) In case of Dharm Pal, the particulars of the bank draft are not mentioned in the application.
- (x) In case of Kulwant Singh, his date of birth is 20th September, 1963. The maximum age for eligibility was prescribed for the general category candidate was 35 years as on 1st August, 2001. Meaning thereby, he was over age on the cut of date. The demand draft and the date of application is 27th September, 2001, which is beyond the last date for receipt of applications. In addition to this, the certificate annexed with the application shows 35% disability, which was below the minimum required i.e. 40%.
- (xi) In case of Boota Singh, the application is on a form different than what was prescribed in the advertisement. Even application does not contain details of the demand draft required to be sent along with application.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Peon	13	33	20	12

MALI-CUM-CHOWKIDAR :—As far as posts of Mali-cum-Chowkidar are concerned, number of posts advertised and

candidates selected were 5. The following discrepancies were pointed out in case of the selected candidates :—

- (i) In case of Gurnek Singh, he applied for the post of Peon, which was scored of and replaced with 'Water Carrier' and ultimately even after scoring that 'Mali-cum-Chowkidar' was mentioned with different pen and ink. There is a note on the application under the signature of the Chairman of the Selection Committee that the applicant requested that his application be considered for the post of 'Mali-cum-Chowkidar'. Meaning thereby admittedly he never applied for that post.
- (ii) Similar is the position of Mohan Lal and Inderjit Singh, who had also applied for the post of Peon, which was later on replaced with 'Mali-cum-Chowkidar' and a note by the Chairman of the Selection Committee is appended on the application.
- (iii) In case of Baru Masih though after deleting the word 'Peon' from the column of post applied, 'Mali-cum-Chowkidar' was mentioned but there is no note by the Chairman of the Selection Committee on this application for change of option.
- (iv) In case of Devinder Singh, the application is for the post of Peon, however, he has been selected and appointed as Mali-cum-Chowkidar.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Mali-cum-Chowkidar	5	5	—	5

WATER CARRIER :—As for as post of Water Carrier is concerned, number of posts advertised were 6. As against this 8 candidates were selected. Meaning thereby 2 candidates in excess of the posts advertised were selected. The following discrepancies were pointed out in case of the selected candidates :—

- (i) In case of Majit Singh, his date of birth is mentioned as 4th April, 1984. Meaning thereby he would complete 18 years of age on 4th April, 2002 whereas the cut of date for consideration of the age was 1st August, 2001 and as such he was under age on the date of application, selection and appointment.
- (ii) In case of Chattar Singh, the application initially was for the post of 'Peon', which was replaced by cutting for 'Mali-cum-Chowkidar'. However, he was selected and appointed as Water Carrier. There is no mention of any demand draft number or the date in the application.
- (iii) In case of Krishan Chand, a perusal of the application shows that same is a reminder to some application earlier sent by candidate on 25th June, 2001 for the post of Water Carrier. There is no application available on file on the prescribed format with requisite certificates alongwith demand draft.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Water Carrier	6	8	2	3

CLERK :—As far as post of Clerk is concerned, number of posts advertised were 9. As against this 27 candidates were selected. Meaning thereby 18 candidates in excess of the posts advertised

were selected. The following discrepancies were pointed out in case of the selected candidates :—

- (i) In case of Prem Masih, his application is unsigned containing no particulars of the demand draft.
- (ii) In case of Gurinderbir Singh also, the particulars of the demand draft are not mentioned and even no date is mentioned on the application.
- (iii) In case of Ranjit Kaur, nomenclature of the post applied for was changed to 'Clerk' after applying fluid on the post initially applied for.
- (iv) In case of Gurmukh Singh, the demand draft annexed with the application is dated 24th September, 2001. The application is undated. Meaning thereby it was entertained after the last date of receipt of applications, which was 17th September, 2001.
- (v) In case of Hakam Singh, he was not eligible for the reasons that he did not possess the requisite educational qualifications as in Matric he had secured 40% marks whereas minimum required was Second Division and in the 10+2 examination, he had compartment.
- (vi) In case of Deepak Jindal, application is on a format different than what is prescribed in the advertisement. The demand draft annexed with the application is dated 23rd June, 2001, when even advertisement inviting applications for the posts had not been issued.
- (vii) In case of Ram Singh, there are many cuttings/over writings on the application. Evidently the date of demand draft, which was 19th September, 2001 was change to 10th September, 2001.
- (viii) In case of Pawan Kumar Garg, his date of birth is 22nd March, 1961. The maximum age for eligibility was prescribed for the general category candidate was 35 years as on 1st August, 2001. Meaning thereby, he was over age on the cut of date. His application is also lacking particulars with regard to demand draft and date thereof.

- (ix) In case of Manjit Kumar, the application is on a format different than what is prescribed in the advertisement and further the demand draft annexed with the application is dated 17th September, 2001. As per the terms of the advertisement, application was to be sent by registered post. When the demand draft was dated 17th September, 2001, there is no possibility of despatch and receipt by registered post on the same date.
- (x) Similar are the cases of Gurmeet Singh, Satinder Bir Singh, Kuldeep Singh and Subhash Kumar. In their cases also demand drafts as well as applications are dated 17th September, 2001. As per the terms of the advertisement, applications were to be sent by registered post. When the demand drafts were dated 17th September, 2001, there is no possibility of dispatch and receipt by registered post on the same date.
- (xi) In case of Urmil Devi, the application is on a format different than what is prescribed in the advertisement.

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Clerks	9	27	18	14

CADRE STRENGTH OF VARIOUS POSTS AND NUMBER OF POSTS RESERVED

(19) Chart produced in Court by learned Senior Counsel appearing for the State showing the number of sanctioned cadre strength for advertised posts, vacancies available for handicapped category, candidates already employed against the vacancies reserved for handicapped category, vacancies available in the quota, advertised vacancies and the selected candidates is extracted below :—

S. No.	Name of the Post	No. of the posts sanctioned by the department	No. of Posts falling in the 3% quota of disabled persons as per the instructions	Posts already filled in the deptt. out of quota for disabled persons	Total available posts to be published	Total posts published by the deptt.	No. of candidates selected by the Selection Committee	Eligible candidates	Ineligible candidates	Special remarks
1	2	3	4	5	6	7	8	9	10	11
1	Veterinary Pharmacist	128	4	-	4	8	22	-	22	Diploma is necessary for the Veterinary Pharmacist. But none of the candidates have this diploma. In the cases of 12 candidates, no irregularities were found as per the advertisement published and remaining 10 candidates were ineligible.
2	Clerk	370	11	5	6	9	27	-	27	For the post of Clerk, qualification required was 10+2 and also to pass type test in Punjabi at the required speed. But none of the 27 candidates had passed the type test in Punjabi.

1	2	3	4	5	6
3	Peon	367	11	5	6
4	Beldar	54	2	-	2
5	Mali-cum-Chowkidar	149	5	-	5
6	Water Carrier	185	6	1	5

7	8	9	10	11
13	33	24	9	There is no error in the forms of 24 candidates. There are irregularities in the forms of remaining 9 candidates.
2	5	-	5	Irregularities were found in the forms of all the candidates so none of them was found eligible.
5	5	-	5	Irregularities were found in the forms of all the candidates so none of them was found eligible.
6	8	5	3	5 candidates were found eligible for recruitment as per the advertisement published and irregularities were found in the forms of 3 candidates.

1	2	3	4	5	6	7	8	9	10	11
7	Boatman	7	-	-	-	1	1	-	1	Irregularities were found in the form of a candidates as per the advertisement published, so he was found ineligible.
8	Sweeper	51	2	2	-	6	6	2	4	2 candidates were found eligible for recruitment as per the advertisement published and irregularities were found in the forms of 4 candidates.
9	Road Guard	19	1	-	1	1	1	-	1	Irregularities were found in the form of a candidate as per the advertisement published, so he was found ineligible.
Total :		1330	42	13	29	51	108	31	77	

(20) The above chart is being reproduced as was submitted by learned counsel for the respondents showing that even the advertised posts were more than the available vacancies in the reserved category. However, the issue from that angle is not being considered as even on the basis of other material produced before this Court, it is evident that the process of selection was far from being fair.

(21) The table showing number of vacancies advertised, candidates selected and the number of candidates in whose case irregularities were found is as under :—

Post	Vacancies advertised	Number of candidates selected & appointed	Number of persons selected in excess of the advertised vacancies	Number of candidates in whose cases discrepancies were found
Veterinary Pharmacist	8	22	14	10
Beldar	2	5	3	5
Sweeper	6	6	—	3
Boatman	1	1	—	1
Peon	13	33	20	12
Mali-cum-chowkidar	5	5	—	5
Water Carrier	6	8	2	3
Clerk	9	27	18	14

(22) A perusal of the above table shows that as against advertised vacancies in case of Veterinary Pharmacists 14 candidates. In addition to this all the selected candidates did not have basic qualifications. In case of Beldar 3 candidates, in case of Peon 20 candidates, in case of Water Carrier 2 candidates and in case of Clerks 18 candidates in excess of the posts advertised were selected.

RELEVANT PROVISIONS OF THE 1995 ACT AND THE 1965 RULES :

Section 2 (p) & (t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:--

(p) “medical authority” means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government”.

X X X

X X X X

X X X X

(t) “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority”.

Section 33 of the 1995 Act :

“**Reservation of Posts** :—Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent, each shall be reserved for persons suffering from :—

- (i) Blindness or low vision
- (ii) hearing impairment
- (iii) locomotor disability or cerebral palsy.

in the posts identified for each disability :

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

RULES 4 & 6 OF THE PUNJAB PANCHAYAT SAMITIS AND ZILA PARISHADS SERVICES RULES, 1965

“4. **Appointing Authority** :—

- (1) All appointments to the Service shall be made—
 - (i) in the case of employees of a Zila Parishad by the Zila Parishad concerned; and
 - (ii) in the case of employees of a Panchayat Samiti, and also in their case of Secretary of a Gram Panchayat, by the Panchayat Samiti concerned.
- (2) All appointments to the Service shall be made by the appointing authority on the recommendation of the selection committee of committees as the case may be :

Provided that under the emergent circumstances a vacancy may be filled in by the Zila Parishad or the Panchayat Samiti, as the case may be, for a period of six months or till a candidate is recommended by the Selection Committee, whichever is earlier.

6. Age and physical fitness :—

- (1) No person shall be appointed to any post in Service by direct cruitment, if he is less than eighteen years or is more than thirty years of age in the case of non technical posts, thirty-three years in the case of technical posts on the 1st day of January of the year immediately preceding the last date fixed for the submission of applications :
- (2) A person appointed to the Service by direct recruitment, shall be required to produce a certificate of physical fitness as per policy framd by Government from time to time.
- (3) Person appointed to the Service by direct recruitment shall be required to produce certificate of physical fitness from the Chief Medical Officer of the district before joining service. This condition will not, however, apply to the persons appointed in a temporary vacancy of less than 3 months duration.”

DISCUSSIONS :

(23) On perusal of the applications of the selected candidates, the following discrepancies/irregularities/illegalities were found :

- (i) The applications were incomplete;
- (ii) The applications were submitted and accepted after the last date for submission of the applications;
- (iii) Number of applications were on a format different than what was prescribed in the advertisement;
- (iv) Posts applied for have been changed by applying the fluid on the column for the post applied in the applications or by over writing or making cuttings or by writing another post after adding ‘/’;
- (v) Nomenclature of the Posts in the applications have been changed;
- (vi) Demand drafts have been appended of the dates even when the advertisement was not issued;
- (vii) Demand drafts and applications containing the last date of the submission of applications i.e. 17th September, 2001 on which it was not possible to despatch and receive the applications by registered post as per terms of the advertisement.
- (viii) Some candidates, who are selected and appointed are under age and some are over age;
- (ix) Some candidates were lacking minimum qualifications;
- (x) Certificates/documents attached with the applications were bearing a date beyond the last date fixed for receipt of applications.
- (xi) Some applications contain no date and even no demand draft particulars;
- (xii) Some candidates were lacking disability criteria as the minimum percentage of disability required was 40% and the certificate produced by one candidate was not by a competent authority;

(xiii) In a number of applications were interpolations were made etc.

(24) The illegalities in the process of selection is further fortified from the fact that even the advertisement was not in conformity with the Rule 6 of the 1965 Rules, according to which for non technical post, the prescribed age is 18 to 30 years whereas for technical post, it is 18 to 33 years on the first day of January of the year immediately preceding the last date fixed for submission of applications whereas in the advertisement the age was mentioned as 18 to 35 years as on 1st August, 2001 as against 1st January, 2001. This shows that the entire process was conducted and concluded in so much of hurry that even relevant Act and Rules were not consulted.

(25) Still further, there is clear violation of the Section 33 of the 1995 Act wherein it is specifically provided that reservation of 3% vacancies for the disabled persons are to be divided amongst three different categories to the extent of 1% each. However, a perusal of the advertisement in pursuance to which the selections in question were made, no such bifurcation of vacancies was made and the majority of the selected candidates are from one or the other category.

(26) Further, there is no merit in the contention raised by learned counsel for the petitioners that competent authority for appointment of the candidate for various posts as per Rule 4 of the 1965 Rules is Zila Parishad concerned in case of employees of a Zila Parishad and is Panchayat Samiti concerned in case of employees of a Panchayat Samiti, accordingly, the order of termination could not be passed by the Director-cum-Special Secretary Department of Rural Development and Panchayats Department. When confronted with the fact that even the selection had been made by the authority incompetent as per the Rules, the only contention was that it was an act of the Government for which the petitioners should not be made to suffer. Such an explanation can only be noticed and rejected as such because even a selection by incompetent authority would vitiate the same.

(27) A perusal of the record shows that in case of number of selected and appointed candidates, the documents annexed with the applications bear the date after the last date of receipt of applications, which

clearly is a case of interpolation and tampering with the record whatever available of the eligible candidates on the last date for receipt of applications. In totality the entire process of selection does not inspire confidence.

(28) Even though show cause notices had been issued to all the candidates by registered post, however, still the grouse is that fair opportunity of hearing was not granted as the inspection of record or time to file reply was not granted though the show cause notice itself contained material particulars regarding illegalities, irregularities conducted in the process of selection, which was the main reason for cancellation of selection. Still even if there is some violation in compliance of the principles of natural justice, the observations of Hon'ble the Supreme Court in O. Chakradhar's case (*supra*) comes to the rescue of the respondents. The relevant extract thereof is as under :—

“The nature and the extent of illegalities and irregularities committed in conducting a selection have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

As per the report of CBI the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with the impunity at each stage viz. Right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances, it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot

be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. The present case, therefore, is not of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The Railway Board's decision to cancel the selection cannot be faulted with and the order of termination of the services of the respondent is upheld".

(29) From the facts noticed above, it can safely be held that selection and appointments of the petitioners were clearly in violation of Articles 14 and 16 of the Constitution of India and would be nullity as has been held by Hon'ble the Supreme Court in **Secretary, State of Karnataka & others v. Uma Devi & others** (11).

(30) Hon'ble the Supreme Court in Inderpreet Singh Kahlon's case (supra) observed as under :—

"If the services of the appointees who had put in few years of service were terminated; compliance of three principles at the hands of the State was imperative, viz. To establish (1) Satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reasons of a thorough investigation in a fair and transparent manner; (3) Whether the sufficient material present enabled the State to arrive at satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt."

(11) J.T. 2006(4) S.C. 420

(31) Though in the present case, the candidates had not put in few years in service as they were merely appointed in December, 2001 and were initially removed in August, 2002. However, still if the facts on record are considered on the touch stone of principles laid down in the above referred judgment, the only possible conclusion is that entire selection process is vitiated on account of illegalities, irregularities and favouritism.

(32) Public appointments are not the private property of any party in power so as to enable it to distribute the same only amongst its affiliates. Each and every citizen has equal right to compete and get selected to any Government job and the authorities are bound to follow fair selection process.

(33) It has been held by Hon'ble the Supreme Court in **Secretary, A.P. Public Service Commission vs. B. Swapna & others** (12), that no appointments can be made beyond the advertised number of vacancies and secondly the norms of selection cannot be altered after the selection process had started. Accordingly, the selections have to be set aside even on this ground as for most of the posts even the selected candidates are much more than the posts advertised. Secondly, in the case of Pharamcists even the qualifications were relaxed after the selection was over, which also was an ante dated action as contended by the learned counsel for the State.

(34) In Civil Writ Petitions No. 7039 of 2004, 6981, 7726, 8351, 8366, 10298, 10790, 14791 of 2005, 5634, 5653, 6840, 6899, 7389, 7561 and 14740 of 2006, petitioners therein did not approach this Court immediately after their services were dispensed with,—*vide* order passed on 2nd August, 2002 and had chosen to remain silent. It was only in 2004, 2005 and 2006 that they approached this Court by filing the petitions. The preliminary objection regarding delay and laches has been taken by the learned Additional Advocate General, Punjab appearing for the State in these cases, to which learned counsel for the petitioners therein responded by stating that once this Court had already opined on the similar orders passed, which were result of common direction by the Government, petitioners should not be non suited on account of delay only. However, since I have not found any merit in the submissions of the petitioners otherwise also, for the reasons that the entire selection has been found to be a result of

(12) (2005) 4 S.C.C. 154

favouritism coupled with large scale illegalities, irregularities, I do not deem it appropriate to go into this issue in detail.

(35) In the present case, as discussed above, various aspects of selection starting from issue of advertisement in violation of provisions of the 1995 Act and the 1965 Rules, the receipt of applications (incomplete, after the last date fixed for receipt thereof), appointment of ineligible candidates (qualification wise, age wise), selection of large number of candidates in excess of the advertised vacancies, clearly show that there is sufficient material on record to hold that entire selection process was far from fair. No illegality has been committed by the respondents while terminating the services of all the candidates, who were appointed in the process. Once in the cases of number of selected and appointed candidates, illegalities, irregularities, and reasons for favouritisms are available, the only possible conclusion is to set aside the entire process of selection.

(36) Accordingly, I do not find any merit in these petitions and the same are dismissed.

R.N.R.

Before Satish Kumar Mittal & K.C. Puri, JJ.

SEWA RAM—*Petitioners*

versus

BHARAT PETROLEUM CORPORATION LTD. & OTHERS—
Respondents

C.W.P. No. 14143 of 2006

15th November, 2007

Constitution of India, 1950—Art. 14 & 226—Petitioner recommended for allotment of LPG distributorship by Dealer Selection Board at Sr. No. 1 on merit panel—On inquiry Corporation finding petitioner involved in 3 criminal cases and that in a criminal case charge was framed against petitioner u/s 452/323 IPC—Eligibility conditions—Candidate should not have been convicted of any criminal offence involving moral turpitude/economic offence—