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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-290-2025 (O&M)
Reserved on : 18.03.2025

Pronounced on : 29th May, 2025.

Surender Lather

...Appellant

Vs.

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Chetan Mittal, Senior Advocate, assisted by
Mr. Himanshu Gupta, Advocate and
Mr. Avichal Sharma, Advocate for the appellant.

Mr. Vivek Chauhan, Addl. AG, Haryana.

Mr. Kanwal Goyal, Advocate and
Ms. Sheena Dhaiya, Advocate for the respondent No.2.

SANJEEV PRAKASH SHARMA, J.

1. Challenge in the present appeal is to the judgment dated 16.01.2025, passed by the learned Single Judge, whereby the writ petition preferred by the appellant was dismissed and his claim for consideration of appointment was rejected.

2. After notice of motion was issued and reply was filed, the matter came up before this Court. The State Government authorities sought time several times but ultimately taking into consideration that the writ petition is of the year 2020 and relates to appointment, we heard the case finally. Written submissions were allowed to be filed by the parties which have now been received.



3. Brief facts which need to be noticed for the purpose of adjudication of the present appeal are that on 24.01.2004, an advertisement was issued by the Haryana Public Service Commission (for short 'the Commission'), for filling up '58' posts of Haryana Civil Services (Executive Branch) and '44' posts of other allied services. On 30.12.2004, final select list was prepared and the Commission sent its recommendation for appointment to the State Government. Appellant was selected and recommended for appointment to the post of HCS (Executive Branch) in the general category but writ petition came to be filed in the meanwhile by the candidates including the petitioner bearing CWP-3768-2005, wherein, the respondents took a stand that the matter is being inquired by the vigilance and, therefore, the writ petitions were dismissed vide order dated 12.10.2016.

4. The said order was assailed before the Hon'ble Supreme Court, but the Hon'ble Supreme Court dismissed the SLP by its order dated 11.12.2007, with direction to that the respondents/State Government to take steps to conclude the inquiry. In the meanwhile, another advertisement was issued on 04.01.2009, to fill-up the same vacancy against which the appellant and other candidates were selected. On 20.08.2010, orders were issued in CWP-2130-2009, directing to conclude the vigilance inquiry within a period of six months. In contempt, three months further time was granted to conclude the inquiry.

5. It is to be noticed that the State Government vide order dated 13.05.2005, had in the meanwhile reduced the cadre strength of HCS (Executive Branch) from 300 to 230, which was also challenged by way of writ petition and the same was later on dismissed on 12.10.2006. Civil



Appeal No.5803 of 2007, assailing the order of the learned Single Judge, was preferred, which came to be dismissed vide order dated 11.11.2007, by the Hon'ble Supreme Court directing the State Government to complete the inquiry. The State Vigilance Bureau concluded the inquiry and submitted its report on 09.11.2011 and as per inquiry there were irregularities alleged to have been committed in the selection process and reference was made to un-usualties in the checking of answer sheets and final marks list prepared, wherein marks have been increased/decreased by use of different inks by the examiners was also alleged.

6. One Apurv Kumar and others filed writ petition No.108/2012, wherein the High Court passed an order on 29.05.2015, holding that bifurcation in the selection process cannot be allowed. The Division Bench in LPA-1168/2015, passed an order on 12.08.2015, noticing that the State Government was required to take an independent decision either by holding an inquiry or based on the report received from the vigilance bureau and as the State Government had not taken any decision, they were called upon to apprise the Court of any decision taken by the authorities based on the inquiry submitted by the Vigilance Bureau or any other material which results in vitiating of the entire selection.

7. As has been pointed out by the respondents/State Government in their written statement, in compliance of order of the Division Bench, the Committee consisting of senior officers under the chairmanship of Additional DG, Vigilance Bureau, was constituted, which held that exercise was required to be conducted as to which of the candidates were innocent and which were not. The State Vigilance Bureau was considered to be the most



appropriate agency to carry out this exercise as they had thoroughly investigated all the record. The committee of senior officers, therefore, concluded and segregated candidates where answer sheets had no discrepancy and offered appointment to 38 candidates treating them as ‘non-tainted’. Letter in this respect dated 26.02.2016, was placed before the Court, which was noticed by the Division Bench and the appeals were partly allowed confirming the decision of the State of Haryana dated 26.02.2016. Further, the Court also granted liberty to make representation to the State of Haryana with regard to claim of being non-tainted.

8. The appellant, Surender Lather, submitted his representation and the Committee noticed that the examiner who conducted the evaluation of answer sheet used two pens while evaluating the answer sheet and signing and, therefore, proceeded to reject the claim of the appellant vide order dated 27.02.2017. The same was challenged by the appellant, whereby he had been treated as tainted candidate and his claim has been rejected.

9. It is the case of the appellant that out of those ‘38’ candidates who had been considered as untainted and had been appointed, five of the selected candidates were those in whose cases also the examiner had used different pen while putting number and while signing and the case of the appellant could not have been distinguished from the said five candidates. It is further submission that so far as the FSL report relating to the examiner is concerned, it had clearly stated that the examiner who has used the two inks, is the one and the same. Learned counsel has submitted the following details:-

Increase of marks without attestation	12 candidates (fictitious No.1844,
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by the examiner.	1802, 1939, 1606, 2897, 2863, 2724, 2069, 1682, 2834, 2925 and 1937).
Decrease of marks without attested by the examiner.	05 candidates (fictitious No.2823, 1968, 1654, 2925 and 2658).
Cutting/overwriting not attested by examiner.	06 candidates (fictitious No.2308, 1654, 2650, 1510 , 2740 and 2910)
Marks indicated by pencil inside the answer sheet for each question.	1 Candidate (Fictitious No.1844).
Totaling mistake.	1 candidate (Fictitious No.2658)
Different ink used for signature of examiner.	05 candidates (Fictitious No.2658, 2724, 2404, 1915 and 1844).
Page left blank and answer written thereafter.	05 candidates (fictitious No.2219, 1990, 1968, 1999 and 1682).
Different parts of question not attempted together.	1 candidate (Fictitious No.2688)
Disclosure of identity by cutting/overwriting at front page or other identity mark etc.	04 candidates (Fictitious no.1844, 2646, 1682 and 1999).

Rather candidates having graver ‘unusualities’ like increase of marks without attestation, totaling mistake, pages left blank and answer written thereafter were also selected.”

10. After the appellant preferred the writ petition before this Court and pointed out the aforesaid aspects, the State Government with a view to frustrate the claim of the appellant, issued show cause notices to the appointed candidates who were similarly placed as the appellant and with



whom the appellant was claiming parity. The show cause notices were challenged by way of writ petition and this Court vide its judgment dated 16.08.2023, in CWP-24966-20121 and other connected writ petitions, quashed the said show cause notices and held them to be appointed by holding as under:-

“Keeping in view the above facts and circumstances, show cause notices dated 27.11.2021, which have been issued to the petitioners cannot be held to be valid one and cannot be allowed to operate and are consequently set aside. It may be noticed that this order will not preclude the government to seek review of the order passed by the Division Bench in LPA No.168 of 2015, dated 27.02.2016, in case they intend to reopen the issue as to whether the petitioners are tainted or not.”

11. Learned counsel submits that there was no review preferred against the order passed in LPA-1168-2015 and the concerned persons have been allowed to continue. In view of the above, the writ petition filed by the petitioner was withdrawn with liberty to revive and, therefore, after the judgment was passed, the writ petition was revived by the appellant.

12. The appellant moved an application before the learned Single Judge seeking revival of his writ petition and by a common order while the writ petition was revived in view of the fact that the learned Single Judge had decided another writ petition holding that the State Vigilance Bureau Report dated 09.11.2011 and the order passed earlier by the learned Single Judge has attained finality and the subsequent writ petition was barred by principle of res-judicata and that there was no right of selected candidate qua appointment, dismissed the writ petition at the request of counsel for the appellant. The present appeal was filed against the said order. While at the



first blush, we may not accept the appeal to be not maintainable as the writ petition was dismissed purportedly on the prayer made by the appellant's counsel but we find that it is a fact that the prayer to dismiss the writ petition was made because the Court had already decided another writ petition titled as Subhash Chand vs. State of Haryana on 08.01.2024. Accordingly, notice of motion was issued in this appeal.

13. We are of the firm view that a petition has to be decided on merits one way or the other and merely because the counsel states, the petition cannot be dismissed on this count and we, therefore, heard the counsel on merits. It is merely on account of the fact that in the FSL report, which has been placed on record, we find that the appellant has not been declared to be tainted and the vigilance bureau report dated 09.11.2011 had not taken into consideration the report of the FSL. It is also to be noted that the appellant preferred directly writ petition No.691-2019, titled as Surinder Lather vs. State of Haryana before the Hon'ble Supreme Court, wherein the appellant was allowed to withdraw his writ petition with liberty to make a representation pointing out parity before the appropriate forum/authority.

14. In the light of the aforesaid orders of the Hon'ble Supreme Court, we would examine the case of the appellant on the point of parity with the other candidates who have been allowed to be appointed and against whom also similar allegations of the examiner having used two separate pens was existing.

15. Learned counsel submitted that the final report by the Vigilance Bureau has been submitted in the Court on 05.07.2023 making some persons as accused and the appellant has not been made as an accused in the said



report. Learned counsel has submitted that orders dated 22.02.2017 and 27.11.2017 deserve to be set aside, whereby the candidate of the appellant was held to be tainted and rejected. Learned counsel submitted that FSL report dated 18.07.2011, reflected that the writing comparison are inter se inconsistent and examiner has used one pen at the time of evaluation of answer sheet and used another pen later on while marking on the front page and signatures and by no stretch of imagination can it be said that the appellant has in any manner used any unfair means. His selection has, therefore, been wrongly treated as tainted, more so, as all other similarly candidates were offered appointment and are working.

16. Learned counsel submits that merely on the ground that different inks have been used by the examiner, who has been found to be one and the same, the candidature of the appellant ought not have been rejected and the entire action was wholly unjustified and whimsical.

17. Learned counsel has further submitted that the learned Single Judge has erred in holding the writ petition preferred against the decision dated 22.02.2017, suffers from principle of res-judicata as the order dated 22.02.2017 was not existing at the time when initially the appellant had filed the writ petition challenging the entire selection process. Learned counsel submits that the writ petition ultimately culminated in the orders passed by the Division Bench whereby it held that no decision has been taken by the State Government on the vigilance report which was required to be done. The earlier writ petition, therefore, had become redundant in the light of observations of the Division Bench and it cannot be said that a decision was granted which had attained finality as against the appellant. Further, he



submits that the challenge is to the decision taken by the State Government subsequently whereby it has arbitrarily left out the appellant and appointed the other persons who were similarly situated. It is submitted that the decision of the learned Single Bench is also erroneous as the Vigilance Bureau cannot be said to be a decision making authority and merely by casting doubt on the appellant who was nowhere involved at the time of examining of his answer sheet by an examiner, who is said to be one and the same while using different pens and the signatures having not been found to be forged, there is no occasion to keep the appellant outside from his valuable right of consideration for appointment on the basis of his merit. Learned counsel submits that similarly situated other candidates have been offered appointment and by way of separate judgment have been allowed to continue. He, therefore, prays that the respondents be directed to consider the case of the appellant for appointment in terms of original recommendation dated 31.12.2004 and be placed along with the other candidates who have been already appointed, granting him notional seniority and pay fixation and continuity of service and all other service benefits.

18. Per contra, learned counsel appearing for the Commission submits that the appellant's claim was examined and the same was rejected, therefore, there was no occasion to consider his case vis-à-vis others. He further submits that Subhash Chander has filed an LPA-1037-2024, which is still pending and the Court should hear the other cases also and decide the same by common order.

19. However, we find that the present case was de-tagged from the other four LPAs which are on different aspects. In such matters like the



present one, we are afraid that there cannot be any commonality on facts. The position of law as cited, while the State Government has not placed reliance on any judgment in the written submission, learned senior counsel appearing for the appellant has cited the following judgments:-

- (i) **Dinesh Kumar Kashyap and others Vs. South East Central Railway and others (2019) 12 SCC 798,**
- (ii) **Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417,**
- (iii) **Sirandeep Singh Panag v. State of Punjab 2008 SCC OnLine P&H 776** and
- (iv) **Surendra Narain Singh v. State of Bihar (1998) 5 SCC 246.**

Principal of res-judicata.

20. In the present case, we find that there has been protracted litigation. While it is true that the appellant had earlier preferred a writ petition before this Court bearing CWP-1580-2020, which was decided on 16.08.2023 with liberty to revive. It is a fact that the writ petition was revived and thereafter the learned Single Judge has passed an order which is impugned before this Court. We therefore cannot turn back and hold that the revival could not have been done. Principal of res-judicata essentially would apply where there is a same cause of action which has arisen and was decided on merits in an earlier litigation between the same parties. The constructive res-judicata in writ proceedings would essentially being mere the same questions of law having been examined, are raised in another set of writ petitions and raising of same question of law would by another litigation by



another party, would fall within meaning of constructive res-judicata and would be barred.

21. We here find that the appointed candidates who had been found to be untainted were offered appointment and have been continuously working. The name of the appellant had also been recommended for appointment under the same selection. However, in his case, the State Government submitted a report that he fell within the list of tainted candidates as the examiner had used two different inks firstly for evaluating of answers and awarding marks against each question and the second pen used on the first page where marks were mentioned and totaled and signed by the examiner. The FSL report results in holding (a) there was same examiner (b) he has used two different pens.

22. Learned counsel has taken us to the original answer sheet of the appellant as well as that of other candidates in whose cases also the examiner used two different inks in the same fashion as that in the case of the appellant and it is an admitted position that the other candidates have already been appointed and have not been treated as tainted, of course, later on after the appellant set up the claim, they were alleged to come within the tainted list and an attempt was made to terminate their services by issuing show cause notices but the High Court set aside the same.

23. We have also gone through the said judgment and find that the learned Single Judge found the action of issuing show cause notices as a mere formality and passed order supra. The respondents neither in their reply nor in the written submission have been able to point out any dissimilarity between the appellant and that of those five candidates who have already



been appointed. The FSL report qua the appellant has been found to be the same as that with regard to others who have been selected.

24. In view of the above, we do not find any reason to reject the claim of the appellant on account of res-judicata.

25. We also find that there has been an arbitrary exercise conducted by the respondents while carrying out their duties of examining the case of the candidates as directed by the Division Bench of this Court and by the Supreme Court. The power given to the executive authorities has to be exercised fairly and without any discrimination. However, we find that the exercise as directed has been done by adopting pick and choose method. Once the authorities took a decision to treat the candidates having their answer sheet signed by one single examiner by two inks fall within untainted category, the concerned committee could not have been allowed to pick up five of them and offer appointment while leaving similarly situated person like the appellant.

26. We are satisfied from the original documents which have been placed before us obtained through RTI that the answer sheets of those candidates who have been appointed also carry two different inks of the same examiner who has examined the answer sheet of the appellant. He apparently has made markings from one pen while examining the answers, however, on the front page he has used another ink and has put his signatures also. There has been no forgery found by the FSL nor there is any ambiguity. No doubt, therefore, can be raised with regard to authenticity of the answer copy. Moreover, once a view is taken, the same has to be applied to all similarly situated persons. Picking up some and leaving others would be anathema to



the principles of equality. It is a case of discrimination *per se* which cannot be allowed to be sustained.

27. We further find that the candidates who were declared untainted and were continuing in employment, were sought to be removed but the learned Single has set aside such show cause notices issued to them and he also granted liberty to seek review of the order passed in LPA No.1168 of 2015, which has also not been done. In the written submissions filed by the respondents, the State is completely silent on this aspect. We, therefore, find no other option but to conclude a case of discrimination towards the appellant. He, therefore, would be entitled to prayer made by him.

28. Accordingly, the appeal is allowed and the respondents are directed to offer appointment to the appellant. The appellant shall be placed along with the other candidates who have been already appointed and he would also be entitled to notional seniority, pay fixation and continuity of service along with all other service benefits.

29. No costs.

30. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

29th May, 2025
rajesh

MEENAKSHI I. MEHTA, J.

I would respectfully differ from my learned brother Judge in my opinion on the merits of the present Letters Patent Appeal.



At the very outset, it would be apposite to refer to the order passed by learned Single Judge on 16.01.2025, as assailed in the instant appeal and the same is reproduced as under:-

“CM No.173-CWP-2025

*Present application has been filed for revival of the main writ petition keeping in view the order 16.08.2023 passed by this Court in **CWP-7888-2017, titled as Jitender Singh vs. State of Haryana and another.***

Notice of the application to the counsel opposite.

Mr. Gaurav Jindal, Addl. A.G. Haryana accepts notice on behalf of the respondent-State and raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application which are duly supported by an affidavit coupled with the fact that learned counsel for the respondent-State raises no objection for the same, application is allowed and the present petition is revived and on the joint request of the parties, same is taken up for hearing.

CWP-1580-2020

1. *Learned counsel for the petitioner submits that the issue raised in the present petition has already been decided by this Court while passing order in **CWP-7956-2017 titled as Subhash Chander vs. State of Haryana and another decided on 08.01.2024** and prays that the present petition may kindly be dismissed in terms of the said order.*

2. *Ordered accordingly.”*

2. From the bare perusal of the afore-quoted order, it becomes crystal clear that it was the appellant/writ-petitioner (here-in-after to be referred as ‘the writ-petitioner’) himself who had sought the dismissal of **CWP No.1580 of 2020**, as preferred by him for seeking the issuance of a writ



in the nature of certiorari, quashing the orders Annexures P-9 and P-11 passed on 22.02.2017 and 27.11.2017 respectively, regarding the rejection of his claim for his appointment to the post of HCS (Executive Branch) on account of his selection in the Recruitment Process conducted in pursuance of the Advertisement No.12 of 2004 and also the Inquiry Report dated 29.01.2016 (Annexure P-5), declaring only 38 candidates, out of total 102 candidates, as innocent, with the further prayer for issuing a writ in the nature of mandamus to consider him for his appointment on the above-said post and to grant him the seniority accordingly. But it is worth-while to mention here that throughout in the grounds as set-forth in the present appeal, the writ-petitioner has not even whispered about the reason for his having opted for the dismissal of his afore-mentioned Civil Writ Petition, instead of putting forth his contentions to contest the same on merits. To add to it, there is nothing in the above-referred impugned order to suggest that the writ-petitioner had ever sought to reserve his right to file an appeal against the same. In such circumstances, he cannot be allowed to take a somersault by moving this appeal to lay challenge to the afore-cited order, on 30.01.2025, i.e just two weeks after it was passed.

3. However, I deem it appropriate to discuss the merits of the instant appeal, so as to meet out the eventuality of presumption, even if for the sake of arguments, regarding its maintainability but before adverting to the same, it is pertinent to briefly recapitulate the facts, as emerging from the perusal of the record. Undisputedly, the vigilance inquiry was initiated to look into the allegations of illegalities and irregularities committed in conducting the recruitment process wherein 102 candidates, including the



writ-petitioner, had been selected for the above-mentioned posts. On the conclusion of this enquiry, the State Vigilance Bureau had submitted its Report dated 09.11.2011 (Annexure P-3) qua the tainted and untainted candidates and concededly, the writ-petitioner was categorized therein as a tainted candidate.

4. Thereafter, the writ-petitioner and some other candidates filed **CWP No.3378 of 2015** for seeking their appointment on the afore-said posts, which had been dismissed by learned Single Judge vide the judgment passed on 29.05.2015, while deciding the bunch of Civil Writ Petitions with the lead petition bearing **CWP No.108 of 2012**. Several candidates filed the appeals, including **LPA No.1168 of 2015**, to assail the above-referred judgment and the same were decided vide judgment Annexure P-7 rendered on 27.02.2016, whereby these appeals had partly been allowed in terms of the decision taken by the State, vide letter dated 26.02.2016, to the effect that the candidates, who had been found innocent by the Committee constituted in pursuance of the order passed in the afore-mentioned appeals on 12.08.2015, would be offered the appointment accordingly. It is worth-while to mention here that the above-said Committee had also found the writ-petitioner to be a tainted candidate. **LPA No.380 of 2016**, as preferred by the writ-petitioner against the judgment dated 29.05.2015, had been decided by the Co-ordinate Bench on 25.08.2017 vide the following order:-

“Parties are ad idem that Letters Patent Appeal against the same very judgment impugned in the present appeal has been decided on 27.02.2016 (LPA No.1168 of 2015). Both are agreed that they will be satisfied if the present appeal is disposed of in the same terms. Ordered



accordingly.

Since a direction has been given to consider the cases of aspirants, the process of consideration be concluded as expeditiously as possible, preferably within a period of 4 months from the date of receipt of a certified copy of the order.”

5. From the afore-cited order, it becomes quite explicit that the writ-petitioner, even after having been categorized as tainted candidate, had chosen not to agitate/contest his above-referred appeal on merits and had, rather, opted for consideration of his claim by the respondent-Government, without seeking any liberty to approach this Court again, on the same cause of action, in the eventuality of the rejection of his claim by the respondent-Government. Then, it has categorically been mentioned in Para No.3(xxi) of the grounds of this appeal that the **SLP**, as preferred by the appellant, i.e writ-petitioner, against the afore-mentioned order, had also been dismissed by the Apex Court vide the order dated 12.04.2019. Thus, the above-said judgment dated 29.05.2015 has gained finality qua the writ-petitioner.

6. Further, in para 3(xxvii) of the grounds of the present appeal, the writ-petitioner has specifically averred that he had approached Hon'ble Supreme Court by way of filing **Writ Petition (Civil) No.691 of 2019** with the prayer for the issuance of a writ in the nature of mandamus that no stigma should be attached to him on the basis of the afore-referred report and also to claim the parity with 38 (thirty eight) so called non-tainted candidates appointed to the above-mentioned posts and the afore-said Writ Petition was dismissed vide the order dated 02.07.2019 (Annexure P-13), while granting him the liberty to move a representation, pointing out parity before the



appropriate forum/authority. A bare reading of order Annexure P-13 shows that ***WP(C) No.691 of 2019*** had been dismissed for its having been withdrawn. It being so, it becomes quite clear that the writ-petitioner did not choose to contest his above-described claim regarding his exoneration from the stigma of being tainted in view of the Inquiry Report dated 09.11.2011 and the Committee's Report dated 29.01.2016, before the Apex Court. All the afore-discussed facts and circumstances unequivocally lead to the only irresistible conclusion to the effect that the writ-petitioner had chosen/opted for not contesting ***LPA No.380 of 2016*** and ***Writ Petition (Civil) No.691 of 2019*** and even ***CWP No.1580 of 2020***, so as to avoid the anticipated rejection of his claim therein and he has, thus, been repeatedly trying to hood-wink the process of the Court since long.

7. Learned Senior counsel for the writ-petitioner has referred to the copy of the above-mentioned order Annexure P-13, as handed down by Hon'ble Supreme Court on 02.07.2019 in ***Writ Petition (Civil) No.691 of 2019 titled as Surender Lather Vs. The State of Haryana and another*** and has pointed out that the present writ-petitioner has been granted the liberty therein to make a representation, pointing out parity, before the appropriate forum/authority. He has further referred to the Report of the FSL and has contended that only different tint of ink as well as writing instrument are reported to have been used for marking on the front page on the table of marks in the answer-sheet of the writ-petitioner and as per the Status-Report dated 06.03.2019 (filed by way of the affidavit of the Deputy Superintendent of Police, State Vigilance Bureau, Hisar), the answer-sheets of 05 (five) candidates out of 38 (thirty eight) candidates, who had been given



appointment by considering them to be untainted/innocent, were also having the same flaw and therefore, the writ-petitioner is also entitled to the relief, as prayed for in the afore-said Civil Writ petition, on the ground of parity and moreover, the respondent-State had issued show-cause notices to several appointed candidates with whom the writ-petitioner claimed parity and the same were challenged before this Court and vide the judgment passed on 16.08.2023, these notices were quashed while granting liberty to the State to seek the review of the order/judgment Annexure P-7 but no review petition has been filed and in these circumstances, it becomes explicit that the orders Annexures P-9 & P-11, as passed by the respondents for the rejection of the claim of the writ-petitioner for his appointment on the above-referred post, are not legally sustainable and therefore, the same are liable to be quashed and resultantly, the impugned order also deserves to be set-aside.

8. However, the afore-raised contentions are devoid of any merit because Annexure P-4 is the Chart containing the findings of the Inquiry Report in respect of all the 102 selected candidates and the name of the writ-petitioner finds mention at Sr. No.20 in the same and the findings, as recorded qua him therein, are as under:-

“In the answer sheet of Hindi & Hindi Essay handwriting of marking differs from the hand writing of marking of other answer sheets.

Different ink has been used for marking on the front page on table of marks and signature of examiner.”

From the above-quoted findings, it becomes crystal clear that besides the different ink having been used for marking on the front page on the table of marks and the signature of the examiner, another major flaw



regarding the handwriting of the marking in the answer-sheets of Hindi and Hindi Essay of the writ-petitioner, being different from the handwriting of the marking of the other answer-sheets, had also been found/noticed.

9. It goes undisputed between the parties that in the earlier round of litigation, Hon'ble Supreme Court, while dismissing *SLP No.21418 of 2006*, had observed that the inquiry initiated by the Vigilance Bureau be allowed to be continued unless the State, in terms of the Report made by the Vigilance Bureau and upon making an inquiry of its own, satisfied itself that the selection process was not tainted, meaning thereby that the Apex Court had approved the conducting of the inquiry by the Vigilance Bureau as well as the submission of its Report for the purpose of decision of the fate of the recruitment process in question by the respondent-State. Inquiry Report Annexure P-3 is quite a detailed one. Further, Annexure P-5 is the Report submitted by the Committee consisting of the Additional Director General, Inspector General and Superintendent of Police as well as Deputy DA of the State Vigilance Bureau, as constituted in pursuance of the order passed by this Court on 12.08.2015 in *LPA No.1168 of 2015* and it has categorically been mentioned in the afore-said Report that the Committee had considered all the aspects of the matter in dispute. It is necessary to point it out here that the State Government had taken the Inquiry Reports, as submitted by the State Vigilance Bureau, into consideration for arriving at the conscious decision in respect of tainted and non-tainted selected candidates which had been conveyed vide the letter dated 26.02.2016 (Annexure P-6) and the Co-ordinate Bench had passed the judgment Annexure P-7 on the basis of this letter by segregating the tainted candidates from the non-tainted ones and as



discussed in the preceding paragraphs, the writ-petitioner did not choose/opt to contest **LPA No.380 of 2016**, as filed by him to assail the above-referred judgment dated 29.05.2015 which had been challenged in **LPA No.1168 of 2015** also, on merits and rather, the same was decided vide the afore-quoted order dated 25.08.2017 and admittedly, the **SLP**, as preferred by him against the above-said order, had been dismissed by Hon'ble Supreme Court on 12.04.2019.

10. So far as the Status-Report dated 06.03.2019 (filed by way of the affidavit of Deputy Superintendent of Police, State Vigilance Bureau, Hisar) regarding the flaws/irregularities in the answer-sheets of 38 (thirty eight) appointed candidates is concerned, it is again pertinent to mention here that the first Inquiry Report dated 09.11.2011 (Annexure P-3) was given by none other than the Director, State Vigilance Bureau whereas the second Report dated 29.01.2016 (Annexure P-5) had been submitted by the Committee, duly constituted by the Director General of the said Bureau and in these circumstances, the affidavit furnished/submitted by an officer of the rank of DSP can, by no stretch of imagination, be construed to have an over-riding effect over the afore-mentioned two Reports and that too, in the circumstances when the Report of the Committee (Annexure P-5), which affirms the first Report (Annexure P-3), has been taken into consideration by the Co-ordinate Bench while deciding **LPA No.1168 of 2015** and other connected appeals. Even otherwise, Para No.7 of the above-said affidavit pertains to the alleged discrepancies noticed during the fresh scrutiny of the answer-sheets of 38 appointed candidates and it has nowhere been reported therein that the answer-sheet of any of the afore-referred candidates, was



found to be having different handwriting, as noticed in Chart Annexure P-4 in the findings regarding the answer-sheets of the writ-petitioner. Then, as regards the report of the FSL, though it might be an important factor in deciding the legality and propriety of the recruitment process but the same cannot be taken to be the sole decisive factor for the Vigilance Bureau to form its final opinion/prepare its Report. In view of the above-discussed facts and circumstances, the writ-petitioner cannot claim parity with the aforementioned 05 (five) appointed candidates.

11. So far as the orders Annexures P-9 and P-11 are concerned, a perusal of Annexure P-9 reveals that the writ-petitioner had been afforded the opportunity of being heard, before rejecting his claim. The Report qua the difference in handwriting of the marking of his answer-sheets of Hindi and Hindi Essay from the handwriting of the marking of the other answer-sheets, had also been taken into consideration. Similarly, order Annexure P-11 regarding the rejection of his representation has also been passed after considering all the relevant factors. The writ-petitioner has not been able to place any cogent material on the file to show/establish any bias, malice or mala-fides on the part of the respondents towards him in rejecting his above-described claim.

12. As regards the contention qua no review petition having been filed by the State in pursuance of the liberty as granted by this Court vide the afore-mentioned judgment dated 16.08.2023, the same does not hold much water because even if for the sake of arguments, the case of the writ-petitioner is presumed to be on the similar footing to that of the above-referred five (05) appointed candidates, even then the facts remains that



parity cannot be claimed for seeking any negative relief. Hon'ble Supreme court has categorically held in **Shanti Sports Club and another Vs. Union of India and others AIR 2010 Supreme Court 433** that “Article 14 of the Constitution declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities.” These observations are fully applicable to the instant case and in the light of the same, it is held that the writ-petitioner cannot be granted the relief, as prayed for by him.

13. The observations made by the Apex Court in **Dinesh Kumar Kashyap and others (supra)**, **Ashok Kumar Yadav (supra)**, **Surendra Narain Singh (supra)** and the Full Bench of this Court in **Sirandeep Singh Panag (supra)**, are of no avail/help to the writ-petitioner to substantiate his claim because the facts and circumstances of the afore-cited cases are distinguishable from those of the present one. In **Dinesh Kumar Kashyap and others (supra)**, a select list qua Group ‘D’ posts in South-East Central



Railway was prepared with 20% extra candidates to avoid the short-fall in vacancies filled and the SECR was not making any appointments from 20% extra candidates despite the fact that 624 posts were lying vacant whereas it is not so in the instant case. Then, in **Ashok Kumar Yadav (supra)**, the issue pertained to the eventuality where the close relatives of some of the members of the Public Service Commission were to appear for interview before it but in the present case, the issue involved is entirely different. Further, in **Surendra Narain Singh (supra)**, the dispute pertained to the inter-se seniority of the Munsifs recruited through two different modes of recruitment whereas in the instant case, the matter does not pertain to any controversy qua the seniority of the writ-petitioner. Again, in **Sirandeep Singh Panag (supra)**, it was observed that the report of the Committee, declaring all the candidates to be tainted, was based on no evidence and was the result of suspicion but in the present case, as discussed earlier, the Reports Annexures P-3 and P-5 are based on the enquiries, as conducted by the State Vigilance Bureau and subsequently, by the duly constituted Committee wherein the tainted candidates have explicitly been segregated from the untainted candidates.

14. As a sequel to the fore-going discussion, it follows that the Letters Patent Appeal in hand is sans any merit and therefore, it deserves dismissal. Resultantly, the same stands dismissed accordingly.

29th May, 2025
pooja

(MEENAKSHI I. MEHTA)
JUDGE



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-290-2025 (O&M)
Reserved on : 18.03.2025

Pronounced on : 29th May, 2025.

Surender Lather ...Appellant

Vs.

State of Haryana and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by: Mr. Chetan Mittal, Senior Advocate, assisted by
Mr. Himanshu Gupta, Advocate and
Mr. Avichal Sharma, Advocate for the appellant.

Mr. Vivek Chauhan, Addl. AG, Haryana.

Mr. Kanwal Goyal, Advocate and
Ms. Sheena Dhaiya, Advocate for the respondent No.2.

SANJEEV PRAKASH SHARMA, J.

Since there is difference of opinion amongst us, it would be in the interest of justice that the Registry may place this matter along with our respective judgments before Hon'ble the Chief Justice for constitution of a Larger Bench, to decide the issue finally.

**(SANJEEV PRAKASH SHARMA)
JUDGE**

**(MEENAKSHI I. MEHTA)
JUDGE**

29th May, 2025
rajesh

- | | | |
|-------------------------------|---|--------|
| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |