CASE NO.:
Appeal (civil) 3411-3421 of 2005

PETITIONER:
Inderpreet Singh Kahlon & Ors.

RESPONDENT:
State of Punjab & Ors.

DATE OF JUDGMENT: 03/05/2006

BENCH:
Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[WITH C.A. No. 3422/2005, 3410/2005, 3409/2005, 3405-3408/2005, 3456-3459/2005, 3446-3447/2005, 3402/2005, 3449-3455/2005, 3463-3464/2005, 3460/2005, 3401/2005, 3445/2005, 3399/2005, 3404/2005, 3444/2005, 3441/2005, 3439/2005, 3428-3436/2005, 3440/2005, 3438/2005, 3442/2005, 3437/2005, 3403/2005, 3427/2005, 3461/2005, 3400/2005, 3477/2005, 3475/2005, W.P. (C) No. 14/2004, C.A. No. 3423/2005, 3448/2005, 3472-3474/2005, 3489/2005 and 3491/2005]

DALVEER BHANDARI, J.

I had the benefit of reading the erudite judgment of my learned brother Justice Sinha. I concur with the conclusions and findings arrived at by him on all the issues except on the issue of propriety of hearing of the matter by the judges (who were on the Committee), after the appellants gave clear consent to the hearing of cases by the full bench even before the commencement of the hearing of cases. I would therefore, like to write a separate judgment.

These appeals emanate from a Full Bench judgment of Punjab and Haryana High Court in Civil Writ Petition No. 8421 of 2002 along with other connected matters.

The founding fathers of the Constitution perhaps, in their wildest dreams, could not have visualized that the people who are expected to strictly adhere to the constitutional values and guide the destiny of the Nation, in times to come would malign and denigrate the system to such an extent that for his grave misdeeds, the constitutional authority itself, in the larger public interest would be required to be put behind the bars. The Chairman of the Punjab Public Service Commission is an important constitutional authority.

This case relates to a period when one Ravinderpal Singh Sidhu (in short, R.S. Sidhu) was the Chairman of the Punjab Public Service Commission (hereinafter called the Commission) from September 1996 to 21.3.2002. His clandestine activities and misdeeds reached the pinnacle of disgrace, ignominy, dishonour, degradation and humiliation. Perhaps, no one could have polluted the entire system in a greater measure. On 25.3.2002 an FIR was registered at Police Station, Mohali under section 7 read with section 13(2) of the Prevention of Corruption Act, 1988 in relation to the trap organized in which R.S. Sidhu was caught red-handed accepting a bribe of Rs. 5 lakhs.

The statement of one of the accused Jagman Singh (who later turned as an approver) was recorded under Section 164 CrPC on 24.1.2002 and 24.4.2002. In three days from 17.4.2002 to 19.4.2002, more than Rs. 16 crores were recovered from the lockers and the bank accounts of the relations of R.S. Sidhu. According to the State, a total cash amount, securities and properties worth about Rs. 22 crores were recovered. Out of the said amount, a sum of Rs. 1.28 crores was recovered from the house of Jagman Singh. In the history of this country, there may not have been many cases of the Prevention of Corruption Act of this magnitude, where such huge amounts were recovered. All this amount was collected by R.S.Sidhu in lieu of ensuring recruitment/appointments to various offices of the PCS (Executive Branch), allied services and PCS (Judicial Branch) in the State of Punjab from the prospective candidates.

This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed) affect a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions.

The following vacancies which arose during the tenure of R.S. Sidhu as Chairman of the Punjab Public Service Commission are under challenge.

On the Administrative side the following vacancies arose:

Class I: Direct Recruits:	28 vacancies
Class II (allied etc): Direct Recruits:	63 vacancies
Class I: Nominated:	18 vacancies
Total	109

Similarly, on the Judicial Side the following vacancies arose:

Class I for 1998 vacancies:	21
Class I for 1999 vacancies :	14
Class I for 2000 vacancies:	8
Class I for 2001 vacancies:	21
Total	64

"By an advertisement issued in February, 1998, the Commission invited applications for recruitment against 28 vacancies in PCS (Executive branch) and 63 vacancies in Allied Services. In all, 13094 candidates appeared in the preliminary examination held on 29.3.1998. Out of them, 1097 candidates were declared successful. The main written examination was held between 2.7.1998 and 2.8.1998 and the result was declared on 25.1.1999. 273 candidates were called for interview which were held between 20.4.1999 and 22.6.1999. The final result was declared on 11.7.1999 and the successful candidates were appointed to PCS (Executive branch) and Allied Services in September, 1999 and thereafter.

Recruitment to PCS (Executive Branch) by nomination made in terms of Rules 8 to 11 and 15 of the Punjab Civil Service

(Executive Branch (Class-I) Rules, 1976
(for short, the 1976 Rules'

For the year 1994:
There were three vacancies for Register A-I which were to be filled from amongst Tehsildars/Naib Tehsildars. There were two vacancies for Register A-II which were to be filled from amongst Civil Secretariat Ministerial Staff. There was one vacancy for Register A-III which was to be filled from amongst the Excise and Taxation Officers/Block Development Officers/District Development and Panchayat Officers. There was one vacancy for Register 'C' which was to be filled from amongst the officers/officials working in subordinate offices. Interviews for selection for the vacancies to be filled from the four registers were held on 6.4.1999, 28.7.1999 and 29.7.1999, 4.1.1999 and 7.4.1999 respectively.

For the year 1996:

There were five vacancies for Register A-I. There was no vacancy for Register A-II. There were two vacancies for Register A-III and there were three vacancies for Register 'C'. Interviews for selection for appointment to Register A-I were held on 26.5.1999. Interviews for selection for appointment to Register A-III from amongst District Development and Panchayat Officers were held on 29.5.1999. For selection from amongst Excise and Taxation Officers, interviews were held on 29.6.1999. For Register 'C', interviews were held on 4.6.1999 and 7.6.1999.

PCS (Judicial Branch) made in terms of
Punjab Civil Service (Judicial Branch)
Rules, 1951 (for short, 'the 1951 Rules')

In all, four selections were made for recruitment to PCS (Judicial Branch) during the tenure of R.S. Sidhu as Chairman of the Commission. The details of the vacancies for which the selections were made are as under:

Year	Number of vacancies
1998	21
1999	14
2000	8
2001	21

The candidates selected on the recommendations made by the Commission except those recommended in 2001 were appointed to the service after obtaining approval of the High Court on administrative side."

It may be pertinent to mention that two FIRs were registered. FIR No. 7 was registered at Police Station, Mohali under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 on 25.3.2002 and the FIR No. 24 was

registered on 30.4.2002 against R.S. Sidhu and Pritpal Singh, the then Secretary of the Commission in the context of large scale fraud committed in the selections made by the Commission. On the basis of the material on record, it is revealed that a number of candidates paid money to R.S. Sidhu for ensuring selections in the examination and appointment to the PCS (Executive Branch), Allied Services and PCS (Judicial Branch) and in the raids, as mentioned earlier, a huge amount of money was recovered.

The Vigilance Bureau highlighted the following irregularities committed by the Commission at the behest of the then Chairman:

"(I) The screening of answer sheets of competitive examinations reveals that the favoured and tainted candidates were helped in written tests in one way or another. For instance some selective candidates were helped by giving question papers one night before the date of examinations and if the candidates could not perform well in the written examination, the examiners were asked to give maximum marks to the favoured candidates, irrespective of the matter contained in the answer sheets and the hand writing being not legible.

(ii) The interview marks were tailored to help the favoured and tainted candidates. This was the main criterion used by the Chairman of the Commission for selection of desired candidates. During the investigation of the case, this factor has emerged very clearly and there is a strong evidence in the case file. The favoured candidates have been given marks in the interview and the candidates coming in the way of favoured candidates have been given less marks in the interview to keep them way down in the merit list.

(iii) While pursuing the list of candidates who were interviewed by the Chairman and the Members, the most astonishing feature is that in more than 95% cases, Chairman and the Members have allotted similar marks to the candidates after interview which is impossible as all the Members and the Chairman were supposed to test the capability of the candidates in their individual capacities. It could never have been a consensus gradation.

(iv) In many of the selections there was a one Member Board.

(v) The procedure for calling experts, paper setting and paper setters, examiners (Markers etc.) were exclusively in the hands of the Chairman as reported by the Secretary, Punjab Service Commission and no such record is available in the Commission, whereas such record can only be destroyed after a lapse of 5 years as per instructions of the PPSC.

(vi) The selections, which are not based on the competitive examination, are based on pass marks (percentage of basic degree + interview marks). The procedure is such that the difference in pass marks can be easily covered by interview marks. For example, if 3 candidates have 50%,

60% and 70% marks in Graduation, their base marks (40% of the percentage in basic degree) will be 20, 24 and 28 respectively. The marks allotted for interview can easily cover the gap of 8 marks between the candidates getting the lowest and highest base marks.

(vii) In some cases the interview marks are out of range of grade marks. For example, B+ (26 to 30) grade is given by the expert but the Board gave him/her 32 marks. This irregularity may be due to clerical mistake committed by the PPSC staff and is therefore being verified.

(viii) There is some evidence on the file that expert(s) was/were asked to be selective."

On consideration of the entire material placed before it, the State Government decided to cancel the entire selection made for recruitment of PCS (Executive Branch) and Allied Services in 1998. Consequently, a general order dated 24.8.2002 was issued terminating the services of the appellants.

Regarding Judicial Officers appointed to PCS (Judicial Branch), the High Court constituted a sub-committee of five Judges to scrutinize the record of selection. After going through the answer sheets of the candidates, who were selected on the basis of examinations held for recruitment against the vacancies in the years 1999, 2000 and 2001, the sub-committee submitted a report dated 30.5.2002 with the observation that, interpolations and cuttings were made in the marks awarded to some of the candidates and their marks were increased and that the assessment made by the examiners was far from fair. The report of the sub-committee was accepted by the Full Bench of the High Court and a recommendation was made to the government to terminate the services of those who were appointed on the basis of the selections made during the tenure of R.S. Sidhu. On a reference made by the State Government, the second sub-committee examined the answer sheets of some of those who were selected as well as the answer sheets of those who were not selected and observed that a deliberate attempt had been made to give higher marks to some undeserving candidates and at the same time, lower marks were awarded to more meritorious candidates. The report submitted by the second sub-committee was also approved by the Full Court. On the recommendations made by the High Court, the State Government terminated the services of those who were appointed on the basis of the selections made by the Commission against the vacancies of the years 1998, 1999 and 2000.

All the appointments were terminated on the recommendations of the High Court on 27.9.2002. Similarly, the appointments of nominated Executive Class I Officers were terminated by order dated 23.5.2002.

These appellants have filed a number of writ petitions before the Punjab & Haryana High Court which were dismissed by the impugned judgment of the Full Bench being devoid of any merit.

These appellants, being aggrieved by the said judgment of the Full Bench, have now approached this Court by filing these special leave petitions. After hearing all concerned, this Court granted special leave petitions and these appeals have now been placed for final disposal before this Court.

Mr. Rajiv Dhawan, learned Senior Advocate and a large number of counsel have appeared on behalf of the appellants. Submissions made by the appellants are summarized as under:

(I) The appellants have challenged the impugned order mainly on the grounds of violation of articles 14, 21 and 311 of the Constitution and the breach of the principles of natural justice.

(II) Some of the appellants have submitted that they had completed 3 years probation and according to Rule 23 of the 1976 Rules they were deemed to have been confirmed in their services and their services could not be terminated without holding regular enquiry in accordance with the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, 'the 1970 Rules') read with Article 311 of the Constitution of India and, in any case, Rule 23 could not have been invoked for dispensing with their services because their work, conduct and performance had remained satisfactory during the period of probation.

(III) The appellants have also submitted that both the Vigilance Bureau and the Chief Secretary had decided the issue of mass dismissal orders in less than 24 hours without proper application of mind. It was also submitted that the Screening Committee of 2004 showed that an exercise separating tainted from the non-tainted candidates could be done in two or three months. It was submitted that the decision of mass dismissal was passed on insufficient material and without application of mind.

(IV) Some of the appellants have submitted that their academic records are very good and they were selected to PCS (Executive Branch) and/or Allied Services and PCS (Judicial Branch) on the basis of their academic records and their good performance in the examinations held and they have nothing to do with the illegalities, irregularities committed by R.S. Sidhu during his tenure as the Chairman of the Punjab Public Service Commission and, therefore, their appointments should not be disturbed.

(V) Those appointed to PCS (Executive Branch) from Registers A-I, A-II, A-III and 'C' have averred that they were selected on the basis of their outstanding service record and the taint, if any, attached to the selections made for appointment by the direct recruitment cannot affect their selections. The candidates belonging to the reserved categories of Scheduled Castes, Backward Classes, Ex-servicemen, Freedom Fighters and Handicapped have averred that they have nothing to do with the selections made by R.S. Sidhu by taking bribe from the candidates or on account of "Sifarish" and their services could not have been terminated on the basis of the reports of the Vigilance Bureau.

(VI) The appellants have also challenged that there is no definite or specific material available with the State Government on the basis of which it could form a bonafide opinion that selections were tainted and the reports prepared by the Vigilance Bureau could not be relied upon for terminating their services because the same were entirely based on the statement of approvers recorded under Section 164 of the Code of Criminal Procedure.

(VII) It has also been submitted that the criminal investigations were in relation to the Chairman, PPSC without shedding light on nominated candidates. Even without getting the interview details of nominated candidates the Vigilance Bureau treated this as a case of mass corruption on 21.5.2002. This action was clearly arbitrary and wholly untenable.

(VIII) The appellants submitted that there was no material

before the Committee on the basis of which the drastic order of cancelling the selections of three batches comprising of 39 judicial officers could be made. It was further submitted that the examination of material including answer-sheets of selected/non-selected candidates, statements of approvers under Section 164 of the Code of Criminal Procedure was done only in context of 1998 batch on its back reference from the State Government.

(IX) The appellants further submitted that the Full Bench of the High Court lost sight of the fact that there were four separate batches in which four separate sitting High Court judges participated as experts whose opinion was binding under Rule 4 of Part C of the PCS (JB) Rules, 1951. There was no allegation of any impropriety committed by the experts of the Interview Board.

(X) The appellants also submitted that the fact finding enquiry which came to the conclusion that the findings of misconduct on the basis of which the services of the appellants were terminated was conducted behind the back of the appellants. They were neither associated with the enquiry nor was any material supplied to them before or after the termination, to enable them from effectively rebutting the findings. The appellants were only permitted to examine their own answer-sheets in which no cutting/overwriting/ irregularity was found.

(XI) According to the appellants, the High Court erroneously proceeded on the administrative side to presume that the mere irregularity in 7 papers of 2001 batch meant irregularity of the entire batch. On the basis of this presumption another presumption was raised that there were irregularities in all the four batches from 1998 to 2001. In the case of other selections held by the PPSC under the Chairmanship of R.S. Sidhu, the Government had undertaken to constitute two separate committees which had gone into the record of over 3,500 candidates to ascertain the presence of any taint or otherwise. In the present case, it was not impractical or impossible to have conducted this exercise for the serving judicial officers who were only 39 in number. According to the appellants, the action of cancelling was taken in extreme haste and without any logical basis.

(XII) The appellants submitted that it was incumbent upon the State Government to establish from the records that prior to 23.5.2002 it had examined all the selections made during the tenure of R.S. Sidhu and it was after such a detailed consideration that it became apparent that the taint was only in respect of the selections in the year 1998 which would necessitate the extremely harsh and punitive decision to terminate en masse selections of all the candidates on the ground that the entire selection process was vitiated.

(XIII) The appellants submitted that the selections were vitiated because, according to the respondents, Mr. Sidhu employed corrupt methods in the selection process of the candidates. From this criterion or yardstick, all the 3,446 selections made during the tenure of R.S. Sidhu would stand 'tainted' and the services of all these candidates are also liable to be terminated.

(XIV) The appellants submitted that it was not a case of large scale irregularities where it was impossible to separate the tainted candidates from the non-tainted candidates. The test for determining whether a set of facts qualifies to be a case of large scale irregularities sustaining a decision to cancel the entire selection was aptly stated by this Court in the case of Union of India v. Rajesh P.U. (2003) 7 SCC 285 in the following words :

"In the light of the above and in the absence of

any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."

It is the sacred duty of the Court to sift the grain from the chaff. The expression "public interest" or "probity in governance" cannot be put in a strait-jacket. "Public interest" takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether the action was taken in public interest or was taken to uphold probity in governance.

(XV) The appellants submitted that where there are imputations against a key decision maker or a key decision, every decision made by such decision maker during his period of office is not necessarily tainted and to be set aside. In fact, the correct approach is to investigate the issues thoroughly and to weed out the tainted decisions from the ones that are not.

(XVI) The impugned order of termination is also stigmatic. The order ostensibly discharged the appellants during the period of probation but the order of discharge in fact was because of serious allegations of corruption which appeared in the press against the entire batch. If the veil is lifted it will be seen that the only reason why the appellants's services have been terminated is the so called misconduct attributed to the entire batch. Under these circumstances, since the order is stigmatic in nature the same could not have been passed without conducting an enquiry and giving the appellants an opportunity of explaining their position. The order is, therefore, liable to be quashed.

(XVII) The passing of such an order at this stage of a person's career has serious consequences in the entire course of the individual's life. Today, the appellants would have to suffer a big stigma of having been dismissed from the service on account of their being a part of so called tainted batch.

(XVIII) The appellants submitted that they have spent three best years of their lives taking the departmental examinations and serving the State. Therefore, it is totally arbitrary and

illegal on the part of the State Government to throw the appellants out of job at this stage unceremoniously. The order is totally arbitrary and liable to be quashed on this ground.

(XIX) The order of termination is in clear violation of Rule 17 of the PCS (EB) (Class 1) Rules 1976 which stipulates thus "the Govt. may at any time, for reasons to be recorded in writing, remove the name of any person from any register of accepted candidates; provided that before taking such action the person concerned will be given an opportunity against the action so proposed".

(XX) The entire case of the respondent State is based on the report of investigation made by the Vigilance Department, which is primarily based upon the statement of the tout turned approver and the matter is still sub-judice before the learned Trial Court, hence there is no veracity of these statements or reports in law and can never be the basis of termination of services. The report and the challan have been presented by the Vigilance Department in the months of July and August 2002 whereas, the impugned order of termination was passed on 23.5.02.

(XXI) That the allegation of pushing up the unmeritorious candidates with a purpose to facilitate their selections by awarding them more marks in the interview is not substantiated by the fact that a large number of candidates who are not named in the FIR have also got very high/low marks. The suggestion of the State Government would in fact amount to a proposition, that marks in the interview are linked with the academic record of the candidate and any discrepancy in the same would give rise to suspicion of taint. If this was so then the entire objective of conducting an interview is lost. An interview is included in the selection process so as to evaluate the personality, leadership quality and ability to be a good administrator by the Selection Board. It is not uncommon where academically sound candidates may prove to be bad administrators due to lack of the above mentioned qualities. Thus, in case the argument of the State is to be accepted, possibly no selection can hold good and taint can be read into practically any selection process.

(XXII) Reliance has also been placed on the case of Union of India v. Rajesh P.U., Puthuvalnikathu [(2003) 7 SCC 285]. In this case, applications were invited for filling up 134 posts of Constables by the Central Bureau of Investigation. The selection process consisted of a written examination and an interview followed by a physical fitness test. However, the selected candidates including the respondent were informed that the selection list had been cancelled by the Special Committee constituted to enquire into the allegations of favouritism and nepotism on the part of the officers in conducting the Physical Efficiency Test and irregularities committed during the written exam. The respondent approached the High Court after his application was dismissed by the Central Administrative Tribunal. The Division Bench after perusal of the Committee’s report and review of the entire process categorically rejected allegations of nepotism/favourtism and came to the conclusion that there was no justification to cancel the entire selection when the impact of irregularities which crept into evaluation on merits could be identified specifically and was found, on a reconsideration of the entire records, to have resulted in about 31 specific number of candidates being selected undeservedly to the detriment of similar such number of candidates. Repelling the plea that a person in the select list has no vested right to get appointed and finding the cancellation of the entire

selection arbitrary and unreasonable, the High Court allowed the writ petition.

(XXIII) An appeal was preferred to this Court. This Court observed that applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, which was wholly unwarranted and unnecessary. This Court also observed that the High Court had adopted a practical, pragmatic, rational and realistic solution to the problem and the appeal filed by the Union of India was consequently dismissed.

(XXIV) The appellants have also submitted that nominated candidates were entitled to protection under Article 311. The appellants have also placed reliance on a large number of judgments of this Court which indicated that probationers who have crossed the maximum period of probation were deemed to be confirmed.

(XXV) The appellants have also submitted that there is a clear difference between the proven case of mass cheating for an examination and an unproven imputed charge of corruption where the appointment of the civil servant is involved.

In Anamika Mishra v. U.P.P.S.C. [(1990) Supp. SCC 692], this Court observed that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination. On the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of the written examination and select those who on the basis of the written and the freshly-held interview became eligible for selection.

In S.P. Biswas v. State Bank of India [1991 Supp (2) SCC 354], there were allegations of unfair means adopted in the examination. The Bank got the enquiry conducted and steps were taken to exclude the possibility of results being affected by unfair means. This Court approved the decision of the High Court and observed that the relevant records disclosed that an honest attempt was made on the part of the management of the Bank to examine all the points raised in the report and otherwise, and in cases where an element of use of unfair means was found, a necessary action was taken.

(XXVI) The appellants also submitted that, in the instant case, the decisions were collegiate decisions by a number of people and those decisions could not be set aside because of the allegations against the Chairman of the Commission. It was submitted that this is not a mass cheating case but a mass dismissal case based on mere allegations. It was submitted that for cause on imputations of corruption even though the order of 23.5.2002 is "finally a dismissal simpliciter". The various cases of dismissals are based on proper investigation or proven illegality, not mass dismissals based merely on conjectures. It was also submitted that the officers of 1999 were targeted where others of the period 1996-2002 were given a total go-by.

Reliance has been placed on Onkar Lal Bajaj v. Union of India [(2003) 2 SCC 673]. This Court, in the said case, on the basis of news item appeared in the Indian Express, making allegation of political patronage in allotment of retail outlets of petroleum products, LPG distributorships and SKO-LDO dealerships examined the entire case. As a result of media exposure the Government in public interest decided to cancel all the allotments. This Court examined the matter in great detail and observed as to how could all the large number of candidates against whom there was not even insinuation be clubbed with the handful of those who were said to have been allotted these dealerships/distributorships on account of political connections and patronage? The Court stated that the two were clearly unequals. Rotten apples cannot be equated with good apples. Under these circumstances, the plea of probity in governance or fair play in action motivating the impugned action cannot be accepted. The impugned order from any angle cannot stand the scrutiny of law. This Court observed that the solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories, tainted and the rest, on par is wholly unjustified, arbitrary and unconstitutional being violative of Article 14 of the Constitution. This Court also observed that the Government instead of fulfilling the duty and obligation, cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any case exposed by the media. If a hue and cry is made that certain allotments have been made to the sitting members of Parliament or their wives or members of legislature or their relations, the public, media and the Opposition would be justified in raising eyebrows. Faced with this situation, the Court appointed a Committee of a retired Judge of this Court along with a retired Judge of Delhi High Court to examine all 413 cases. This Court observed that if a Committee, on preliminary examination of facts and records, formed an opinion that the allotment was made on merit and not as a result of political connections or patronage or other extraneous considerations, it would be open to the Committee not to proceed with the probe in detail. If such large scale matters from all over the country were directed to be reexamined why cannot a small number of cases of one State be scrutinized?

Mr. Rakesh Dwivedi, learned counsel appearing for the State of Punjab submitted that the government can set aside the selections if there is some material which is sufficient to come to a conclusion that corruption and manipulation have pervasively influenced the selection process. He also submitted that the Courts do not sit in appeal and would give wide latitude to the Government with regard to adjudging the fairness of selections. The Courts would be slow at interfering with such decisions of the government. He submitted that probity of public services can only be maintained through fair selection where merit is judged on the basis of capability, whether in the written examination or in the interview. It is the constitutional duty of the Commission and the State Government to ensure that the selections are fair and free of corruption and manipulations.

He also submitted that while taking the decision to cancel a selection no stigma is attached to the candidates who are affected as there was no individual charge against them. It is the selection process which is condemned. He submitted that the Government is not required to establish beyond reasonable doubt that there was corruption and manipulation. It is entitled to judge on the basis of probabilities and ordinary

course of human conduct and the real possibility of the selections being entirely effected by the likelihood of bias of the Chairman of the Commission who was completely managing the examinations. According to him, it was not possible to separate the tainted candidates from the non-tainted candidates. He submitted that the selection process is found to be vitiated pervasively that all the appointments made on the basis of such selection would be null and void as an issue. He submitted that, therefore, the State Government was justified in terminating the services of the appellants.

Mr. P.P. Rao, learned senior counsel appearing for the High Court submitted that the selection of judicial officers is believed to be contaminated at source, having regard to the nature of judicial posts, the High Court had to take appropriate remedial measures to restore the credibility of recruitment and to safeguard the independence of judiciary. The High Court acted after being satisfied prima facie on the basis of the reports of the Committees of Judges that all the four selections were vitiated. In the circumstances, the cancellation of selections/appointments and directing a fresh selection was just, fair and reasonable. He submitted that this is a case of condemnation of all four selections made but not of the candidates selected. In such a case, the rule of audi alteram partem will not be attracted. He submitted that appointments made on the basis of condemned selections are void ab initio. He submitted that, therefore, the appointees cannot be regarded as lawful holders of the offices.

He also submitted that it is well settled that justice should not only be done but also seen to be done. The same principle applies to the judicial appointments as well, as the Judiciary survives on its credibility. Selection of judicial officers should not only be fair but also be seen to be transparent, free from any taint or suspicion to retain public confidence. He further submitted that it is not open to allege bias on the part of the two Judges who were on the Committee, having consented to their hearing the matter. No such plea was raised before the High Court in the writ petitions. In any event, without impleading the Judges concerned by name, the plea of bias cannot be urged. He placed reliance on the cases of Dr. G. Sarana v. University of Lucknow [(1976) 3 SCC 585], AShok Kumar Yadav v. State of Haryana [(1985) Supp. 1 SCR 657] and State of Maharashtra v. R.S. Nayak [(1982) 2 SCC 463].

The principal question which needs to be adjudicated is whether, in the facts and circumstances of these cases, the respondents were justified in cancelling the entire selection both of executive and judicial officers?

Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R.S. Sidhu, the then Chairman, Punjab Public Service Commission. On careful scrutiny of the facts and circumstances of the case, in my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, it was not an impossible task.

The peculiar facts of this case which need to be highlighted are that some of the candidates have worked for about three years and their services were terminated only on the basis of criminal investigation which was at the initial stage. The termination of their services as a consequence of cancellation of selection would not only prejudice their interests seriously, but would ruin their entire future career.

It may be pertinent to mention that during the said period there has been no allegation regarding the integrity or

efficiency of these officers.

The facts of this case reveal that the material supplied to the Committee having regard to the facts that majority of the officers named in the FIR belonged to 2001 batch, the respondents not only cancelled the entire selection of 2001 batch, but on the basis of the cancellation of selections of 2001 batch the entire process of 1999 and 2002 selections was also cancelled. It is also relevant to mention that the selection process for the year 1998 was not the subject matter nor any recommendation had been made by the Committee, even then the selections of this year were also vitiated. The High Court Committee without there being sufficient and adequate material on record recommended cancellation of selections of both the executive and judicial officers and the Full Bench erred in accepting the recommendation and terminating the services of all the officers.

A close scrutiny of the facts of this case clearly reveals that the judicial officers did not get a fair treatment by the High Court. They were not given copies of the Report and other material on which reliance was placed and they virtually had no chance of making effective representation before the Committee or any other forum where they could ventilate their grievances and present their point of view.

When the basis of termination is serious allegations of corruption, then it is imperative that the principles of natural justice must be fully complied with.

The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.

This Court had an occasion to examine a similar controversy in the case of Onkar Lal Bajaj's case (supra). In that case, there were serious allegations of political patronage in allotment of retail outlets of petroleum products, (LPG distributorships and SKO-LDO dealerships). This Court laid down that how could a large number of candidates against whom there was not even insinuation be clubbed with handful of those who were said to have been allotted dealerships/distributorships on account of political connection and patronage? This Court clearly stated that the two were clearly unequals. Equal treatment to unequals is nothing but inequality. This is the most important principle which has been laid down in this case by this Court. The Court further observed that to put both the categories, tainted and the rest, on par is wholly unjustified, arbitrary and unconstitutional, being violative of Article 14 of the Constitution. In somewhat similar circumstances, in this case, the Government, instead of discharging its obligation, unjustly resorted to the cancellation of all the allotments en masse by treating unequals as equals without even prima facie

examining their cases. Those officers whose services were affected because of en masse cancellation have not been given an opportunity to represent before the concerned authorities. In the case of Onkar Lal Bajaj there were 413 cases and the task was indeed difficult to segregate the cases of political connection and patronage with other cases. But, even then, this Court while, setting aside the order of the Government cancelling the allotment, appointed a Committee of two retired Judges, one of this Court and another from the Delhi High Court, and they were requested to examine all 413 cases and decide the matter after getting the report from that Committee appointed by the Court.

While following the ratio in the said case, in the facts and circumstances of the case, we deem it appropriate to set aside the order of the respondents cancelling the en masse selections and direct the respondents to examine each case separately on its merits and submit a report to this Court.

In somewhat similar circumstances, in which initially it looked that it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, from the others, even then in the case of Union of India v. Rajesh P.U. (supra), this Court observed that the competent authority completely mis-directed itself in taking such an extreme and unreasonable decision of cancelling the entire selections.

The appellants submitted that the judicial officers have not been fairly treated by the High Court. It was urged that the two senior judges who were members of the Committee (appointed by the High Court) should not have been part of the Full Bench constituted by the Chief Justice. In the facts and circumstances of this case, I do not find any merit in this submission of the appellants. In these cases, before hearing commenced, the learned counsel appearing for the appellants clearly consented to hearing of the matter by the judges of the full bench. After giving clear consent before the High Court, they cannot be permitted to make any grievance before this Court. This tendency should not be encouraged.

The report submitted by the judges of the Committee was placed before the Full Court and after thorough examination and discussion on the report by the full court, the same was approved by all the judges of the High Court unanimously. All the judges after threadbare deliberations on the report had put their seal of approval. The report, in fact became the report of the High Court. On the same analogy no judge of the Punjab and Haryana High Court should have heard this matter.

The respondents have placed reliance on famous case Pinochet (1999) 1 All ER 577 which has been referred and relied by the Supreme Court in Rupa Hurra (2002) 4 SCC 388 at prs.21 read with prs.37-9 and Kumaon Vikas Mandal (2001) 1 SCC 182 at prs.30-2. There is no quarrel with the principles which have been laid down in Pinochet's case. But in the facts and circumstances of this case after giving clear consent before the commencement of the hearing in the High Court, it is not fair and appropriate for the appellants to take this objection before this Court for the first time after the Division Bench's judgment.

In the facts of this case doctrine of waiver is attracted.

In 16 Halsbury's Laws (4th edn) para 1471, the term 'Waiver' has been described in the following words:

"Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if

the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel, although, unlike estoppel, waiver must always be an intentional act with knowledge. A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted upon it is sufficient consideration. Where the waiver is not express it may be implied from conduct which is inconsistent with the continuance of the right, without need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver; but mere acts of indulgence will not amount to waiver; nor can a party benefit from the waiver unless he has altered his position in reliance on it. The waiver may be terminated by reasonable but not necessarily formal notice unless the party who benefits by the waiver cannot resume his position, or termination would cause injustice to him.

It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration."

In 45 Halsbury's Laws (4th edn) para 1269, the meaning of the word 'waiver' has been described as follows:

"Waiver is the abandonment of a right, and thus is a defence against its subsequent enforcement. Waiver may be express or, where there is knowledge of the right, may be implied from conduct which is inconsistent with the continuance of the right. A mere statement of an intention not to insist on a right does not suffice in the absence of consideration; but a deliberate election not to insist on full rights, although made without first obtaining full disclosure of material facts, and to come to a settlement on that basis will be binding."

The two judges, who were part of the full bench, did not have bias of any kind against the appellants. They had no pecuniary or any other interest in the matter. They have discharged their judicial functions as judges. Therefore, I find no merit in the submission that the two judges, who were part of the Committee, ought not to have heard this matter.

In the facts and circumstances of the case, in my considered opinion, the appellants are not justified in making

any grievance before this Court regarding the hearing of the cases by the full bench of which two judges who had submitted the Report, were also members. Admittedly, those judges constituting the full Bench had no interest of any kind in deciding the matter one way or the other. The appellants before the commencement of hearing categorically submitted that they had no objection whatsoever to the hearing of the matter by the said full bench. Even assuming, those judges had any bias against the appellants, the appellants had waived their right, if any. In these circumstances, the doctrine of 'waiver' is fully applicable.

The doctrine of "Waiver" has been explained in Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd. [(1970) 2 ALL ER 871]. The Court observed as under:
"Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel."

The English Court in Earl of Darnley v. London, Chatham and Dover Rly Co. [(1867) LR 2 HL 43 at 57, per Lord Chelmsford LC] observed that Waiver must always be an intentional act with knowledge.

In Central London Property Trust Ltd. v. High Trees House Ltd. [(1947) KB 130], the Court observed as under:
"It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration."

The doctrine of 'waiver' has been interpreted by American cases in the same manner.

In Scherer v. Wahlstrom [Tax Civ. App., 318 S.W.2d 456, 459], the waiver is relinquishment or surrender of a right. The Court observed as under:
"A "waiver" is a giving up, relinquishment or surrender of some known right and takes place where a person dispenses with the performance of something which he has a right to exact."

In Smith v. McKnight [Tax Civ. App., 240 S.W.2d 368, 371, 372], the court observed as under:
"A "waiver" is a giving up, relinquishment or surrender of some known right, and takes place where a person dispenses with the performance of something which he has a right to exact."

The same principles have been adopted in Covington

Virginian v. Woods [29 S.E.2d, 406, 410, 182 Va. 538] and Missouri State Life Ins. Co. v. Le Fevre, Tex [10 S.W.2d 267, 269].

The doctrine of 'waiver' has been given the same meaning by our Courts also. In the instant case, assuming the appellants had any right, that right was clearly relinquished and given up by them, when they gave no objection to the hearing of the case by the two judges who were part of the full bench. Now, after the case was heard and the judgment has gone against them, it is hardly fair, proper and appropriate for them to raise this as a ground before this Court.

Another significant aspect of this matter is that the two judges (who were part of the Committee) were not impleaded as parties in the writ petitions before the High Court and they have not been impleaded as parties in these appeals before this Court. In case, the appellants were so keen to level allegations against those two judges, the appellants ought to have impleaded them as parties at least before this Court (with the permission of this Court). This is the minimum requirement of the principles of natural justice.

The ratio of Joseph Vilangandan v. Executive Engineer [(1978) 3 SCC 36], is that before taking any action against a contractor or anyone, a notice has to be given. Applying the principles of the said case, in this case, the conclusion would be that the appellants ought to have impleaded the said two judges as parties to the petition before levelling allegation of bias against them.

In M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal [(1975) 1 SCC 70, this Court laid down that fundamentals of fair play require that the person concerned should be given a notice. The appellants in the instant case are not justified in levelling allegations against the said two judges without impleading them as parties to the appeal before this Court.

I respectfully agree with all the findings of my learned brother Justice Sinha expect on this issue. On consideration of the cumulative facts and circumstances I entirely endorse the directions given by my learned brother Justice Sinha. Consequently, the learned Chief Justice of Punjab and Haryana High Court is requested to set up two independent committees, one, with regard to the executive officers and another with regard to the judicial officers. They should delineate the area which falls for consideration by the said Committees and the Committees be requested to reconsider all the cases and submit a Report to the Punjab and Haryana High Court as expeditiously as possible.

In consonance with the principles of natural justice the respondents are directed to supply the copies of the report and other material on which reliance has been placed within two weeks. The appellants would also be permitted to inspect the entire record and obtain copies of the documents in accordance with the rules. The Court would also provide the appellants two weeks time to submit their objections to such report and comment, if any, on the material provided by the Court. Since the appellants are out of job, the High Court is requested to dispose of the matter as expeditiously as possible preferably within three months from the date of receipt of the copy of this order. Status quo as of today shall be maintained until the disposal of the matter by the High Court.

These appeals are accordingly disposed of. In the facts and circumstances, the parties are directed to bear their own

costs.