A

STATE OF PUNJAB

v.

SALIL SABHLOK AND ORS.

(Civil Appeal No.7640 of 2011)

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FEBRUARY 15, 2013

[A.K. PATNAIK AND MADAN B. LOKUR, JJ.]

Constitution of India, 1950 – Arts.226, 316 and 320 – State Public Service Commission – Appointment of C *Chairman – Interference u/Art.226 of the Constitution – Scope – Held: High Court should not normally, in exercise of its power u/Art.226, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission – But in an exceptional* D *case, if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions u/Art.320 have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and* E *extra-ordinary powers u/Art.226 and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution –On facts, where appointment of 'H' as Chairman of the Punjab Public Service Commission was quashed by the High* F *Court while exercising jurisdiction u/Art.226, the materials on record do not indicate that 'H' had any knowledge or experience whatsoever either in administration or in recruitment nor do the materials indicate that he had the qualities to perform the duties as the Chairman of the State* G *Public Service Commission u/Art.320 – Decision of the State Government to appoint 'H' as the Chairman of the Punjab Public Service Commission was invalid for non-consideration of relevant factors implied from the very nature of the duties entrusted to Public Service Commissions u/Art.320 –* H *Impugned order of High Court accordingly not interfered with.*

Constitution of India, 1950 – Art.226 – Power under – Exercise of – Scope – Held: Art.226 vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

Public Service Commisison – State Public Service Commission – Appointment of Chairman – Procedure – Implied relevant factors – Held: It is for the Governor who is the appointing authority u/Art.316 to lay down the procedure – But in absence of any procedure laid down by the Governor, the State Government would not have absolute discretion – The State Government has to select only persons with integrity and competence for appointment, because the discretion vested in the State Government u/Art.316 is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commission enumerated in Art.320 – The State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration – Even though Art.316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission u/Art.316 – Constitution of India, 1950 – Articles 316 and 320.

Public Interest Litigation – Selection of 'H' for appointment as Chairman of the Punjab Public Service Commission –Writ petition challenging such appointment – Maintainability – Held: Respondent No.1 filed the writ petition for espousing the

A *cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is*
B *not influenced by politics and extraneous considerations – Considering the averments in the writ petition, it cannot be held that the writ petition was just a service matter in which only the aggrieved party had the locus to initiate a legal action in the court of law – The writ petition was a matter affecting*
C *interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides were not in doubt – When respondent No.1 brought to the notice of the High Court through the writ petition that the State Government of Punjab*
D *proposed to appoint 'H' as Chairman of the Public Service Commission, only because of his political affiliation, the High Court rightly entertained the writ petition as a public interest litigation.*

Practice & Procedure – Reference to larger Bench – Writ
E *petition challenging appointment of 'H' as Chairman of the Punjab Public Service Commission – Division Bench of the High Court made academic reference to Full Bench of three Judges of the High Court on specific questions of law – Justification – Held: On facts, justified – No merit in the*
F *submission that the Division Bench of the High Court having found in its order that the irregularities and illegalities pointed out in the writ petition against 'H' were unsubstantiated, should not have made an academic reference to the larger Bench of the High Court – The Division Bench of the High Court was*
G *of the view that the persons to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench of three Judges and accordingly made the reference – Punjab High Court Rules – rr. 6, 7, 8 and 9.*

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Practice & Procedure – Reference to larger Bench – Scope of reference – Writ petition challenging appointment of Chairman of the Punjab Public Service Commission – Division Bench of the High Court made reference to Full Bench of three Judges of the High Court on specific questions of law relating to procedure for identifying persons of competence and integrity for such appointment – Full Bench, instead of deciding the specific questions, gave directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Art.14 of the Constitution was made – Justification – Held: Not justified – The Full Bench of the High Court decided issues which were not referred to it by the Division Bench of the High Court – It acted beyond its jurisdiction and usurped the constitutional power of the Governor in laying down the procedure for appointment of the Chairman and Members of the Public Service Commission – Constitution of India, 1950 – Art.316.

The State Government of Punjab appointed Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission. Respondent No.1, an Advocate practicing at the Punjab and Haryana High Court, Chandigarh, filed a public interest litigation under Article 226 of the Constitution praying for a mandamus directing the State Government to frame regulations governing the conditions of service and appointment of the Chairman and/or the Members of the Public Service Commission as envisaged in Article 318 of the Constitution. Respondent no.1 also prayed for a direction restraining the State Government from appointing Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission in view of the fact that his appointment does not fall within the parameters of integrity, impartiality and independence as reiterated time and again by this Court.

A The Division Bench of the High Court referred the matter to the Bench of three Judges of the High Court. Thereafter, the Chief Justice of the High Court constituted a Full Bench. The Full Bench of the High Court delivered a judgment and passed an order on B 17.08.2011 directing both the State of Haryana and the State of Punjab to follow a particular procedure as part of the decision-making process for appointment as Members and Chairman of the Public Service Commission, till such time a fair, rational, objective and C transparent policy to meet the mandate of Article 14 was made. By the order dated 17.08.2011, the Full Bench of the High Court also ordered that the writ petition be listed before the Division Bench to be constituted by the Chief Justice of the High Court. Pursuant to the order dated 17.08.2011, the Division Bench constituted by the Chief D Justice of the High Court quashed the appointment of Shri Harish Dhanda as Chairman of the Punjab Public Service Commission and disposed of the writ petition of respondent No.1 in terms of the judgment of the Full Bench. Aggrieved, the State of Punjab, State of Haryana E and Shri H.R. Dhanda filed the instant appeals against the judgment and orders dated 17.08.2011 of the Full Bench and the Division Bench of the High Court.

The question which arose for decision of this Court F was whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution can lay down the procedure for the selection and appointment of the Chairman of the State Public Service Commission and quash his appointment in appropriate cases.

G Disposing of the appeals, the Court

HELD:

Per Patnaik, J.

H 1. On a reading of the entire writ petition filed by

respondent No.1 before the High Court, it is clear that respondent no.1 filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, it cannot be held that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides are not in doubt. Considering the past experience of the damage to recruitment to public services caused by appointing a person lacking in character as the Chairman of the Public Service Commission in the State of Punjab during the period 1996 to 2002 [as noted in the judgment of this Court in *Inderpreet Singh Kahlon* case] when respondent No.1 brought to the notice of the High Court through the writ petition that the State Government of Punjab proposed to appoint Shri Harish Dhanda as the Chairman of the Public Service Commission, only because of his political affiliation, the High Court rightly entertained the writ petition as a public interest litigation. [Paras 23, 31] [51-E-H; 62-A-C]

2.1. Though respondent No.1 had alleged in the writ petition some irregularities and illegalities on the part of Shri Harish Dhanda, who was proposed to be appointed as Chairman of the Public Service Commission by the State Government, the writ petition was not founded only on such irregularities and illegalities alleged against Shri Harish Dhanda. In addition, the respondent No.1 had also alleged in the writ petition that Shri Harish Dhanda

A was politically affiliated to the ruling party and was not selected for appointment as Chairman of the Public Service Commission on the basis of his qualifications, experience or ability which are necessary for the post of the Chairman of the Public Service Commission. Thus, B even if the Division Bench had recorded a finding in the order dated 13.07.2011 that the irregularities and illegalities pointed out in the writ petition against Shri Harish Dhanda do not stand substantiated, the writ petition could not be disposed of with the said finding C only. The Division Bench of the High Court, therefore, thought it necessary to make a reference to the Full Bench and has given its reasons for the reference to the Full Bench in its order dated 13.07.2011. [Para 24] [52-H; 53-A-C]

D 2.2. It is clear from the order dated 13.07.2011 that the Division Bench of the High Court found that Article 316 of the Constitution, which provides for appointment of the Chairman and other Members of the Public Service Commission by the Governor, does not prescribe any E particular procedure and took the view that, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. The Division Bench of the High Court was of the further view that the persons F to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench of three Judges and accordingly referred the matter to the three Judges. The Division Bench also referred the question to the larger G Bench of three Judges as to whether the procedure adopted in the present case for appointing Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission was valid and if not, what is the effect of not following the procedure. There is, therefore, no merit in H the submission that the Division Bench of the High Court

having found in its order dated 13.07.2011 that the irregularities and illegalities pointed out in the writ petition against Shri Harish Dhanda are unsubstantiated, should not have made an academic reference to the larger Bench of the High Court. [Para 25] [53-H; 54-A-E]

3.1. However, it cannot be said that the Division Bench referred the entire case to the Full Bench by the order dated 13.07.2011. It is further found that although specific questions relating to the procedure for identifying persons of competence and integrity for appointment as the Chairman of the Public Service Commission only were referred by the Division Bench of the High Court, the Full Bench, instead of deciding these specific questions referred to it, has given directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is made. The Full Bench of the High Court has decided issues which were not referred to it by the Division Bench of the High Court and the judgment dated 17.08.2011 of the Full Bench of the High Court was without jurisdiction. [Para 28] [57-B-E]

3.2. Under Article 316 of the Constitution, the Governor of a State has not only the express power of appointing the Chairman and other Members of Public Service Commission but also the implied powers to lay down the procedure for appointment of Chairman and Members of the Public Service Commission and the High Court cannot under Article 226 of the Constitution usurp this constitutional power of the Government and lay down the procedure for appointment of the Chairman and other Members of the Public Service Commission. The Full Bench of the High Court, therefore, could not

A have laid down the procedure for appointment of the Chairman and Members of the Punjab Public Service Commission and the Haryana Public Service Commission by the impugned judgment dated 17.08.2011. Inasmuch as the Full Bench of the High Court has in its judgment B dated 17.08.2011 acted beyond its jurisdiction and has usurped the constitutional power of the Governor in laying down the procedure for appointment of the Chairman and Members of the Public Service Commission, the said judgment dated 17.08.2011 of the C Full Bench of the High Court is being set aside. [Paras 29, 30] [59-E-H; 60-A-B]

4.1. Nevertheless to cut short the litigation, the writ petition is now being decided on merits instead of remanding the matter to the High Court. [Para 30] [60-B]

D 4.2. It is for the Governor who is the appointing authority under Article 316 of the Constitution to lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down E by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service F Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public G Service Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service H Commissions enumerated in Article 320 of the

Constitution. Under clause (1) of Article 320 of the Constitution, the State Public Service Commission has the duty to conduct examinations for appointments to the services of the State. Under clause (3) of Article 320, the State Public Service Commission has to be consulted by the State Government on matters relating to recruitment and appointment to the civil services and civil posts in the State, on disciplinary matters affecting a person serving under the Government of a State in a civil capacity, on claims by and in respect of a person who is serving under the State Government towards costs of defending a legal proceeding, on claims for award of pension in respect of injuries sustained by a person while serving under the State Government and other matters. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration. [Para 31] [62-E-H; 63-A-D]

4.3. Even though Article 316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission under Article 316 of the Constitution. Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution. To ensure this independence of the Chairman and Members of the Public Service Commission, clause (3) of Article 316 of the Constitution provides that a person shall, on expiration of his term of office be ineligible for

A reappointment to that office. [Paras 32, 33] [63-E-G; 65-C-D]

4.4. Besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute and the Constitution and the statutory or the constitutional authority cannot in breach of such implied restrictions exercise its discretionary power. Moreover, Article 226 of the Constitution vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. The power of the High Court under Article 226 of the Constitution is, thus, not confined to only writ of *quo warranto* but to other directions, orders or writs. [Para 34] [65-G-H; 66-A-C]

4.5. The High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extra-ordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution. [Para 34] [67-C-E]

5. In the present case, the High Court in its order dated 13.07.2011 had held that the irregularities and

illegalities alleged against Shri Harish Dhanda have not been substantiated. This Court had passed orders on 01.08.2012 calling upon the State of Punjab to produce the material referred to in para 69 of the judgment of the Full Bench of the High Court on the basis of which Shri Harish Dhanda was selected for appointment as Chairman of the Punjab Public Service Commission. Pursuant to the order dated 01.08.2012, the State Government produced the files in which the selection and appointment of Shri Harish Dhanda was processed by the State Government. The materials indicate that Shri Harish Dhanda had B.A. and LL.B Degrees and was practicing as an Advocate at the District Courts in Ludhiana and had been elected as the President of the District Bar Association, Ludhiana for seven terms and has been member of the Legislative Assembly. These materials do not indicate that Shri Harish Dhanda had any knowledge or experience whatsoever either in administration or in recruitment nor do these materials indicate that Shri Harish Dhanda had the qualities to perform the duties as the Chairman of the State Public Service Commission under Article 320 of the Constitution. No other information through affidavit has also been placed on record to show that Shri Harish Dhanda has the positive qualities to perform the duties of the office of the Chairman of the State Pubic Service Commission under Article 320 of the Constitution. The decision of the State Government to appoint Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission was thus invalid for non-consideration of relevant factors implied from the very nature of the duties entrusted to the Public Service Commissions under Article 320 of the Constitution. [Para 35] [67-F-H; 68-G-H; 69-A-D]

6. In the result, the impugned order of the Division Bench of the High Court dated 17.08.2011 quashing the selection and appointment of Shri Harish Dhanda as

A **Chairman of the Punjab Public Service Commission, is not interfered with, but the judgment dated 17.08.2011 of the Full Bench of the High Court is set aside. [Para 36] [69-E]**

B *E.P. Royappa v. State of Tamil Nadu & Anr.* **(1974) 4 SCC 3: 1974 (2) SCR 348;** *State of West Bengal & Ors. v. Manas Kumar Chakraborty & Ors.* **(2003) 2 SCC 604: 2002 (5) Suppl. SCR 72 – distinguished.**

In re Mehar Singh Singh Saini, Chairman, HPSC and
C *others* **(2010) 13 SCC 586 – explained.**

In R/o Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission **(2000) 4 SCC 309: 2000 (2) SCR 688;** *Ram Kumar Kashyap and another vs. Union of India and*
D *another* **AIR 2010 SC 1151: 2009 (12) SCR 601;** *R.K. Jain v. Union of India & Ors.* **(1993) 4 SCC 119: 1993 (3) SCR 802;** *Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors.* **(1998) 7 SCC 273: 1998 (1) Suppl. SCR 77;** *Dattaraj Nathuji Thaware v. State of Maharashtra & Ors.* **(2005) 1 SCC**
E **590: 2004 (6) Suppl. SCR 900;** *Ashok Kumar Pandey v. State of West Bengal* **(2004) 3 SCC 349: 2003 (5) Suppl. SCR 716;** *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.* **(2010) 9 SCC 655: 2010 (10) SCR 561;** *Girjesh Shrivastava & Ors. v. State of M.P. & Ors.* **(2010) 10 SCC 707: 2010 (12) SCR 839;** *Kesho Nath Khurana v. Union of India & Ors.* **(1981)**
F **Supp.1 SCC 38;** ***The State of Punjab v. Sodhi Sukhdev Singh*** **(1961) 2 SCR 371;** *Supreme Court Employees Welfare Association v. Union of India & Anr.* **(1989) 4 SCC 187: 1989 (3) SCR 488;** *Suresh Seth v. Commissioner of Indore Municipal Corporation* **(2005) 13 SCC 287;** *Divisional*
G *Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr.* **(2008) 1 SCC 683: 2007 (12) SCR 1084;** *Asif Hameed & Ors. v. State of J & K & Ors.* **(1989) 2 Supp. SCC 364: 1989 (3) SCR 19;** ***B.*** *Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Association & Ors.*
H **(2006) 11 SCC 731: 2006 (5) Suppl. SCR 462;** *Ashok Kumar*

Yadav & Ors. v. *State of Haryana & Ors.* **(1985) 4 SCC 417: 1985 (1) Suppl. SCR 657;** *Inderpreet Singh Kahlon and Others v. State of Punjab and Others* **(2006) 11 SCC 356: 2006 (1) Suppl. SCR 772;** *Centre for PIL and Another v. Union of India and Another* **(2011) 4 SCC 1;** *Kerala State Science & Technology Museum v. Rambal Co. & Ors.* **(2006) 6 SCC 258: 2006 (4) Suppl. SCR 243;** *Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur & Anr.* **AIR 1966 SC 81: 1965 SCR 536;** *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* **(1978) 1 SCC 405: 1978 (2) SCR 272;** *M/s Hochtief Gammon v. State of Orissa and Others* **AIR 1975 SC 2226: 1976 (1) SCR 667 – referred to.**

De Smith's Judicial Review, Sixth Edition – **referred to.**

Case Law Reference:

2000 (2) SCR 688	**referred to**	**Para 4, 31**
2009 (12) SCR 601	**referred to**	**Para 4**
(2010) 13 SCC 586	**explained**	**Para 4, 26**
1993 (3) SCR 802	**referred to**	**Para 9**
1998 (1) Suppl. SCR 77	**referred to**	**Para 9**
2004 (6) Suppl. SCR 900	**referred to**	**Para 9**
2003 (5) Suppl. SCR 716	**referred to**	**Para 9, 31**
2010 (10) SCR 561	**referred to**	**Para 9**
2010 (12) SCR 839	**referred to**	**Para 9**
(1981) Supp.1 SCC 38	**referred to**	**Para 11**
(1961) 2 SCR 371	**referred to**	**Para 11**
1989 (3) SCR 488	**referred to**	**Para 12**
(2005) 13 SCC 287	**referred to**	**Para 12**

A	2007 (12) SCR 1084	referred to	Para 12
	1989 (3) SCR 19	referred to	Para 12
	1974 (2) SCR 348	distinguished	Para 12
B	2002 (5) Suppl. SCR 72	distinguished	Para 12
	2006 (5) Suppl. SCR 462	referred to	Para 13
	1985 (1) Suppl. SCR 657	referred to	Para 15
	2000 (2) SCR 688	referred to	Para 15
C	2006 (1) Suppl. SCR 772	referred to	Para 15, 32
	(2011) 4 SCC 1	referred to	Para 16
	2006 (4) Suppl. SCR 243	referred to	Para 18
D	1965 SCR 536	referred to	Para 19
	1978 (2) SCR 272	referred to	Para 29,
	1976 SCR 667	referred to	Para 32

E Per Lokur, J. [Concurring]

1.1. The appointment of the Chairperson of the Punjab Public Service Commission is an appointment to a constitutional position and is not a "service matter". A F PIL challenging such an appointment is, therefore, maintainable both for the issuance of a writ of *quo warranto* and for a writ of declaration, as the case may be. [Para 107] [109-F-G]

1.2. In a case for the issuance of a writ of declaration, G exercise of the power of judicial review is presently limited to examining the deliberative process for the appointment not meeting the constitutional, functional and institutional requirements of the institution whose integrity and commitment needs to be maintained or the

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appointment for these reasons not being in public interest. [Para 109-H; 110-A]

1.3. The circumstances of this case leave no room for doubt that the notification dated 7th July 2011 appointing Mr. Harish Rai Dhanda was deservedly quashed by the High Court since there was no deliberative process worth the name in making the appointment and also since the constitutional, functional and institutional requirements of the Punjab Public Service Commission were not met. [Para 109] [110-B-C]

1.4. There is a need for a word of caution to the High Courts. There is a likelihood of comparable challenges being made by trigger-happy litigants to appointments made to constitutional positions where no eligibility criterion or procedure has been laid down. The High Courts will do well to be extremely circumspect in even entertaining such petitions. It is necessary to keep in mind that sufficient elbow room must be given to the Executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators given by this Court from time to time. [Para 110] [110-C-E]

1.5. Given the experience in the making of such appointments, there is no doubt that until the State Legislature enacts an appropriate law, the State of Punjab must step in and take urgent steps to frame a memorandum of procedure and administrative guidelines for the selection and appointment of the Chairperson and members of the Punjab Public Service Commission, so that the possibility of arbitrary appointments is eliminated. [Para 111] [110-F-G]

Hari Bansh Lal v. Sahodar Prasad Mahto, **(2010) 9 SCC 655**; *E.P. Royappa v. State of Tamil Nadu,* **(1974) 4 SCC 3**;

A *State of W.B. v. Manas Kumar Chakraborty,* **(2003) 2 SCC 604;** *State of Mysore* v. *Syed Mahmood,* **AIR 1968 SC 1113,** *Statesman (P) Ltd.* v. *H.R. Deb,* **AIR 1968 SC 1495 and** *State Bank of India* v. *Mohd. Mynuddin,* **(1987) 4 SCC 486 – distinguished.**

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R.K. Jain v. Union of India, **(1993) 4 SCC 119,** *Mor Modern Coop. Transport Society v. Govt. of Haryana,* **(2002) 6 SCC 269,** *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712* **and** *B. Srinivasa Reddy v.*
C *Karnataka Urban Water Supply & Drainage Board Employees' Association,* **(2006) 11 SCC 731 (2);** *Mahesh Chandra Gupta v. Union of India & Others,* **(2009) 8 SCC 273; Reference under Article 317(1) of the** *Constitution of India, In re,* **(1990) 4 SCC 262;** *Bihar Public Service Commission v. Shiv Jatan Thakur,* **1994 Supp. (3) SCC 220;**
D *Ram Ashray Yadav (Dr.), Chairman, Bihar Public Service Commission, In Re,* **(2000) 4 SCC 309; Ram Kumar Kashyap v. Union of India, (2009) 9 SCC 278;** *Mehar Singh Saini, Chairman, Haryana Public Service Commission, In re,* **(2010) 13 SCC 586;** *R.K. Jain v. Union of India,* **(1993) 4 SCC**
E **119;** *Girjesh Shrivastava v. State of Madhya Pradesh,* **(2010) 10 SCC 707;** *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* **(1998) 7 SCC 273,** *B. Srinivasa Reddy, Dattaraj Nathuji Thaware v. State of Maharashtra,* **(2005) 1 SCC 590,** *Ashok Kumar Pandey v. State of W.B* **(2004) 3 SCC 349;** *T.*
F *C. Basappa v. T. Nagappa* **[1955] 1 SCR 250;** *Kumar Padma Prasad v. Union of India,* **(1992) 2 SCC 428;** *N. Kannadasan v. Ajoy Khose,* **(2009) 7 SCC 1;** *Centre for PIL v. Union of India,* **(2011) 4 SCC 1;** *Ashok Kumar Yadav v. State of Haryana,* **(1985) 4 SCC 417; In R/O Dr Ram Ashray**
G **Yadav, Chairman, Bihar Public Service Commission, (2000) 4 SCC 309;** *Inderpreet Singh Kahlon v. State of Punjab,* **(2006) 11 SCC 356;** *State of Bihar v. Upendra Narayan Singh* **(2009) 5 SCC 65;** *Mohinder Singh Gill v. Chief Election Commissioner,* **(1978) 1 SCC 405;** *Supreme*
H *Court Employees' Welfare Assn. v. Union of India,* **(1989) 4**

SCC 187; *Asif Hameed v. State of J & K,* **1989 Supp (2) SCC 364;** *Suresh Seth v. Commissioner, Indore Municipal Corpn.,* **(2005) 13 SCC 287;** *Supreme Court Employees' Welfare Assn. and State of J&K v. A.R. Zakki,* **1992 Supp (1) SCC 548;** *Kesho Nath Khurana v. Union of India,* **1981 Supp SCC 38;** *Kerala State Science & Technology Museum v. Rambal Co.,* **(2006) 6 SCC 258;** *T.A. Hameed v. M. Viswanathan,* **(2008) 3 SCC 243;** *Saquib Abdul Hameed Nachan v. State of Maharashtra,* **(2010) 9 SCC 93;** *State of Punjab v. Sodhi Sukhdev Singh,* **(1961) 2 SCR 371 – referred to.**

Case Law Reference:

(2010) 9 SCC 655	**distinguished**	**Para 16**
(1993) 4 SCC 119	**referred to**	**Para 16**
(2002) 6 SCC 269	**referred to**	**Para 16**
(2003) 4 SCC 712	**referred to**	**Para 16**
(2006) 11 SCC 731 (2)	**referred to**	**Para 16**
(2009) 8 SCC 273	**referred to**	**Para 17**
In re, (1990) 4 SCC 262	**referred to**	**Para 19**
1994 Supp. (3) SCC 220	**referred to**	**Para 20**
In Re, (2000) 4 SCC 309	**referred to**	**Para 21**
(2009) 9 SCC 278	**referred to**	**Para 22**
In re, (2010) 13 SCC 586	**referred to**	**Para 23**
(1993) 4 SCC 119	**referred to**	**Para 32**
(2010) 10 SCC 707	**referred to**	**Para 34**
(1998) 7 SCC 273	**referred to**	**Para 34**
(2005) 1 SCC 590	**referred to**	**Para 34**
(2004) 3 SCC 349	**referred to**	**Para 34**

[1955] 1 SCR 250	referred to	Para 36
(1992) 2 SCC 428	referred to	Para 37
(2009) 7 SCC 1	referred to	Para 38
(2011) 4 SCC 1	referred to	Para 39
(1985) 4 SCC 417	referred to	Para 41
(2000) 4 SCC 309	referred to	Para 42
(2006) 11 SCC 356	referred to	Para 44
(2009) 5 SCC 65	referred to	Para 46
(1978) 1 SCC 405	referred to	Para 60
(1974) 4 SCC 3	distinguished	Para 69
(2003) 2 SCC 604	distinguished	Para 70
AIR 1968 SC 1113	distinguished	Para 71
AIR 1968 SC 1495	distinguished	Para 71
(1987) 4 SCC 486	distinguished	Para 71
(1989) 4 SCC 187	referred to	Para 84
1989 Supp (2) SCC 364	referred to	Para 84
(2005) 13 SCC 287	referred to	Para 85
1992 Supp (1) SCC 548	referred to	Para 85
1981 Supp SCC 38	referred to	Para 95
(2006) 6 SCC 258	referred to	Para 95
(2008) 3 SCC 243	referred to	Para 95
(2010) 9 SCC 93	referred to	Para 95
(1961) 2 SCR 371	referred to	Para 106

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7640 of 2011. A

From the Judgment & Order dated 17.08.2011 of the High Court of Punjab & Haryana at Chandigarh in CWP No, 11846 of 2011 (O & M). B

WITH

C.A. Nos. 2685, 3687 of 2012 & 1365-1367 of 2013.

P.P. Rao, P.N. Misra, Sarvesh Bisaria, P.C. Sharma, Abhimanyu Tiwari, Apeksha Sharan, S. Usha Reddy, Manjit Singh, Kamal Mohan Gupta, R.S. Hegde, Rajeev Singh for the Appellant. C

U.U. Lalit, Law Associates & Co., Kiran Bhardwaj, J. Wasim A. Quadri, B.V. Balramdass, Anil Katiyar, D.S. Chauhan Rajan Bharti, P.P. Singh for the Respondents. D

The Judgments of the Court were delivered by

A. K. PATNAIK, J. 1. Leave granted in S.L.P. (C) Nos. 22010-22012 of 2011. E

2. In these appeals against the judgment and orders of the Punjab and Haryana High Court, a very important question of law arises for our decision: whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution can lay down the procedure for the selection and appointment of the Chairman of the State Public Service Commission and quash his appointment in appropriate cases. F

Facts: G

3. The relevant facts very briefly are that by notification dated 07.07.2011, the State Government of Punjab appointed Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission. On 10.07.2011, the respondent No.1 who was an Advocate practicing at the Punjab and Haryana High H

A Court, Chandigarh, filed a public interest litigation under Article 226 of the Constitution (Writ Petition No.11846 of 2011) praying for a mandamus directing the State Government to frame regulations governing the conditions of service and appointment of the Chairman and/or the Members of the Public B Service Commission as envisaged in Article 318 of the Constitution of India. The respondent No.1 also prayed for a direction restraining the State Government from appointing Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission in view of the fact that his appointment does not C fall within the parameters of integrity, impartiality and independence as reiterated time and again by this Court.

4. The Division Bench of the High Court, after hearing the learned counsel for the writ petitioner and the learned Additional Advocate General for the State of Punjab, passed an order on D 13.07.2011 holding that even though Article 316 of the Constitution does not prescribe any particular procedure for appointment of Chairman of the Public Service Commission, having regard to the purpose and nature of the appointment, it cannot be assumed that the power of appointment need not E be regulated by any procedure. Relying on the judgments of this Court in the case of *In R/O Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission* [(2000) 4 SCC 309], *Ram Kumar Kashyap and another* vs. *Union of India and another* (AIR 2010 SC 1151) and *In re Mehar Singh Singh Saini,* F *Chairman, HPSC and others* [(2010) 13 SCC 586], the Division Bench held that it is not disputed that the persons to be appointed as Chairman and Members of the Public Service Commission must have competence and integrity. The Division Bench of the High Court further held that a question, therefore, G arises as to how such persons are to be identified and selected for appointment as Chairman of the Public Service Commission and whether, in the present case, the procedure adopted was valid and if not, the effect thereof. The Division Bench further observed that these questions need to be

H

considered by a Bench of three Judges and referred the matter to the Bench of three Judges of the High Court.

5. Pursuant to the order dated 13.07.2011 of the Division Bench, the Chief Justice of the High Court constituted a Full Bench. On 19.07.2011, the Full Bench of the High Court passed an order calling for certain information from the State Government of Punjab and the Punjab Public Service Commission on the number of posts filled up by the Public Service Commission in the last five years, the number of posts taken out from the purview of the Public Service Commission in the last five years and regulations, if any, framed by the State Government. On 01.08.2011, the Full Bench of the High Court also passed orders requiring the Union of India to furnish information on three questions: (1) Whether there were any criteria or guidelines to empanel a candidate for consideration for appointment as a Member of the Union India Public Service Commission; (2) Which authority or officer prepares such panel; and (3) What methodology is kept in view by the authority while preparing the panel.

6. Aggrieved by the order dated 13.07.2011 of the Division Bench of the High Court and the orders dated 19.07.2011 and 01.08.2011 of the Full Bench of the High Court, the State of Punjab filed Special Leave Petitions (C) Nos.22010-22012 of 2011 before this Court. On 05.08.2011, this Court, while issuing a notice in the Special Leave Petitions, made it clear that issuance of notice in the Special Leave Petitions will not come in the way of the High Court deciding the matter and the State of Punjab is at liberty to urge all contentions before the High Court. Accordingly, the Full Bench of the High Court heard the matters on 08.08.2011 and directed the Chief Secretary of the State of Punjab to remain present at 2.00 P.M. along with the relevant files which contain the advice of the Chief Minister to the Government. The Chief Secretary of the State of Punjab produced the original files containing the advice of the Chief Minister to the Governor of

A Punjab and after seeing the original files, the Full Bench of the High Court returned the same and reserved the matter for judgment.

7. Thereafter, the Full Bench of the High Court delivered B the judgment and order dated 17.08.2011 directing that till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 is made, both the State of Haryana and the State of Punjab shall follow the procedure detailed hereunder as part of the decision-making process for C appointment as Members and Chairman of the Public Service Commission:-

1. There shall be Search Committee constituted under the Chairmanship of the Chief Secretary of the respective State Governments.

D

2. The Search Committee shall consist of at least three members. One of the members shall be serving Principal Secretary i.e. not below the rank of Financial Commissioner and the third member can be serving or E retired Bureaucrat not below the rank of Financial Commissioner, or member of the Armed Forces not below the rank of Brigadier or of equivalent rank.

3. The Search Committee shall consider all the names which came to its notice or are forwarded by any person F or by any aspirant. The Search Committee shall prepare panel of suitable candidates equal to the three times the number of vacancies.

4. While preparation of the panel, it shall be specifically G elicited about the pendency of any court litigation, civil or criminal, conviction or otherwise in a criminal court or civil court decree or any other proceedings that may have a bearing on the integrity and character of the candidates.

5. Such panel prepared by the Search Committee shall be H considered by a High Powered Committee consisting of

Hon'ble Chief Minister, Speaker of Assembly and Leader of Opposition.

6. It is thereafter, the recommendation shall be placed with all relevant materials with relative merits of the candidates for the approval of the Hon'ble Governor after completing the procedure before such approval.

7. The proceedings of the Search Committee shall be conducted keeping in view the principles laid down in Centre for Public Interest Litigation's case (supra).

By the order dated 17.08.2011, the Full Bench of the High Court also ordered that the writ petition be listed before the Division Bench to be constituted by the Chief Justice of the High Court.

8. Pursuant to the judgment dated 17.08.2011, the Division Bench constituted by the Chief Justice of the High Court quashed the appointment of Shri Harish Dhanda as Chairman of the Punjab Public Service Commission and disposed of the writ petition of respondent No.1 in terms of the judgment of the Full Bench. Aggrieved, the State of Punjab, State of Haryana and Shri H.R. Dhanda have filed these appeals against the judgment and orders dated 17.08.2011 of the Full Bench and the Division Bench of the High Court.

Contentions of the learned counsel for the parties:

9. Mr. P.P. Rao, learned senior counsel for the State of Punjab, submitted that the writ petition before the High Court was a service matter and could not have been entertained by the High Court as a Public Interest Litigation at the instance of the writ petitioner. He cited the decisions of this Court in *R.K. Jain v. Union of India & Ors.* [(1993) 4 SCC 119], *Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors.* [(1998) 7 SCC 273], *Dattaraj Nathuji Thaware v. State of Maharashtra & Ors.* [(2005) 1 SCC 590], *Ashok Kumar*

A *Pandey v. State of West Bengal* [(2004) 3 SCC 349], *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.* [(2010) 9 SCC 655] and *Girjesh Shrivastava & Ors. v. State of M.P. & Ors.* [(2010) 10 SCC 707] for the proposition that a dispute relating to a service matter cannot be entertained as a Public Interest
B Litigation.

10. Mr. Rao next submitted that the Division Bench has recorded a clear finding in its order dated 13.07.2011 that the allegations regarding irregularities and illegalities against Shri Harish Dhanda in the writ petition do not stand substantiated
C and there was, therefore, absolutely no need for the Division Bench of the High Court to make an academic reference to the Full Bench of the High Court. He next submitted that this Court in the case of *Mehar Singh Saini Chairman, HPSC In Re* (supra) had already declared the law that it is for the legislature
D to frame the guidelines or parameters regarding the experience, qualifications and stature for appointment as Chairman/Members of the Public Service Commission and this law declared by this Court was binding on all Courts in India and hence, there was no necessity whatsoever for the Division
E Bench to make a reference to a Full Bench on the very same questions of law.

11. Mr. Rao submitted that this Court has held in *Kesho Nath Khurana v. Union of India & Ors.* [(1981) Supp.1 SCC 38] that a Court to which a reference is made cannot adjudicate
F upon an issue which is not referred to it and yet the Full Bench of the High Court in this case has gone beyond the order of reference passed by the Division Bench and held that until a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is laid down, the
G procedure laid down by the Full Bench must be followed and has also declared the appointment of Shri Harish Dhanda as Chairman of the Public Service Commission to be invalid. He also relied on the Punjab High Court Rules to argue that the Full Bench can be constituted only for answering the questions
H referred to it by the Division Bench of the High Court. He

vehemently argued that these provisions of the Rules of the Punjab High Court have been violated and the judgment of the Full Bench of the High Court is clearly without jurisdiction. He next submitted that the direction given by the Full Bench in its order dated 01.08.2011 to produce the file containing the advice tendered by the Chief Minister to the Governor is clearly unconstitutional and *ultra vires* of Article 163(3) of the Constitution and relied on the decision of this Court in *The State of Punjab v. Sodhi Sukhdev Singh* [(1961) 2 SCR 371] on this point.

12. Mr. Rao next submitted that Article 316 of the Constitution has left it to the discretion of the State Government to select and appoint the Chairman and Members of a Public Service Commission and having regard to the doctrine of separation of powers which is part of the basic structure of the Constitution, the High Court cannot direct the Government to exercise its discretion by following a procedure prescribed by the High Court. He cited *Supreme Court Employees Welfare Association v. Union of India & Anr.* [(1989) 4 SCC 187], *Suresh Seth v. Commissioner of Indore Municipal Corporation* [(2005) 13 SCC 287], *Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr.* [(2008) 1 SCC 683] and *Asif Hameed & Ors. v. State of J & K & Ors.* [(1989) 2 Supp. SCC 364] in support of the aforesaid submission. He submitted that the appointments to the constitutional offices, like the Attorney General, Advocate General, Comptroller & Auditor General, Chief Election Commissioner, Chairman and Members of the Union Public Service Commission and appointments to the topmost Executive posts, like the Chief Secretary or Director General of Police, has to be made within the discretion of the Government inasmuch as persons in whom the Government has confidence are appointed to the posts. He relied on *E.P. Royappa v. State of Tamil Nadu & Anr.* [(1974) 4 SCC 3] and *State of West Bengal & Ors. v. Manas Kumar Chakraborty & Ors.* [(2003) 2 SCC 604] for this proposition.

A 13. Mr. Rao argued that in the absence of clear violation of statutory provisions and regulations laying down the procedure for appointment, the High Court has no jurisdiction even to issue a writ of *quo warranto*. In support of this argument, he relied on the decision of this Court in *B. Srinivasa Reddy* B *v. Karnataka Urban Water Supply & Drainage Board Employees Association & Ors.* [(2006) 11 SCC 731]. He submitted that this a fit case in which the order of the Division Bench dated 13.07.2011 and the interim orders as well as the judgment of the Full Bench dated 17.08.2011 and the final order C of the Division Bench dated 17.08.2011 of the High Court quashing the appointment of Shri Harish Dhanda as well as consequential orders passed by the Government implementing the impugned judgment and order provisionally should be set aside by this Court.

D 14. Mr. U.U. Lalit, learned senior counsel appearing for the respondent No.1 who had filed the writ petition before the High Court, referred to the proclamation by the Queen in Council on 1st November, 1858 to the Princes, Chiefs and the People of India to show that in the civil and military services of the East E India Company persons with education, ability and integrity were to be recruited. He also referred to the report on the Public Service Commission, 1886-87 wherein the object of Public Service Commission was broadly stated to be to devise a scheme which may reasonably be hoped to possess the F necessary elements of finality, and to do full justice to the claims of natives of India to higher and more extensive employment in the public service. He also referred to the report of the Royal Commission on the superior services in India dated 27.03.1924 and in particular Chapter IV thereof on "*The Public Service* G *Commission*" in which it is stated that wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial H and efficient instrument by which Governments, of whatever

political complexion, may give effect to their policies and for this reason Public Service Commission should be detached so far as practicable from all political associations. He also referred to the speeches of Dr. B.R. Ambedkar, Shri Jaspat Roy Kapoor, Pandit Hirday Nath Kunzru and Shri H.V. Kamath in the Constitutional Assembly and argued that to perform this difficult job of finding the best talent for the State Public Services without any political influence and other extraneous considerations the Public Service Commission must have a Chairman of great ability, independence and integrity.

15. Mr. Lalit further submitted that this Court has also in a number of pronouncements emphasized on the need to appoint eminent persons possessing a high degree of competence and integrity as Chairman and Members of the Public Service Commission so as to inspire confidence in the public mind about the objectivity and impartiality of the selection to be made by the Public Service Commission. In this context he referred to the judgments of this Court in *Ashok Kumar Yadav & Ors.* v. *State of Haryana & Ors.* [(1985) 4 SCC 417], *in R/O Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission* [(2000) 4 SCC 309], *Inderpreet Singh Kahlon and Others* v. *State of Punjab and Others* [(2006) 11 SCC 356] and *Mehar Singh Saini, Chairman, Haryana Public Service Commission and others In Re* (supra).

16. Mr. Lalit submitted that Shri Harish Dhanda may be eligible for appointment as Chairman of the Public Service Commission but eligibility is not enough to be the Chairman of the State Public Service Commission. He submitted that the person who is eligible must also have some positive qualities such as experience, ability, character and integrity for being appointed as the Chairman of the State Public Service Commission. He submitted that it is not only the personal integrity of the candidate who is to be appointed but also the integrity of the Pubic Service Commission as an institution which has to be borne in mind while making the appointment.

A He referred to the decisions of this Court in *Centre for PIL and Another* v. *Union of India and Another* [(2011) 4 SCC 1] in which a distinction has been made between personal integrity of a candidate appointed as the Central Vigilance Commissioner and the integrity of the Central Vigilance B Commission as an institution and it has been held that while recommending a name of the candidate for appointment as Central Vigilance Commissioner, the question that one has to ask is whether the candidate recommended to function as the Central Vigilance Commissioner would be competent to C function as a Central Vigilance Commissioner. He submitted that in the aforesaid case, this Court has also held that there was a difference between judicial review and merit review and has further held that the Courts, while exercising the power of judicial review, are not concerned with the final decision of the D Government taken on merit but are entitled to consider the integrity of the decision-making process.

17. Mr. Lalit submitted that the writ petitioner challenged the decision-making process of the Government in selecting and appointing Shri Harish Dhanda as Chairman of the Public E Service Commission on the ground that it was not an informed process of decision-making in as much as the State Government has not collected information and materials on whether Shri Dhanda had the experience, ability and character for being appointed as the Chairman of the Public Service F Commission. He submitted that as a matter of fact the State Government was also not even informed of the fact that the Central Administrative Tribunal, Chandigarh Bench, in its order dated 15.11.2007 in O.A. No.495/PB/2007 had adversely commented on the conduct of Shri Harish Dhanda. He G explained that in the aforesaid O.A., Shri Amit Misra, who belonged to the Indian Forest Service and was posted as Divisional Forest Officer, Ropar in Punjab, had alleged that he had been transferred out of Ropar and posted as Division Forest Officer, Ferozpur, because of an incident which had H occurred on 21.06.2007 on account of which he incurred the

displeasure of Shri Harish Dhanda, who was then the Chief Parliamentary Secretary, Department of Local Government, Punjab. He alleged that Shri Dhanda had been given the permission to stay at the Van Chetna Kendra/Forest Rest House at Pallanpur, District Ropar, for a few days, but later on he wanted to make the Forest Rest House as his permanent residence to which Shri Amit Misra objected as the same was not permitted under the Rules and Shri Amit Misra had directed the official incharge of the Rest House not to allow anybody to use the Rest House without getting permission and accordingly when Shri Dhanda wanted the keys of the Rest House on 22.06.2007 he was not given the keys of the Rest House and Shri Dhanda recorded a note addressed to the Principal Chief Conservator of Forests narrating the entire incident and ensured that Shri Amit Misra was posted out of Ropar by an order of transfer dated 31.07.2007. The Central Administrative Tribunal, Chandigarh Bench, called for the official noting which led to the passing of the transfer order dated 31.07.2007 and recorded the finding that even though the Government decided not to allow the use of the Rest House as a permanent residence of the Chief Parliamentary Secretary, yet Shri Amit Misra, being a junior officer, became the victim of the annoyance of Shri Harish Dhanda and with his political influence, the Forest Minister initiated the proposal for his transfer from Ropar, which was approved by the Chief Minister. Mr. Lalit submitted that this adverse finding of the Central Administrative Tribunal in a proceeding, in which Shri Harish Dhanda was also a respondent, was not brought to the notice of the State Government when it took the decision to select and appoint Shri Harish Dhanda as the Chairman of the Public Service Commission.

18. In reply to the submission of Mr. Rao that the Full Bench had no jurisdiction to expand the scope of the reference and should have limited itself to the questions referred to by the Division Bench by the order dated 13.07.2011, Mr. Lalit submitted that the order dated 13.07.2011 of the Division

A Bench of the High Court would show that the entire case was referred to the Full Bench and, therefore, the Full Bench passed the order dated 17.08.2011 on all relevant aspects of the case. He cited the decision of this Court in *Kerala State Science & Technology Museum v. Rambal Co. & Ors.* [2006) 6 SCC
B 258] to argue that a reference can also be made of the entire case to a larger Bench and in such a case, the larger Bench has to decide the entire case and its jurisdiction is not limited to specific issues. He also referred to the Rules of the Punjab High Court to show that the Full Bench of the High Court can
C also be constituted to decide the entire case in important matters.

19. On the jurisdiction of the High Court to issue a writ for quashing the appointment of a Chairman of the Public Service Commission, Mr. Lalit cited the decision in *Dwarka Nath v.*
D *Income-tax Officer, Special Circle, D Ward, Kanpur & Anr.* [AIR 1966 SC 81] in which a three-Judge Bench of this Court has held that Article 226 of the Constitution is couched in comprehensive phraseology and it *ex facie* confers wide power on the High Court to reach injustice wherever it is found. He
E submitted that in this decision this Court has also explained that the High Court under Article 226 of the Constitution can issue writs in the nature of prerogative writs as understood in England and can also issue other directions, orders or writs. He vehemently submitted that the contention on behalf of the
F appellants that the High Court could not have issued a writ/order quashing the selection and appointment of Shri Harish Dhanda is, therefore, not correct.

20. Mr. Lalit finally submitted that pursuant to the impugned
G orders of the Full Bench and the Division Bench of the High Court, the Search Committee was constituted by the Government for selection of the Chairman of the Punjab Public Service Commission and the Search Committee invited the names of eminent persons of impeccable integrity, caliber and administrative experience from all walks of life, to be
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considered for the post of the Chairman of Punjab Public Service Commission and thereafter the High Power Committee selected Lt. Gen. R.A. Sujlana (Retd.) who has been appointed by the State Government as the Chairman of the Punjab Public Service Commission in December, 2011 and he has been functioning as such since then. He submitted that the appointment of Lt. Gen. R.A. Sujlana is also not subject to orders passed by this Court and the news reports indicate that Lt. Gen. R.A. Sujlana has been an upright officer of the Indian Army and has wide administrative experience. He submitted that this is not a fit case in which this Court should interfere with the appointment of Lt. Gen. R.A. Sujlana as the Chairman of the Punjab Public Service Commission even if this Court finds infirmities in the impugned orders passed by the Full Bench and the Division Bench of the High Court.

21. Learned counsel for Shri Harish Dhanda, adopted the arguments of Mr. P.P. Rao and also submitted that the order of the Central Administrative Tribunal in O.A. No.495/PB/2007 was filed before the Full Bench of the High Court on 01.08.2011 which was the last date of hearing. He submitted that Shri Harish Dhanda, therefore, did not have any opportunity to reply before the Full Bench on the findings in the order of the Central Administrative Tribunal.

22. Shri P.N. Misra, learned counsel appearing for the State of Haryana, adopted the arguments of Mr. P.P. Rao and further submitted that the Full Bench should not have added the State of Haryana as a party. He also submitted that the Full Bench should not have issued the directions in its order dated 17.08.2011 to the State of Haryana to adopt the same procedure for selection and appointment of the Chairman and Members of the Haryana Public Service Commission when the State of Haryana had nothing to do with the appointment of Shri Harish Dhanda as Chairman of the Punjab Public Service Commission.

A **Findings of the Court:**

23. The first question that I have to decide is whether the High Court was right in entertaining the writ petition as a public interest litigation at the instance of the respondent No.1. I have perused the writ petition CWP No.11846 of 2011, which was filed before the High Court by the respondent No.1, and I find that in the first paragraph of the writ petition the respondent No.1 has stated that he was a public spirited person and that he had filed the writ petition for espousing the public interest and for the betterment of citizens of the State of Punjab. In the writ petition, the respondent No.1 has relied on the provisions of Articles 315, 316, 317, 318, 319 and 320 of the Constitution relating to Public Service Commissions to contend that the functions of the Public Service Commission are sensitive and important and it is very essential that a person, who is appointed as the Chairman of the Public Service Commission, must possess outstanding and high degree educational qualifications and a great amount of experience in the field of selection, administration and recruitment and he must also be a man of integrity and impartiality. The respondent No.1 has alleged in the writ petition that the State Government has not laid down any qualification for appointment to the post of Chairman of the Punjab Public Service Commission and is continuing to appoint persons to the post of Chairman of Public Service Commission on the basis of political affiliation. In the writ petition, the respondent No.1 has also given the example of Shri Ravi Pal Singh Sidhu, who was appointed as the Chairman, Punjab Public Service Commission on the basis of political affiliation and the result was that during his period as the Chairman of the Punjab Public Service Commission, several cases of undeserving candidates being selected and appointed to the Public Service Commission in the State of Punjab came to light and investigations were carried out leading to filing of various criminal cases against the officials of the Public Service Commission as well Shri Sidhu. The respondent No.1 has further stated in the writ petition that he

has filed the writ petition after he read a news report titled: "*MLA Dhanda to be new PPSC Chairperson*". He has stated in the writ petition that Shri Harish Dhanda was an Advocate at Ludhiana before he ventured into politics and had unsuccessfully contested the Vidhan Sabha election before he was elected as MLA on the Shiromani Akali Dal ticket and that he had close political affiliation and affinity with high ups of the ruling party and that the ruling party in the State of Punjab has cleared his name for appointment as the Chairman of the Punjab Public Service Commission shortly. The respondent No.1 has also alleged in the writ petition various irregularities and illegalities committed by Shri Harish Dhanda. He has further stated in the writ petition that his colleague has even sent a representation to the Governor of Punjab and the Chief Minister of Punjab against the proposed appointment of Shri Harish Dhanda. He has accordingly prayed in the writ petition for a mandamus to the State of Punjab to frame regulations governing the conditions of service and appointment of the Chairman and Members of the Punjab Public Service Commission and for an order restraining the State of Punjab from appointing Shri Harish Dhanda as Chairman of the Punjab Public Service Commission. On a reading of the entire writ petition filed by the respondent No.1 before the High Court, I have no doubt that the respondent No.1 has filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, I cannot hold that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general pubic in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides are not in doubt.

A Therefore, I do not accept the submission of Shri P.P. Rao, learned senior counsel appearing for the State of Punjab, that the writ petition was a service matter and the High Court was not right in entertaining the writ petition as a Public Interest Litigation at the instance of the respondent No.1. The decisions
B cited by Shri Rao were in cases where this Court found that the nature of the matter before the Court was essentially a service matter and this Court accordingly held that in such service matters, the aggrieved party and not any third party can only initiate a legal action.

C 24. The next question that I have to decide is whether the Division Bench of the High Court, after having recorded a finding in its order dated 13.07.2011 that the allegations of irregularities and illegalities against Shri Harish Dhanda in the writ petition do not stand substantiated, should have made an
D academic reference to the Full Bench of the High Court. As I have noticed, the respondent No.1 had, in the writ petition, relied on the constitutional provisions in Articles 315, 316, 317, 318, 319 and 320 of the Constitution to plead that the functions of the Public Service Commissions were of a sensitive and critical
E nature and hence the Chairman of the Public Service Commission must possess outstanding and high educational qualifications and a great amount of experience in the field of selection, administration and recruitment. The respondent No.1 has further pleaded in the writ petition that the State
F Government had on an earlier occasion made an appointment of a Chairman of the Punjab Public Service Commission on the basis of political affiliation and this has resulted in selection and appointment of undeserving persons to public service for extraneous considerations. Though respondent No.1 had
G alleged in the writ petition some irregularities and illegalities on the part of Shri Harish Dhanda, who was proposed to be appointed as Chairman of the Public Service Commission by the State Government, the writ petition was not founded only on such irregularities and illegalities alleged against Shri
H Harish Dhanda. In addition, the respondent No.1 had also

alleged in the writ petition that Shri Harish Dhanda was politically affiliated to the ruling party and was not selected for appointment as Chairman of the Public Service Commission on the basis of his qualifications, experience or ability which are necessary for the post of the Chairman of the Public Service Commission. Thus, even if the Division Bench had recorded a finding in the order dated 13.07.2011 that the irregularities and illegalities pointed out in the writ petition against Shri Harish Dhanda do not stand substantiated, the writ petition could not be disposed of with the said finding only. The Division Bench of the High Court, therefore, thought it necessary to make a reference to the Full Bench and has given its reasons for the reference to the Full Bench in Paragraphs 6 and 7 of its order dated 13.07.2011, which are quoted hereinbelow:

> "6. Even though, Article 316 of the Constitution does not prescribe any particular procedure, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. It is undisputed that person to be appointed must have competence and integrity. Reference may be made to judgments of the Hon'ble Supreme Court in In *R/ o Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission* (2000) 4 SCC 309, *Ram Kumar Kashyap and another v. Union of India and another,* AIR 2010 SC 1151 and in re *v. Mehar Singh Saini, Chairman, HPSC and others* (2010) 13 SCC 586 : (2010) 6 SLR 717.
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> 7. If it is so, question is how such persons are to be identified and selected and whether in the present case, procedure adopted is valid and if not, effect thereof. We are of the view that these questions need to be considered by a Bench of three Hon'ble Judges. Accordingly, we refer the matter to a Bench of three Hon'ble Judges."

25. It will be clear from the Paragraphs 6 and 7 of the order dated 13.07.2011 quoted above that the Division Bench of the

A High Court found that Article 316 of the Constitution, which provides for appointment of the Chairman and other Members of the Public Service Commission by the Governor, does not prescribe any particular procedure and took the view that, having regard to the purpose and nature of appointment, it B cannot be assumed that power of appointment need not be regulated by any procedure. The Division Bench of the High Court was of the further view that the persons to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench C of three Judges and accordingly referred the matter to the three Judges. The Division Bench also referred the question to the larger Bench of three Judges as to whether the procedure adopted in the present case for appointing Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission was D valid and if not, what is the effect of not following the procedure. I do not, therefore, find any merit in the submission of Shri Rao that the Division Bench of the High Court having found in its order dated 13.07.2011 that the irregularities and illegalities pointed out in the writ petition against Shri Harish Dhanda are unsubstantiated, should not have made an academic reference E to the larger Bench of the High Court.

26. I may now consider the submission of Mr. Rao that this Court in the case of *Mehar Singh Saini, Chairman, HPSC In Re* (supra) had already declared the law that it is for Parliament F to frame the guidelines or parameters regarding the qualifications, experience or stature for appointment as Chairman/Members of the Public Service Commission and hence it was not necessary for the Division Bench to make a reference to a Full Bench on the very same question of law. In G *Mehar Singh Saini Chairman, HPSC In Re* (supra), this Court noticed that the provisions of Article 316 of the Constitution do not lay down any qualification, educational or otherwise, for appointment to the Commission as Chairman and Members and made the following observations in Para 85 of the judgment H as reported in the SCC:

"Desirability, if any, of providing specific qualification or experience for appointment as Chairman/members of the Commission is a function of Parliament. The guidelines or parameters, if any, including that of stature, if required to be specified, are for the appropriate Government to frame. This requires expertise in the field, data study and adoption of the best methodology by the Government concerned to make appointments to the Commission on merit, ability and integrity. Neither is such expertise available with the Court nor will it be in consonance with the constitutional scheme that this Court should venture into reading such qualifications into Article 316 or provide any specific guidelines controlling the academic qualification, experience and stature of an individual who is proposed to be appointed to this coveted office. Of course, while declining to enter into such arena, we still feel constrained to observe that this is a matter which needs the attention of the Parliamentarians and quarters concerned in the Governments. One of the factors, which has persuaded us to make this observation, is the number of cases which have been referred to this Court by the President of India in terms of Article 317(1) of the Constitution in recent years. A large number of inquiries are pending before this Court which itself reflects that all is not well with the functioning of the Commissions."

The observations of this Court in the aforesaid case of *Mehar Singh Saini Chairman, HPSC In Re* (supra) relate to qualification and experience for appointment as Chairman/ Members of the Commission and have nothing to do with the questions relating to the procedure for identifying persons of integrity and competence to be appointed as Chairman of the Public Service Commission, which were referred by the Division Bench of the High Court to the Full Bench by the order dated 13.07.2011. Mr. Rao is, therefore, not right in his submission that in view of the law declared by this Court in *Mehar Singh Saini, Chairman, HPSC In Re* (supra), there was

A no necessity for the Division Bench to make a reference to the Full Bench by the order dated 13.07.2011.

27. I may next deal with the contention of Mr. Rao that the Full Bench exceeded its jurisdiction by enlarging the scope of reference and deciding matters which were not referred to it B by the order dated 13.07.2011 of the Division Bench. Rule 4 of the Punjab High Court Rules reads as follows:

> "Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and C disposed of by a Bench of two Judges."

I have perused Rules 6, 7, 8 and 9 of the Punjab High Court Rules which relate to Full Bench and I do not find therein any provision which provides what matters a Full Bench comprising three Judges of the High Court will decide. Hence, the Division D Bench of the High Court has the jurisdiction to decide a case, unless otherwise provided by law or by a special order of the Chief Justice and the jurisdiction of a Full Bench to decide matters will flow either from the order of the Chief Justice of the High Court or from the order of the Division Bench which E makes a reference to the Full Bench. In the present case, there is no order of the Chief Justice making a reference but only the order dated 13.07.2011 of the Division Bench of the High Court making a reference to the Full Bench of three Judges of the High Court. Thus, I have to look at the order dated 13.07.2011 F of the Division Bench to find out whether the Division Bench referred only specific questions to the Full Bench as contended by Mr. Rao or referred the entire case to the Full Bench as contended by Mr. Lalit.

G 28. On a close scrutiny of Paragraphs 6 and 7 of the order dated 13.07.2011 of the Division Bench of the High Court which are extracted above, I find that the Division Bench of the High Court has referred only specific questions to the Full Bench: how persons of competence and integrity are to be identified H and selected for appointment as Chairman of the Public

Service Commission and if the procedure adopted for such appointment in the present case was not valid, the effect thereof. The Division Bench of the High Court has made it clear in Para 7 of its order dated 13.07.2001 that "these questions need to be considered by a Bench of three Hon'ble Judges". I, therefore, do not agree with Mr. Lalit that the Division Bench referred the entire case to the Full Bench by the order dated 13.07.2011. I further find that although the aforesaid specific questions relating to the procedure for identifying persons of competence and integrity for appointment as the Chairman of the Public Service Commission only were referred by the Division Bench of the High Court, the Full Bench, instead of deciding these specific questions referred to it, has given directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is made. I, therefore, agree with Mr. Rao that the Full Bench of the High Court has decided issues which were not referred to it by the Division Bench of the High Court and the judgment dated 17.08.2011 of the Full Bench of the High Court was without jurisdiction.

29. I may next consider the contention of Mr. Rao that as the Constitution has left it to the discretion of the State Government to select and appoint the Chairman and Members of a State Public Commission, the High Court cannot direct the Government to exercise its discretion by following a procedure prescribed by the High Court. Mr. Rao has relied on Article 316 of the Constitution and the decision of this Court in *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* [(1978) 1 SCC 405]. Article 316 of the Constitution of India is quoted hereinbelow:

"316. Appointment and term of office of members.-

(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union

A Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

Provided that as nearly as may be one-half of the members
B of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a
C person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of
D absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such
E one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State in the case of a State Commission, may appoint for the purpose.

F (2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the
G age of sixty-two years, whichever is earlier:

Provided that -

(a) a member of a Public Service Commission may, by writing under his hand addressed, in
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the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office; A

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317. B

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office." C

A reading of Article 316 of the Constitution would show that it confers power on the Governor of the State to appoint the Chairman and other Members of a Public Service Commission. D It has been held by this Court in *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* (supra) that an authority has implied powers to make available and carry into effect powers expressly conferred on it. Thus, under Article 316 of the Constitution, the Governor of a State has not E only the express power of appointing the Chairman and other Members of Public Service Commission but also the implied powers to lay down the procedure for appointment of Chairman and Members of the Public Service Commission and the High Court cannot under Article 226 of the Constitution usurp this F constitutional power of the Government and lay down the procedure for appointment of the Chairman and other Members of the Public Service Commission. The Full Bench of the High Court, therefore, could not have laid down the procedure for appointment of the Chairman and Members of the Punjab Public Service Commission and the Haryana Public Service G Commission by the impugned judgment dated 17.08.2011.

30. Having held that the Full Bench of the High Court has in its judgment dated 17.08.2011 acted beyond its jurisdiction and has usurped the constitutional power of the Governor in H

A laying down the procedure for appointment of the Chairman and Members of the Public Service Commission, I have to set aside the judgment dated 17.08.2011 of the Full Bench of the High Court. Thereafter, either of the two courses are open to me: remand the matter to the High Court for disposal of the writ B petition in accordance with law or decide the writ petition on merits. To cut short the litigation, I proceed to decide the writ petition on merits instead of remanding the matter to the High Court.

C 31. This Court has had the occasion to consider the qualities which a person should have for being appointed as Chairman and Member of Public Service Commission and has made observations after considering the nature of the functions entrusted to the Public Service Commissions under Article 320 of the Constitution. In *Ashok Kumar Yadav & Ors. v. State of* D *Haryana & Ors.*.(supra), a Constitution Bench of this Court speaking through P.N. Bhagwati, J, observed:

> "We would therefore like to strongly impress upon every State Government to take care to see that its Public E Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of F making selections strictly on merit."

In *R/O Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission* (supra), Dr. A.S. Anand, C.J. speaking for a three Judge Bench, cautioned:

G "The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not H objectively or that their actions are suspect. Society

expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that he society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and members of the Public Service Commission must forever remain vigilant and conscious of these necessary adjuncts."

Despite these observations of this Court, the State Government of Punjab appointed Shri Ravi Pal Singh Sidhu as the Chairman of the Punjab Public Service Commission between 1996 to 2002 and as has been noted in the judgment of S.B. Sinha, J. of this Court in *Inderpreet Singh Kahlon and Others* v. *State of Punjab and Others* (supra), allegations were made against him that he got a large number of persons appointed on extraneous considerations including monetary consideration during the period 1998 to 2001 and raids were conducted in his house on more that one occasion and a large sum of money was recovered from his custody and his relatives and FIRs were lodged and criminal cases initiated by the Vigilance Bureau of the State of Punjab. Writing a separate judgment in the aforesaid case, Dalveer Bhandari, J, had to comment:

"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

A appointed to these constitutional positions."

Considering this experience of the damage to recruitment to public services caused by appointing a person lacking in character as the Chairman of the Public Service Commission in the State of Punjab, when the respondent No.1 brought to the notice of the High Court through the writ petition that the State Government of Punjab proposed to appoint Shri Harish Dhanda as the Chairman of the Public Service Commission, only because of his political affiliation, the Division Bench of the High Court rightly entertained the writ petition as a public interest litigation. The Division Bench of the High Court, however, found that no procedure for appointment of Chairman and Members of the Public Service Commission has been laid down in Article 316 of the Constitution and therefore posed the question in Paragraphs 6 and 7 of its order dated 13.07.2011 as to what should be the procedure for identifying and selecting persons of integrity and competence for appointment of Chairman of the Public Service Commission and referred the question to a larger Bench of three Judges. I have already held that it is for the Governor who is the appointing authority under Article 316 of the Constitution to lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes

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are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution. Under clause (1) of Article 320 of the Constitution, the State Public Service Commission has the duty to conduct examinations for appointments to the services of the State. Under clause (3) of Article 320, the State Public Service Commission has to be consulted by the State Government on matters relating to recruitment and appointment to the civil services and civil posts in the State, on disciplinary matters affecting a person serving under the Government of a State in a civil capacity, on claims by and in respect of a person who is serving under the State Government towards costs of defending a legal proceeding, on claims for award of pension in respect of injuries sustained by a person while serving under the State Government and other matters. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration.

32. I, therefore, hold that even though Article 316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission under Article 316 of the Constitution. Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution. To quote De Smith's Judicial Review, Sixth Edition:

> "If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations

A required to be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised. (Page 280)

If the relevant factors are not specified (e.g. if the power is merely to grant or refuse a licence, or to attach such conditions as the competent authority thinks fit), it is for the courts to determine whether the permissible considerations are impliedly restricted, and, if so, to what extent (Page 282)"

C In *M/s Hochtief Gammon v. State of Orissa and Others* (AIR 1975 SC 2226), A. Alagiriswamy writing the judgment for a three Judge Bench of this Court explained this limitation on the power of the Executive in the following words:

D "The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the Executive acts lawfully".

33. Mr. Rao, however, relied on a decision of the Constitution Bench of this Court in *E.P. Royappa v. State of Tamil Nadu & Anr.* (supra) in which it was held that the post of F Chief Secretary is a highly sensitive post and the Chief Secretary is a lynchpin in the administration and for smooth functioning of the administration, there should be complete rapport and understanding between the Chief Secretary and the Chief Minister and, therefore, it is only the person in whom the G Chief Minister has complete confidence who can be appointed as Chief Secretary of the State and hence the Chief Secretary of a State cannot be displaced from his post on the ground that his appointment was arbitrary and violative of Articles 14 and 16 of the Constitution. Mr. Rao also relied on the decision of a H two-Judge Bench of this Court in *State of West Bengal & Ors.*

v. Manas Kumar Chakraborty & Ors. (supra) in which it was similarly observed that the post of DG and IG Police was a selection post and it is not open to the courts to sit in appeal over the view taken by the appointing authority with regard to the choice of the officer to be appointed as DG and IG Police and for such selection, the Government of the State must play a predominant role. I am of the considered opinion that the Chairman of the Public Service Commission, who along with its other members has to perform his duties under Article 320 of the Constitution with independence from the State Government cannot be equated with the Chief Secretary or the DG and IG Police, who are concerned solely with the administrative functions and have to work under the State Government. To ensure this independence of the Chairman and Members of the Public Service Commission, clause (3) of Article 316 of the Constitution provides that a person shall, on expiration of his term of office be ineligible for reappointment to that office.

34. Mr. Rao has also relied on the decision of this Court in *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Association & Ors.* (supra) to argue that the High Court's jurisdiction to issue a writ of *quo warranto* is limited to only cases where the appointment to an office is contrary to the statutory rules. He also distinguished the decision of this Court in *Centre for PIL and Another* v. *Union of India and Another* (supra) cited by Mr. Lalit and submitted that in that case the Court had found that the appointment of the Central Vigilance Commissioner was in contravention of the statutory provisions of the Central Vigilance Commission Act, 2003 and for this reason, this Court quashed the appointment of the Central Vigilance Commissioner. I have already held that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute and the Constitution and the statutory or the constitutional authority cannot in breach of such implied restrictions exercise its discretionary power. Moreover, Article 226 of the

A Constitution vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the B enforcement of any of the rights conferred by Part III and for any other purpose. The power of the High Court under Article 226 of the Constitution is, thus, not confined to only writ of *quo warranto* but to other directions, orders or writs. In *Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur & Anr.* C (supra), K. Subba Rao, J. speaking for a three-Judge Bench, has explained the wide scope of the powers of the High Court under Article 226 of the Constitution thus:

> "This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to D reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in E England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders F or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English G Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the H purpose of the article itself. To say this is not to say that

the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in *T.C. Basappa* v. *Nagappa,* 1955-1 SCR 250: (AIR 1954 SC 440) and *Irani* v. *State of Madras,* 1962 (2) SCR 169: (AIR 1961 SC 1731)."

Therefore, I hold that the High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extra-ordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution.

35. Coming now to the facts of the present case, I find that the Division Bench of the High Court in its order dated 13.07.2011 has already held that the irregularities and illegalities alleged against Shri Harish Dhanda have not been substantiated. I must, however, enquire whether the State Government took into consideration the relevant factors relating to his competency to act as the Chairman of the State Public Service Commission. We had, therefore, passed orders on 01.08.2012 calling upon the State of Punjab to produce before us the material referred to in para 69 of the judgment of the Full Bench of the High Court on the basis of which Shri Harish Dhanda was selected for appointment as Chairman of the Punjab Public Service Commission. Pursuant to the order dated 01.08.2012, the State Government has produced the

A files in which the selection and appointment of Shri Harish Dhanda was processed by the State Government. At page 26 of the file on the subject "*Appointment of Chairman of P.P.S.C. – Shri S.K. Sinha, IAS, Shri Harish Rai Dhanda*", I find that a bio-data in one sheet has been placed at page 41 of the file, B which reads as under:

"BIO DATA

Harish Rai Dhanda S/o Sh. Kulbhushan Rai

C Resident: The Retreat, Ferozepur Road, Ludhiana

Date of Birth: 15th May, 1960

Attained Bachelor in Arts from SCD Government College, Ludhiana, Punjab University, (1979).

D

Attained Bachelor in Laws from Law College, Punjab University (1982).

Registered with Bar Council of Punjab and Haryana as Advocate in 1982.

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Practiced Law at District Courts, Ludhiana from 1982 to 2007.

Elected as President of District Bar Association, Ludhiana for seven terms."

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Besides the aforesaid bio-data, there is a certificate dated 06.07.2011 given by the Speaker, Punjab Vidhan Sabha, certifying that Shri Harish Rai Dhanda, MLA, has resigned from the membership of the 13th Punjab Legislative Assembly with G effect from 06.07.2011 and that his resignation has been accepted by the Speaker. The aforesaid materials indicate that Shri Harish Dhanda had B.A. and LL.B Degrees and was practicing as an Advocate at the District Courts in Ludhiana and had been elected as the President of the District Bar

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Association, Ludhiana for seven terms and has been member of the Legislative Assembly. These materials do not indicate that Shri Harish Dhanda had any knowledge or experience whatsoever either in administration or in recruitment nor do these materials indicate that Shri Harish Dhanda had the qualities to perform the duties as the Chairman of the State Public Service Commission under Article 320 of the Constitution which I have discussed in this judgment. No other information through affidavit has also been placed on record before us to show that Shri Harish Dhanda has the positive qualities to perform the duties of the office of the Chairman of the State Pubic Service Commission under Article 320 of the Constitution. The decision of the State Government to appoint Shri Harish Dhanda as the Chairman of the Punjab Public Service Commission was thus invalid for non-consideration of relevant factors implied from the very nature of the duties entrusted to the Public Service Commissions under Article 320 of the Constitution.

36. In the result, I am not inclined to interfere with the impugned order of the Division Bench of the High Court dated 17.08.2011 quashing the selection and appointment of Shri Harish Dhanda as Chairman of the Punjab Public Service Commission, but I set aside the judgment dated 17.08.2011 of the Full Bench of the High Court. Considering, however, the fact that the State Government of Punjab has already selected and appointed Lt. Gen. R.A. Sujlana as the Chairman of the Punjab Public Service Commission, I am not inclined to disturb his appointment only on the ground that his appointment was consequential to the judgment dated 17.08.2011 of the Full Bench of the High Court which I have set aside. The appeal of the State of Punjab is partly allowed and the appeal of the State of Haryana is allowed, but the appeal of Shri Harish Dhanda is dismissed. The parties to bear their own costs.

MADAN B. LOKUR, J. 1. While I entirely agree with Brother Patnaik, but given the seminal importance of the issues

A raised, I think it appropriate to separately express my views in the case.

2. The facts have been stated in detail by Brother Patnaik and it is not necessary to repeat them.

B **The issues:**

3. The primary substantive issue that arises for consideration is whether the High Court could have – and if it could have, whether it ought to have - interfered in the C appointment, by a notification published on 7th July 2011, of Mr. Harish Rai Dhanda as Chairperson of the Punjab Public Service Commission. In my opinion, the answer to both questions must be in the affirmative.

D 4. However, it must be clarified that even though a notification was issued of his appointment, Mr. Dhanda did not actually assume office or occupy the post of Chairperson of the Punjab Public Service Commission. Before he could do so, his appointment was challenged by Salil Sabhlok through a writ petition being Writ Petition (Civil) No.11848 of 2011 filed in the E Punjab & Haryana High Court. When the writ petition was taken up for consideration, a Division Bench of the High Court observed in its order of 13th July 2011 that his "oath ceremony" was fixed for the same day but learned counsel appearing for the State of Punjab stated that the ceremony would be deferred F till the writ petition is decided. Thereafter, the statement was sought to be withdrawn on 1st August 2011. However, the Full Bench of the High Court, which had heard the matter in considerable detail, passed an order on that day retraining administering of the oath of office to Mr. Dhanda. As such, Mr. G Dhanda did not take the oath of allegiance, of office and of secrecy as the Chairperson of the Punjab Public Service Commission. Later, since his appointment was quashed by the High Court, the question of his taking the oaths as above did not arise.

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5. Another substantive issue raised is whether the High Court could have entertained a Public Interest Writ Petition in respect of a "service matter", namely, the appointment of Mr. Harish Rai Dhanda as Chairperson of the Punjab Public Service Commission. In my opinion, the appointment of the Chairperson of the Punjab Public Service Commission is not a "service matter" and so a Public Interest Litigation could have been entertained by the High Court.

6. A few procedural issues have also arisen for consideration and they relate to the desirability of making a reference by the Division Bench to the Full Bench of the High Court of issues said to have been settled by this Court; the framing of questions by the Full Bench of the High Court, over and above the questions referred to it; the necessity of impleadment of the State of Haryana in the proceedings before the Full Bench, even though it had no concern with the appointment of the Chairperson of the Punjab Public Service Commission; the validity of the direction given by the Full Bench to produce the advice tendered by the Chief Minister of the State of Punjab to the Governor of the State in respect of the appointment of the Chairperson of the Punjab Public Service Commission; the power of the Full Bench to frame guidelines for the appointment of the Chairperson of the Punjab Public Service Commission and of the Haryana Public Service Commission and a few other incidental issues.

Public Interest Writ Petition in respect of a "service matter":

7. At the outset, it is important to appreciate that the Chairperson of a Public Service Commission holds a constitutional position and not a statutory post. The significance of this is that the eligibility parameters or selection indicators for appointment to a statutory post are quite different and distinct from the parameters and indicators for appointment to a constitutional position.

A 8. The appointment of a Chairperson of a State Public Service Commission is in terms of Article 316 of the Constitution, which reads as follows:

"**316. Appointment and term of office of members.**— (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1-A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the

Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier: A

Provided that—

(*a*) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office; B C

(*b*) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office." D

9. Two features clearly stand out from a bare reading of Article 316 of the Constitution, and these are: (1) No qualification has been laid down for the appointment of the Chairperson of a State Public Service Commission. Theoretically therefore, the Chief Minister of a State can recommend to the Governor of a State to appoint any person walking on the street as the Chairperson of the State Public Service Commission. (2) The Chairperson of the State Public Service Commission is provided security of tenure since the term of office is fixed at six years or until the age of 62 years, whichever is earlier. E F

10. The security of tenure is confirmed by the provision for removal of the Chairperson of the State Public Service Commission from office as provided for in Article 317 of the Constitution. This reads as follows: G

"**317. Removal and suspension of a member of a** H

A **Public Service Commission.**—(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on
B reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

C (2) The President, in the case of the Union Commission or a Joint Commission, and the Governor, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the
D Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President
E may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

(*a*) is adjudged an insolvent; or

F (*b*) engages during his term of office in any paid employment outside the duties of his office; or

(*c*) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or
G body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a
H

State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour." A

11. An aspect that clearly stands out from a reading of Article 317 is that the Chairperson of the State Public Service Commission can be removed from office on the ground of misbehaviour only after an inquiry is held by this Court on a reference made by the President and that inquiry results in a report that he or she ought to be removed on such ground. The Governor of the State is not empowered to remove the Chairperson of the State Public Service Commission even though he or she is the appointing authority. There are, of course, other grounds mentioned in Article 317 of the Constitution but none of them are of any concern for the purposes of this case. B C D

12. A reading of Article 316 and Article 317 of the Constitution makes it clear that to prevent the person walking on the street from being appointed as the Chairperson of a State Public Service Commission, the Constitution has provided that the appointment is required to be made by the Governor of the State, on advice. Additionally, the Chairperson has security of tenure to the extent that that person cannot be effortlessly removed from office even by the President as long as he or she is not guilty of proven misbehaviour, or is insolvent, or does not take up any employment or is not bodily or mentally infirm. There is, therefore, an in-built constitutional check on the arbitrary appointment of a Chairperson of a State Public Service Commission. The flip side is that if an arbitrary appointment is made, removal of the appointee is a difficult process. E F G

13. If the person walking on the street is appointed in a God-forbid kind of situation, as the Chairperson of a State Public Service Commission, what remedy does an aggrieved H

A citizen have? This question arises in a unique backdrop, in as much as no eligibility criterion has been prescribed for such an appointment and the suitability of a person to hold a post is subjective.

B 14. In this context, three submissions have been put forward by learned counsel supporting the appointment of Mr. Dhanda. If these submissions are accepted, then one would have to believe that a citizen aggrieved by such an appointment would have no remedy. The first submission is that a writ of *quo* C *warranto* would not lie since there is no violation of a statute in the appointment – indeed, no statutory or other qualification or eligibility criterion has been laid down for the appointment. Therefore, a petition for a writ of *quo warranto* would not be maintainable. The second submission is that the appointment to a post is a "service matter". Therefore, a public interest D litigation (or a PIL for short) would not be maintainable. The third submission is that the remedy in a "service matter" would lie with the Administrative Tribunal, but an application before the Tribunal would not be maintainable since the aggrieved citizen is not a candidate for the post and, therefore, would have no E *locus standii* in the matter. It is necessary to consider the correctness of these submissions and the availability of a remedy, if any, to an aggrieved citizen.

Maintainability of a PIL:

F **(i) A writ of *quo warranto***

15. Learned counsel supporting Mr. Dhanda are right that there is no violation of any statutory requirement in the appointment of Mr. Dhanda. This is because no statutory G criterion or parameters have been laid for the appointment of the Chairperson of a Public Service Commission. Therefore, a petition for a writ of *quo warranto* would clearly not lie.

16. A couple of years ago, in *Hari Bansh Lal v. Sahodar* H *Prasad Mahto,* (2010) 9 SCC 655 this Court considered the

position at law and, after referring to several earlier decisions, including *R.K. Jain v. Union of India,* (1993) 4 SCC 119, *Mor Modern Coop. Transport Society v. Govt. of Haryana,* (2002) 6 SCC 269, *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat,* (2003) 4 SCC 712 and *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association,* (2006) 11 SCC 731 (2) held that "even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

17. This principle was framed positively in *Mahesh Chandra Gupta v. Union of India & Others,* (2009) 8 SCC 273 wherein it was said: "In cases involving lack of "eligibility" writ of quo warranto would certainly lie."

(ii) **Is it a service matter?**

18. Is the appointment of a person to a constitutional post a "service matter"? The expression "service matter" is generic in nature and has been specifically defined (as far as I am aware) only in the Administrative Tribunals Act, 1985. Section 3(q) of the Administrative Tribunals Act is relevant in this regard and it reads as follows:

> "**3. Definitions.**—In this Act, unless the context otherwise requires,—
>
> (*q*) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—
>
> (*i*) remuneration (including allowances), pension and other retirement benefits;
>
> (*ii*) tenure including confirmation, seniority,

A promotion, reversion, premature retirement and superannuation;

(*iii*) leave of any kind;

(*iv*) disciplinary matters; or

B

(*v*) any other matter whatsoever;"

19. It cannot be said that the Chairperson of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He or she is not a Government C servant, in the sense of there being a master and servant relationship between the Union or the State and the Chairperson. In view of the constitutional provisions pertaining to the security of tenure and the removal procedure of the Chairperson and members of the Public Service Commission, D it can only be concluded that he or she holds a constitutional post. In this context, in *Reference under Article 317(1) of the Constitution of India, In re,* (1990) 4 SCC 262 it was held:

"The case of a government servant is, subject to the E special provisions, governed by the law of master and servant, but the position in the case of a Member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 F to 323 of Chapter II of Part XIV of the Constitution."

20. Similarly, in *Bihar Public Service Commission v. Shiv Jatan Thakur,* 1994 Supp. (3) SCC 220 the Public Service Commission is referred to as a "constitutional institution" and its Chairperson and members as "constitutional functionaries". G

21. In *Ram Ashray Yadav (Dr.), Chairman, Bihar Public Service Commission, In Re,* (2000) 4 SCC 309 a reference was made to the "constitutional duties and obligations" of the Public Service Commissions. It was also observed that the

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Chairperson of the Public Service Commission is in the position of a constitutional trustee.

22. In *Ram Kumar Kashyap v. Union of India,* (2009) 9 SCC 278 the obligations of the Public Service Commission were referred to as "constitutional obligations" and on a review of the case law, it was held that:

> "... since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions."

23. Finally, in *Mehar Singh Saini, Chairman, Haryana Public Service Commission, In re,* (2010) 13 SCC 586 a distinction was made between service under the Government of India or a State Government and a constitutional body like a Public Service Commission. It was observed that,

> "A clear distinction has been drawn by the Framers [of our Constitution] between service under the Centre or the States and services in the institutions which are creations of the Constitution itself. Article 315 of the Constitution commands that there shall be a Union Public Service Commission for the Centre and State Public Service Commissions for the respective States. This is not, in any manner, linked with the All-India Services contemplated under Article 312 of the Constitution to which, in fact, the selections are to be made by the Commission. The fact that the Constitution itself has not introduced any element of interdependence between the two, undoubtedly, points to the cause of Commission being free from any influence or limitation."

24. A little later in the judgment, the Public Service Commission is described as a "constitutional body".

A 25. This being the position, it is not possible to say that the Chairperson of the Public Service Commission does not occupy a constitutional position or a constitutional post. To describe the appointment to a constitutional post generically or even specifically as a "service matter" would be most B inappropriate, to say the least.

(iii) **Functional test**

26. The employment embargo laid down in the Constitution and the functions of a Public Service Commission also indicate C that its Chairperson has a constitutional status.

27. Article 319 of the Constitution provides that on ceasing to hold office, the Chairperson of a State Public Service Commission cannot take up any other employment either under D the Government of India or under the Government of a State, except as the Chairperson or member of the Union Public Service Commission or as the Chairperson of any other State Public Service Commission.

28. Among other things, the functions of the State Public E Service Commission include, as mentioned in Article 320 of the Constitution, conducting examinations for appointments to the services of the State. The State Public Service Commission may also be consulted by the President or the Governor of the State, subject to regulations that may be made in that behalf, F on all matters relating *inter alia* to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts.

29. Article 322 of the Constitution provides that the G expenses of the State Public Service Commission, including salaries, allowances and pensions of its members shall be charged on the Consolidated Fund of the State. Article 323 of the Constitution requires the Public Service Commission to annually present a report of the work done by it to the Governor of the State. H

30. All these are serious constitutional functions and obligations cast on the Chairperson and members of the Public Service Commission and to equate their appointment with a statutory appointment and slotting their appointment in the category of a "service matter" would be reducing the Constitution into just another statute, which it is not.

(iv) **The remedy**

31. What then is the remedy to a person aggrieved by an appointment to a constitutional position like the Chairperson of a Public Service Commission?

32. About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in *R.K. Jain v. Union of India,* (1993) 4 SCC 119 that an aggrieved person – a "non-appointee" – would alone have the locus standii to challenge the offending action. A third party could seek a remedy only through a public law declaration. This is what was held:

> "In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person."

33. This view was reiterated in *B. Srinivasa Reddy.* Therefore, assuming the appointment of the Chairperson of a Public Service Commission is a "service matter", a third party and a complete stranger such as the writ petitioner cannot approach an Administrative Tribunal to challenge the appointment of Mr. Dhanda as Chairperson of the Punjab Public Service Commission

34. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of *quo warranto.* This is the opinion

A expressed by this Court in several cases. One of the more recent decisions in this context is *Hari Bansh Lal* wherein it was held that "...except for a writ of quo warranto, public interest litigation is not maintainable in service matters." This view was referred to (and not disagreed with) in *Girjesh Shrivastava v.* B *State of Madhya Pradesh,* (2010) 10 SCC 707 after referring to and relying on *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* (1998) 7 SCC 273, *B. Srinivasa Reddy, Dattaraj Nathuji Thaware v. State of Maharashtra,* (2005) 1 SCC 590, *Ashok Kumar Pandey v. State of W.B* (2004) 3 SCC 349 and C *Hari Bansh Lal.*

35. The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of *quo warranto.* However, as I have concluded, the appointment of the Chairperson in a Public Service Commission does not D fall in the category of a service matter. Therefore, a PIL for a writ of *quo warranto* in respect of an appointment to a constitutional position would not be barred on the basis of the judgments rendered by this Court and mentioned above.

E 36. However, in a unique situation like the present, where a writ of *quo warranto* may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy, in the public interest. This Court has, therefore, fashioned a writ of declaration to deal with such F cases. Way back, in *T. C. Basappa v. T. Nagappa* [1955] 1 SCR 250 it was said:

> "The language used in articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to G issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of H the express provisions of our Constitution we need not now

look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges".

37. More recently, such a writ was issued by this Court was in *Kumar Padma Prasad v. Union of India,* (1992) 2 SCC 428 when this Court declared that Mr. K.N. Srivastava was not qualified to be appointed a Judge of the Gauhati High Court even after a warrant for his appointment was issued by the President under his hand and seal. This Court, therefore, directed:

"As a consequence, we quash his appointment as a Judge of the Gauhati High Court. We direct the Union of India and other respondents present before us not to administer oath or affirmation under Article 219 of the Constitution of India to K.N. Srivastava. We further restrain K.N. Srivastava from making and subscribing an oath or affirmation in terms of Article 219 of the Constitution of India and assuming office of the Judge of the High Court."

38. Similarly, in *N. Kannadasan v. Ajoy Khose,* (2009) 7 SCC 1 this Court held that Justice N. Kannadasan (retired) was ineligible to hold the post of the President of the State Consumer Redressal Forum. It was then concluded:

"The superior courts may not only issue a writ of quo warranto but also a writ in the nature of quo warranto. It is also entitled to issue a writ of declaration which would achieve the same purpose."

39. Finally and even more recently, in *Centre for PIL v. Union of India,* (2011) 4 SCC 1 the recommendation of a High Powered Committee recommending the appointment of Mr. P.J. Thomas as the Central Vigilance Commissioner under the proviso to Section 4(1) of the Central Vigilance Commission Act, 2003 was held to be *non est* in law and his appointment

A as the Central Vigilance Commissioner was quashed. This Court opined:

> "At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration."

Who may be appointed - views of this Court:

40. Having come to a conclusion that an aggrieved citizen has only very limited options available to him or her, is there no redress if an arbitrary appointment is made, such as of the person walking on the street. Before answering this question, it would be worth considering who may be appointed to a constitutional post such as the Chairperson of the Public Service Commission.

41. In *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417 this Court looked at the appointment of the Chairperson and members of the Public Service Commission from two different perspectives: firstly, from the perspective of the requirement to have able administrators in the country and secondly from the perspective of the requirement of the institution as such. In regard to the first requirement, it was said:

> "It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Public Service Commission are

> eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them."

In regard to the second requirement, it was said:

> "We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit."

42. In *In R/O Dr Ram Ashray Yadav, Chairman, Bihar Public Service Commission,* (2000) 4 SCC 309 this Court considered the functional requirements of the Public Service Commission and what is expected of its members and held:

> "Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and members of the Commission, like Caesar's wife, must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and members of the Public Service Commissions."

43. With specific reference to the Chairperson of the Public

A Service Commission who is in the position of a "constitutional trustee", this Court said:

> "The Chairman of the Public Service Commission is in the position of a constitutional trustee and the morals of a constitutional trustee have to be tested in a much stricter
B sense than the morals of a common man in the marketplace. Most sensitive standard of behaviour is expected from such a constitutional trustee. His behaviour has to be exemplary, his actions transparent, his functioning has to be objective and in performance of all
C his duties he has to be fair, detached and impartial."

44. *Inderpreet Singh Kahlon v. State of Punjab,* (2006) 11 SCC 356 was decided in the backdrop of a Chairperson of the Punjab Public Service Commission, "an important
D constitutional authority", being put behind bars, *inter alia*, for being caught red-handed accepting a bribe.

45. This Court asserted the necessity of transparency in the appointment to such constitutional positions. It was said:

E "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
F 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
G very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions."

46. Subsequently, in *State of Bihar v. Upendra Narayan Singh* (2009) 5 SCC 65 this Court expressed its anguish with
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the appointments generally made to the Public Service Commissions. It was observed:

> "The Public Service Commissions which have been given the status of constitutional authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system.
>
> "In the beginning, people with the distinction in different fields of administration and social life were appointed as Chairman and members of the Public Service Commissions but with the passage of time appointment to these high offices became personal prerogatives of the political head of the Government and men with questionable background have been appointed to these coveted positions. Such appointees have, instead of making selections for appointment to higher echelons of services on merit, indulged in exhibition of faithfulness to their mentors totally unmindful of their constitutional responsibility."

47. While it is difficult to summarize the indicators laid down by this Court, it is possible to say that the two most important requirements are that personally the Chairperson of the Public Service Commission should be beyond reproach and his or her appointment should inspire confidence among the people in the institution. The first 'quality' can be ascertained through a meaningful deliberative process, while the second 'quality' can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment.

Selection and appointment of Mr. Dhanda:

48. Given the views expressed by this Court from time to time, learned counsel for the writ petitioner submitted that Mr. Dhanda ought not to have been appointed as the Chairperson

A of the Public Service Commission. Three reasons were given in this regard and all of them have been refuted by learned counsel supporting the cause of Mr. Dhanda. They are: (1) There is a question mark about the character and conduct of Mr. Dhanda. (2) Mr. Dhanda lacks the qualifications and stature
B to hold a constitutional position of the Chairperson of a Public Service Commission. (3) The record shows that no meaningful and effective thought was given before appointing Mr. Dhanda as the Chairperson of the Public Service Commission.

C 49. As regards the first reason, certain allegations were made against Mr. Dhanda in the writ petition filed in the High Court. However, in its order dated 13th July 2011 a Division Bench of the High Court held that: "As regards irregularities and illegalities pointed out in the petition, the same do not stand substantiated." This conclusion is strongly relied on by learned
D counsel supporting Mr. Dhanda.

50. However, the judgment under appeal records that the writ petitioner had alleged that Mr. Dhanda had used his political influence to effect the transfer of an officer and that the
E transfer was set aside by the Central Administrative Tribunal as being *mala fide*. In this context, during the hearing of this appeal, we were handed over a copy of the decision rendered by the Central Administrative Tribunal (Chandigarh Bench) in Original Application No. 495/PB/2007 decided on 15th
F November 2007. We were informed that this decision was placed before the High Court and that this decision has attained finality, not having been challenged by anybody.

52. A reading of the decision, particularly paragraph 12 thereof, does show that the applicant before the Central
G Administrative Tribunal was subjected to a transfer contrary to the policy decision relating to mid-term transfers. The relevant portion of paragraph 12 of the decision reads as follows:

"Even though the Government decided not to allow use of
H the Rest house as a permanent residence of the Chief

Parliamentary Secretary, yet the applicant, being a junior officer became the victim of the annoyance of Respondent No.3 [Mr. Dhanda] and with his political influence, the Forest Minister initiated the proposal for his transfer from Ropar, which was approved by the Chief Minister..... ....But a transfer made in this manner when the work and conduct of the officer is not only being appreciated by the Secretary, but also by the Finance Minister is unwarranted and also demoralizing. These are the situations when the courts have to interfere to prevent injustice to employees who are doing their duty according to rules."

53. While it may be that Mr. Dhanda was given a clean chit by the Division Bench when the case was first before it, the fact is that information subsequently came to the notice of the High Court which indicated that Mr. Dhanda was not above using his political influence to get his way. That Mr. Dhanda came in for an adverse comment in a judicial proceeding was certainly known to him, since he was a party to the case before the Central Administrative Tribunal. But he did not disclose this fact to the Chief Minister. In the deliberative process (or whatever little there was of it) the Chief Minister did not even bother to check whether or not Mr. Dhanda was an appropriate person to be appointed as the Chairperson of the Punjab Public Service Commission in the light of the adverse comment. The "thorough and meticulous inquiry and scrutiny" requirement mentioned in *Inderpreet Singh Kahlon* was not at all carried out.

54. As regards the second reason, the qualifications of Mr. Dhanda are as mentioned in his bio-data contained in the official file and reproduced by the High Court in the judgment under appeal. The bio-data reads as follows:

" - Harish Rai Dhanda son of Shri Kulbhushan Rai.

- Resident: The Retreat, Ferozepur Road, Ludhiana.

A - Date of Birth: 15th May, 1960.

- Attained Bachelor in Arts from SCD Government College, Ludhiana, Panjab University, 1979.

- Attained Bachelor in Laws from Law College, Panjab
B University (1982).

- Registered with Bar Council of Punjab and Haryana as Advocate in 1982.

- Practiced Law at District Courts, Ludhiana from 1982
C to 2007.

- Elected as President of District Bar Association, Ludhiana for seven terms.

D 55. The High Court noted that the official file shows that Mr. Dhanda resigned from the membership of the Punjab Legislative Assembly on 6th July 2011. The resignation was accepted the same day.

56. Mr. Dhanda had filed an affidavit in the High Court in
E which he disclosed that he was or had been the Vice President of the Shiromani Akali Dal and the President of its Legal Cell and its spokesperson.

57. In fairness to Mr. Dhanda it must be noted that his
F affidavit clearly mentions that he did not apply for or otherwise seek the post of Chairperson of the Punjab Public Service Commission. He was invited by the Chief Minister to submit his bio-data and to accept the post. The question is that with these qualifications, could it be said that Mr. Dhanda was
G eminently suited to holding the post of the Chairperson of the Public Service Commission? The answer to this must be in the negative if one is to agree with the expectations of this Court declared in various decisions. This is not to say that Mr. Dhanda lacks integrity or competence, but that he clearly has
H no administrative experience for holding a crucial constitutional

position. Merely because Mr. Dhanda is an advocate having had electoral successes does not make him eminently suitable for holding a constitutional position of considerable importance and significance. It is more than apparent that Mr. Dhanda's political affiliation weighed over everything else in his appointment as the Chairperson of the Punjab Public Service Commission.

58. But, as pointed out in *Mahesh Chandra Gupta* the suitability of a person to hold a post is a matter of opinion and this is also a peg on which learned counsel supporting Mr. Dhanda rest their case. The "suitability test" is said to be beyond the scope of judicial review.

59. The third reason is supported by the writ petitioner through the finding given by the High Court that the official file relating to the appointment of Mr. Dhanda as the Chairperson of the Punjab Public Service Commission contains only his bio-data, a certificate to the effect that he resigned from the membership of the Punjab Legislative Assembly on 6th July 2011 and his resignation was accepted the same day and the advice of the Chief Minister to the Governor apparently to appoint Mr. Dhanda as the Chairperson of the Punjab Public Service Commission. The advice was immediately acted upon and Mr. Dhanda was appointed as the Chairperson of the Punjab Public Service Commission by a notification published on 7th July 2011. In other words, the entire exercise relating to the appointment of the Chairperson of the Public Service Commission was completed in a day.

60. Learned counsel supporting the appointment of Mr. Dhanda submitted that no procedure is prescribed for the selection of the Chairperson of the Public Service Commission. Therefore, no fault can be found in the procedure adopted by the State Government. It was submitted, relying on *Mohinder Singh Gill v. Chief Election Commissioner,* (1978) 1 SCC 405 that there is an implied power to adopt any appropriate procedure for making the selection and the State

A Government and the Governor cannot be hamstrung in this regard.

61. It is true that no parameters or guidelines have been laid down in Article 316 of the Constitution for selecting the Chairperson of the Public Service Commission and no law has been enacted on the subject with reference to Entry 41 of List II of the 7th Schedule of the Constitution. It is equally true that the State Government and the Governor have a wide discretion in the procedure to be followed. But, it is also true that ***Mohinder Singh Gill*** refers to Lord Camden as having said that wide discretion is fraught with tyrannical potential even in high personages. Therefore, the jurisprudence of prudence demands a fairly high degree of circumspection in the selection and appointment to a constitutional position having important and significant ramifications.

62. Two factors that need to be jointly taken into account for the exercise of the power of judicial review are: the deliberative process and consideration of the institutional requirements.

63. As far as the deliberative process is concerned (or lack of effective consultation, as described in *Mahesh Chandra Gupta*) it is quite apparent that the entire process of selection and appointment of Mr. Dhanda took place in about a day. There is nothing to show the need for a tearing hurry, though there was some urgency, in filling up the post following the demise of the then Chairperson of the Punjab Public Service Commission in the first week of May 2011. But, it is important to ask, since the post was lying vacant for a couple of months, was the urgency such that the appointment was required to be made without considering anybody other than Mr. Dhanda. There is nothing to show that any consideration whatsoever was given to appointing a person with adequate administrative experience who could achieve the constitutional purpose for which the Public Service Commission was created. There is nothing to show that any background check was carried out to

ascertain whether Mr. Dhanda had come in for any adverse notice, either in a judicial proceeding or any police inquiry. It must be remembered that the appointment of Mr. Dhanda was to a constitutional post and the basis of deliberation before making the selection and appointment were imperative. In this case, clearly, there was no deliberative process, and if any semblance of it did exist, it was irredeemably flawed. The in-built constitutional checks had, unfortunately, broken down.

64. In *Centre for PIL* this Court struck down the appointment of the Central Vigilance Commissioner while reaffirming the distinction between merit review pertaining to the eligibility or suitability of a selected candidate and judicial review pertaining to the recommendation making process. In that case, the selection of the Central Vigilance Commissioner was made under Section 4(1) of the Central Vigilance Commission Act, 2003 (for short the Act) which reads as follows:

> "4. **Appointment of Central Vigilance Commissioner and Vigilance Commissioners.**—(1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:
>
> Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—
>
> (*a*) the Prime Minister — Chairperson;
>
> (*b*) the Minister of Home Affairs — Member;
>
> (*c*) the Leader of the Opposition in the House of the People — Member.
>
> *Explanation.*—For the purposes of this sub-section, 'the Leader of the Opposition in the House of the People' shall, when no such Leader has been so recognised,

include the Leader of the single largest group in opposition of the Government in the House of the People."

65. As can be seen, only the establishment of a High Powered Committee (HPC) for making a recommendation is provided for - the procedure to be followed by the HPC is not detailed in the statute. This is not unusual since a statute cannot particularize every little procedure; otherwise it would become unmanageable and maybe unworkable. Moreover, some situations have to be dealt with in a common sense and pragmatic manner.

66. Acknowledging this, this Court looked at the appointment of the Central Vigilance Commissioner not as a merit review of the integrity of the selected person, but as a judicial review of the recommendation making process relating to the integrity of the institution. It was made clear that while the personal integrity of the candidate cannot be discounted, institutional integrity is the primary consideration to be kept in mind while recommending a candidate. It was observed that while this Court cannot sit in appeal over the opinion of the HPC, it can certainly see whether relevant material and vital aspects having nexus with the objects of the Act are taken into account when a recommendation is made. This Court emphasized the overarching need to act for the good of the institution and in the public interest. Reference in this context was made to *N. Kannadasan*.

67. Keeping in mind the law laid down and the facts as they appear from the record, it does appear that the constitutional, functional and institutional requirements of the Punjab Public Service Commission were not kept in mind when Mr. Dhanda was recommended for appointment as its Chairperson.

A suitable appointee:

68. A submission was made by learned counsel supporting

the appointment of Mr. Dhanda that ultimately it is for the State Government to decide who would be the most suitable person to be appointed as the Chairperson of the Public Service Commission.

69. In this regard, reliance was placed on three decisions. In the first such decision, that is, *E.P. Royappa v. State of Tamil Nadu,* (1974) 4 SCC 3 the post of the Chief Secretary of the State was under consideration. This Court observed that the post is a sensitive one. The post is one of confidence and the Chief Secretary is a lynchpin in the administration of the State. Therefore, the Chief Secretary and the Chief Minister of the State must have complete rapport and understanding between them. If the Chief Secretary forfeits the confidence of the Chief Minister, then he may be shifted to some other post in the larger interests of the administration, provided that no legal or constitutional right of the Chief Secretary is violated.

70. The second decision relied upon was *State of W.B. v. Manas Kumar Chakraborty,* (2003) 2 SCC 604. That case concerned itself with the post of the Director General and Inspector General of Police (DG&IP) in a State. This Court observed that the said post was of a very sensitive nature. It could only be filled up by a person in whom the State Government had confidence. Consequently, it was held that such a post need not be filled up only by seniority, but merit, credibility and confidence that the person can command with the State Government "must play a predominant role in selection of an incumbent to such a post."

71. Finally, in *Hari Bansh Lal,* a case concerning an appointment to a statutory post of Chairperson of a State Electricity Board, reference was made to *State of Mysore v. Syed Mahmood,* AIR 1968 SC 1113, *Statesman (P) Ltd. v. H.R. Deb,* AIR 1968 SC 1495 and *State Bank of India v. Mohd. Mynuddin,* (1987) 4 SCC 486 and it was held:

"It is clear from the above decisions, suitability or otherwise

A of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to the statutory provisions/rules."

72. These decisions are clearly distinguishable. First of all, none of the cited decisions dealt with the appointment to a B constitutional position such as the one that we are concerned with. A constitutional position such as that of the Chairperson of a Public Service Commission cannot be equated with a purely administrative position – it would be rather facetious to do so. While the Chief Secretary and the Director General of C Police are at the top of the ladder, yet they are essentially administrative functionaries. Their duties and responsibilities, however onerous, cannot be judged against the duties and responsibilities of an important constitutional authority or a constitutional trustee, whose very appointment is not only D expected to inspire confidence in the aspirational Indian but also project the credibility of the institution to which he or she belongs. I am, therefore, unable to accept the view that the suitability of an appointee to the post of Chairperson of a Public Service Commission should be evaluated on the same E yardstick as the appointment of a senior administrative functionary.

73. Secondly, it may be necessary for a State Government or the Chief Minister of a State to appoint a "suitable" person F as a Chief Secretary or the Director General of Police or perhaps to a statutory position, the connotation not being derogatory or disparaging, but because both the State Government or the Chief Minister and the appointee share a similar vision of the administrative goals and requirements of G the State. The underlying premise also is that the State Government or the Chief Minister has confidence that the appointee will deliver the goods, as it were, and both are administratively quite compatible with each other. If there is a loss of confidence or the compatibility comes to an end, the appointee may simply be shifted out to some other assignment, H

provided no legal or constitutional right of the appointee is violated. A

74. The question of the Chief Minister or the State Government having "confidence" (in the sense in which the word is used with reference to the Chief Secretary or the Director General of Police or any important statutory post) in the Chairperson of a State Public Service Commission simply does not arise, nor does the issue of compatibility. The Chairperson of a Public Service Commission does not function at the pleasure of the Chief Minister or the State Government. He or she has a fixed tenure of six years or till the age of sixty two years, whichever is earlier. Security of tenure is provided through a mechanism in our Constitution. The Chairperson of a State Public Service Commission, even though appointed by the Governor, may be removed only by the President on the ground of misbehaviour after an inquiry by this Court, or on other specified grounds of insolvency, or being engaged in any other paid employment or being unfit to continue in office by reason of infirmity of mind or body. There is no question of the Chairperson of a Public Service Commission being shifted out if his views are not in sync with the views of the Chief Minister or the State Government. B C D E

75. The independence of the post of the Chairperson or the member of the Punjab Public Service Commission cannot be forgotten or overlooked. That independence is attached to the post is apparent from a reading of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 framed by the Governor of Punjab in exercise of power conferred by Article 318 of the Constitution. F

76. Regulation 2(c) of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 defines "Member" as: G

> "Member" means a Member for the time being of the Commission and includes the Chairman thereof"; H

77. Regulation 4 of these Regulations provides that "Every Member shall on appointment be required to take the oaths in the form laid down in Appendix 'A' to these regulations."

78. The oaths that a member (including the Chairperson) is required to take in the form laid down in Appendix 'A' are oaths of allegiance, of office and of secrecy. A Note given in Appendix 'A' states: "These oaths will be administered by the Governor in person in the presence of the Chief Secretary." The oaths read as follows:

"*Form of Oath of Allegiance*

I _____, solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established and that I will loyally carry out the duties of my office."

"Form of Oath of Office

I, _____, appointed a Member of the Punjab Public Service Commission do solemnly declare, that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

"Form of Oath of Secrecy

I, _____, solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Member of the Punjab Public Service Commission, except as may be required for due discharge of my duties as such Member or as may be specially permitted by the Governor."

79. There is, therefore, a great deal of solemnity attached to the post of the Chairperson of the Public Service Commission. The Chairperson takes the oath of allegiance to

India and to the Constitution of India – not an oath of allegiance to the Chief Minister. An appointment to that position cannot be taken lightly or on considerations other than the public interest. Consequently, it is not possible to accept the contention that the Chief Minister or the State Government is entitled to act only on the perceived suitability of the appointee, over everything else, while advising the Governor to appoint the Chairperson of the Public Service Commission. If such a view is accepted, it will destroy the very fabric of the Public Service Commission.

Finding an appropriate Chairperson:

80. Taking all this into consideration, how can an appropriate person be searched out for appointment to the position of a Chairperson of a Public Service Commission? This question arises in the context of the guidelines framed by the High Court and which have been objected to by the State of Punjab and the State of Haryana. This Court found itself helpless in resolving the dilemma in *Mehar Singh Saini*. This Court pointed out the importance of the Public Service Commission vis-à-vis good governance and the "common man". In this regard, it was observed that:

"The adverse impact of lack of probity in discharge of functions of the [Public Service] Commission can result in defects not only in the process of selection but also in the appointments to the public offices which, in turn, will affect effectiveness of administration of the State."

It was then noted that:

"The conduct of the Chairman and members of the Commission, in discharge of their duties, has to be above board and beyond censure. The credibility of the institution of the Public Service Commission is founded upon faith of the common man on its proper functioning."

81. In this background and in this perspective, this Court

A drew a distinction between the exercise of legislative power by Parliament and the executive power of the Government. It was held that laying down the qualifications and experience required for holding the office of Chairperson or member of the Public Service Commission is a legislative function. This is what this B Court said:

> "Desirability, if any, of providing specific qualification or experience for appointment as Chairman/members of the Commission is a function of Parliament."

C 82. However, the necessary guidelines and parameters for holding such an office are within the executive power of the State. It was held by this Court:

> "The guidelines or parameters, if any, including that of D stature, if required to be specified are for the appropriate Government to frame. This requires expertise in the field, data study and adoption of the best methodology by the Government concerned to make appointments to the Commission on merit, ability and integrity."

E 83. On the "legislative front", this Court found itself quite helpless. This Court obviously could not read those qualifications into Article 316 of the Constitution which were not there, nor could it direct Parliament to enact a law. All that could be done (and which it did) was to draw the attention of F Parliament to the prevailing situation in the light of "the number of cases which have been referred to this Court by the President of India in terms of Article 317(1) of the Constitution in recent years." It was also noted that "A large number of inquiries are pending before this Court which itself reflects that G all is not well with the functioning of the Commissions."

84. Apart from this Court's inability to read qualifications into Article 316 of the Constitution, it was submitted by learned counsel supporting the cause of Mr. Dhanda that this Court cannot direct that legislation be enacted on the subject. H

Reference was made to *Supreme Court Employees' Welfare Assn. v. Union of India,* (1989) 4 SCC 187 wherein it was held:

> "There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

A similar view was expressed in *Asif Hameed v. State of J & K,* 1989 Supp (2) SCC 364. It was held in that decision that:

> "The Constitution has laid down elaborate procedure for the legislature to act thereunder. The legislature is supreme in its own sphere under the Constitution. It is solely for the legislature to consider as to when and in respect of what subject-matter, the laws are to be enacted. No directions in this regard can be issued to the legislature by the courts."

85. In *Suresh Seth v. Commissioner, Indore Municipal Corpn.,* (2005) 13 SCC 287 this Court referred to *Supreme Court Employees' Welfare Assn.* and *State of J&K v. A.R. Zakki,* 1992 Supp (1) SCC 548 and held:

> "..... this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation."

86. There is, therefore, no doubt that this Court can neither legislate on the subject nor issue any direction to Parliament or the State Legislature to enact a law on the subject.

87. On the "executive front", this Court expressed its helplessness in framing guidelines or parameters due to its lack of "expertise in the field, data study and adoption of the best methodology". Keeping this in mind, the High Court was in error in framing the guidelines that it did in the absence of any expertise in the field, data study or knowledge of the best methodology for selecting the Chairperson of the Punjab Public Service Commission.

Options before this Court:

88. But, is this Court really helpless, broadly, in the matter of laying down appropriate guidelines or parameters for the appointment of a Chairperson or members of the Public Service Commission? If *Mehar Singh Saini* is understood in its correct perspective, the answer to this question would be in the negative.

89. First of all, this Court cannot overlook the administrative imperative. There was and still is a need for the Public Service Commission to deliver the goods, as it were. In this context, the Second Administrative Reform Commission in its 15th Report looked at the past, present and future of the Public Service Commission and observed:

> "2.5.3. In the early years of Independence, State Public Service Commissions throughout the country functioned well primarily on account of the fact that:
>
> (a) There was objectivity in selection of competent and experienced people as Chairman and Members of the Commission. The government treated the Public Service Commission as a sacrosanct institution and the Chairman and Members were either very senior government servants (drawn usually from the ICS) or academicians of high standing in their field.
>
> (b) The Commission enjoyed excellent reputation for objectivity, transparency and fairplay.

"2.5.4 But in recent years, this Constitutional body has suffered extensive loss of reputation in many States, mainly on account of (a) charges of corruption, favouritism and nepotism in matters of recruitment and (b) use of archaic processes and procedures in its functioning which leads to inordinate delays. For example, the civil services examinations conducted by a State Public Service Commission take a minimum time period of one and half year to complete. In some cases, it may take even longer.

"2.5.6.6 The Commission is of the view that the intention behind creation of an autonomous Public Service Commission as a Constitutional authority was to create a body of achievers and ex-administrators who could select meritorious candidates for recruitment and promotion to various civil service positions under the State Government with utmost probity and transparency. There is need to take steps to ensure that only persons of high standing, intellectual ability and reputation are selected as Chairman and Members of the Public Service Commission."

90. In this context, the views of the Law Commission of India as contained in its 14th Report, which are at variance with the views of the Second Administrative Reform Commission contained in its 15th Report are worth highlighting, one of the reasons being that the luminaries who assisted the Law Commission reads like a veritable Who's Who from the legal firmament. This is what was said:

"Having regard to the important part played by the Public Service Commission in the selection of the subordinate judiciary, we took care to examine as far as possible the Chairman and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt

A that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations. The evidence given by members of the Public Service Commissions in some of the States does create the feeling that they do B not deserve to be in the responsible posts they occupy."

91. Secondly, the constitutional and more important imperative is that of good governance for the benefit of the aspirational Indian. For this, an appropriate person should be selected to fill up the position of a constitutional trustee. C

92. In the light of the various decisions of this Court adverted to above, the administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairperson and D members of the Punjab Public Service Commission. That it has failed to do so does not preclude this Court or any superior Court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the E desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or member of the Punjab Public Service Commission, does not imply that this Court cannot direct the Executive to frame guidelines and set the parameters. This F Court can certainly issue appropriate directions in this regard, and in the light of the experience gained over the last several decades coupled with the views expressed by the Law Commission, the Second Administrative Reform Commission and the views expressed by this Court from time to time, it is imperative for good governance and better administration to G issue directions to the Executive to frame appropriate guidelines and parameters based on the indicators mentioned by this Court. These guidelines can and should be binding on the State of Punjab till the State Legislature exercises its power.

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Additional questions framed by the Full Bench:

93. Learned counsel supporting the appointment of Mr. Dhanda submitted that the Full Bench could not expand the scope of the reference made to it by the Division Bench, nor could it frame additional questions.

94. Generally speaking, they are right in their contention, but it also depends on the reference made.

95. The law on the subject has crystallized through a long line of decisions and it need not be reiterated again and again. The decisions include *Kesho Nath Khurana v. Union of India,* 1981 Supp SCC 38 (The Division Bench ought to have sent the appeal back to the Single Judge with the answer rendered by them to the question referred by the Single Judge and left it to the Single Judge to dispose of the second appeal according to law.). *Kerala State Science & Technology Museum v. Rambal Co.,* (2006) 6 SCC 258 (It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue which is not the question referred to.). ***T.A.*** *Hameed v. M. Viswanathan, (2008) 3 SCC 243* (Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits.). And more recently, *Saquib Abdul Hameed Nachan v. State of Maharashtra,* (2010) 9 SCC 93 (Normally, after answering the reference by the larger Bench, it is for the Reference Court to decide the issue on merits on the basis of the answers given by the larger Bench.).

96. There is no bar shown whereby a Bench is precluded from referring the entire case for decision by a larger Bench - it depends entirely on the reference made. In any event, that

A issue does not arise in this appeal and so nothing more need be said on the subject.

97. What was the reference made by the Division Bench to the Full Bench and did that Bench frame additional
B questions? The answer to this is to be found in the judgment of the High Court. The reference has not been artistically drafted, but it reads as follows:

"6. Even though, Article 316 of the Constitution does not prescribe any particular procedure, having regard to the
C purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. It is undisputed that person to be appointed must have competence and integrity. Reference may be made to the judgments of the Hon'ble Supreme Court in
D *R/o Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission*, (2000) 4 SCC 309, *Ram Kumar Kashyap and Anr. v. Union of India and Anr.*, AIR 2010 SC 1151 and *In re Mehar Singh Saini, Chairman, HPSC and Ors.*, (2010) 13 SCC 586.

E

7. If it is so, question is how such persons are to be identified and selected and whether in the present case, procedure adopted is valid and if not, effect thereof. We are of the view that these questions need to be considered by a Bench of three Hon'ble Judges. Accordingly, we refer
F the matter to a Bench of three Hon'ble Judges."

98. On the basis of the submissions made, the Full Bench reformulated the questions referred to it in the following words:

G "1. Whether the present petition is not maintainable as the questions raised are the concluded questions by the decisions of the Supreme Court?

2. Whether the present petition is public interest litigation in a service matter, and hence not maintainable on the
H said ground also?

3. Whether this Court can issue directions in the nature of guidelines for a transparent, fair and objective procedure to ensure that the persons of impeccable personal integrity, caliber and qualifications alone are appointed as the members / Chairman of State Public Service Commission? A B

4. Whether in exercise of power of judicial review, it could be stated that the decision making process leading to the appointment of Respondent No. 4 [Mr. Harish Rai Dhanda] as Chairman of Commission was arbitrary, capricious or violative of Article 14?" C

99. The reformulation was explained by the Full Bench by stating that the first two questions were raised on behalf of the State of Punjab regarding the maintainability of the reference itself. In my opinion, the first two questions actually touch upon the maintainability of the writ petition itself. These issues should have been decided by the Division Bench and had it answered the questions in the negative, there would have been no need to make any reference to the Full Bench. D

100. Much was sought to be made by learned counsel for the writ petitioner that the "matter" (that is the entire matter) was referred to the Full Bench. It is difficult to agree that the entire "matter" was referred to the Full Bench. Firstly, the word "matter" must take colour from the context in which it was used, which is with reference only to the two questions placed before the Full Bench. Secondly, even the Full Bench did not think that the entire matter was referred to it and that is why after answering the reference the "matter" was remitted to the Division Bench for disposal in accordance with law. E F

101. To this extent, learned counsel supporting the cause of Mr. Dhanda are right that the Full Bench overstepped its mandate. But where does this discussion lead us to? The two questions were fully argued in this Court for the purposes of obtaining a decision on them, and no suggestion was made that the decision of the Full Bench on these questions be set G H

A aside because of a jurisdictional error and the Division Bench be asked to decide them quite independently. Therefore, this issue is only of academic interest so far as this appeal is concerned notwithstanding the law that a larger Bench should decide only the questions referred to it. Of course, if a B subsidiary question logically and unavoidably arises, the larger Bench cannot be dogmatic and refuse to answer it. A common sense approach must be taken on such occasions.

102. So far as questions 3 and 4 formulated by the Full Bench are concerned, I am of the opinion that they merely C articulate and focus on the issues that were not quite attractively phrased by the Division Bench. I am not in agreement that the Full Bench overstepped its jurisdiction in the reformulation of the issues before it.

103. It was then submitted that there was really no D occasion for the Division Bench to make any reference to the Full Bench of the High Court on the question of framing guidelines or parameters for the appointment of the Chairperson of the Punjab Public Service Commission. This Court had already laid down the law in *Mehar Singh Saini* and E the High Court was merely required to follow it. The argument puts the issue rather simplistically. The Division Bench was fully entitled to refer to the Full Bench the applicability of the decision of this Court to the facts of the case and for further follow up action, if necessary. This argument is mentioned only because F it was raised and nothing really turns on it, except to the extent that it is another way of questioning the maintainability of the writ petition filed in the High Court.

Impleadment of the State of Haryana by the Full Bench:

G 104. The justification given by the Full Bench for *suo motu* impleading the State of Haryana and the Haryana Public Service Commission is because "issues common in respect of the States of Punjab and Haryana, were likely to arise." I think this is hardly a reason for impleadment. The case concerned the appointment of the Chairperson of the Punjab Public H

Service Commission and it should have and could have been left at that without enlarging the scope of the controversy before it.

Production of the Chief Minister's advice:

105. Learned counsel for the State of Punjab submitted that the High Court could not have directed production of the advice tendered by the Chief Minister to the Governor. The basis of this argument is the order dated 1st August 2011 passed by the Full Bench. The relevant portion of the order reads as follows:

> "Mr. Jindal, Addl. Advocate General shall also produce the record relating to the appointment process of respondent No.4 [Mr. Dhanda]."

106. The grievance made by learned counsel in this regard is justified. It need only be pointed out that in *State of Punjab v. Sodhi Sukhdev Singh,* (1961) 2 SCR 371 this Court clearly held that:

> "It is hardly necessary to recall that advice given by the Cabinet to the Rajpramukh or the Governor is expressly saved by Article 163, sub-article (3) of the Constitution; and in the case of such advice no further question need to be considered."

It is not necessary to say anything more on this subject.

Conclusion:

107. The appointment of the Chairperson of the Punjab Public Service Commission is an appointment to a constitutional position and is not a "service matter". A PIL challenging such an appointment is, therefore, maintainable both for the issuance of a writ of *quo warranto* and for a writ of declaration, as the case may be.

108. In a case for the issuance of a writ of declaration, exercise of the power of judicial review is presently limited to examining the deliberative process for the appointment not

A meeting the constitutional, functional and institutional requirements of the institution whose integrity and commitment needs to be maintained or the appointment for these reasons not being in public interest.

109. The circumstances of this case leave no room for B doubt that the notification dated 7th July 2011 appointing Mr. Harish Rai Dhanda was deservedly quashed by the High Court since there was no deliberative process worth the name in making the appointment and also since the constitutional, functional and institutional requirements of the Punjab Public C Service Commission were not met.

110. In the view that I have taken, there is a need for a word of caution to the High Courts. There is a likelihood of comparable challenges being made by trigger-happy litigants to appointments made to constitutional positions where no D eligibility criterion or procedure has been laid down. The High Courts will do well to be extremely circumspect in even entertaining such petitions. It is necessary to keep in mind that sufficient elbow room must be given to the Executive to make constitutional appointments as long as the constitutional, E functional and institutional requirements are met and the appointments are in conformity with the indicators given by this Court from time to time.

111. Given the experience in the making of such F appointments, there is no doubt that until the State Legislature enacts an appropriate law, the State of Punjab must step in and take urgent steps to frame a memorandum of procedure and administrative guidelines for the selection and appointment of the Chairperson and members of the Punjab Public Service Commission, so that the possibility of arbitrary appointments G is eliminated.

112. The Civil Appeals are disposed of as directed by Brother Patnaik.

B.B.B. Appeals disposed of.