# Sahil Aggarwal Vs State of Punjab

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 26, 2014

**Citation:** (2014) 3 SCT 813

**Hon'ble Judges:** Rajesh Bindal, J

**Bench:** Single Bench

**Advocate:** Sourubh Goel, Sameer Sachdeva and Ashok Sharma Nabhewala, Advocate for the Appellant; B.S. Walia, Additional Advocate General, Chetan Mittal, Senior Advocate, R.K. Arora and B.S. Sidhu, Advocate for the Respondent

**Final Decision:** Disposed Off

## Judgement

Rajesh Bindal, J.
This order will dispose of a bunch of petitions bearing CWP Nos. 12835, 14158, 20993 of 2012, 1953, 15477, 18249

and 24401 of 2013, as common questions of law and facts are involved. The issue raised is regarding selection and appointment to the post of

Inspector Grade-II in Food and Civil Supplies Department, Punjab.

2. However, the facts and pleadings from CWP No. 12835 of 2012 are being noticed.

3. Learned counsel for the petitioners submitted that advertisement for selection for 1,289 posts of Inspector Grade II was issued in the year

2010. The cut-off date for qualifications and other eligibility conditions was 31.1.2010. The selection was to be based only on written examination,

for which criteria had been published in the advertisement. 35% of the total marks were prescribed as qualifying marks. On 18.4.2010, written test

was conducted, the result of which was declared on 2.5.2010. It was roll number-wise as well as merit-wise of selected candidates in general

category. There were total 643 posts in general category. Last selected candidate in that category had secured 44.35% marks. Waiting list of 129

candidates in general category was also notified, in terms of which the last candidate was having 43.15% marks. Some of the candidates raised

objection regarding the questions in the written test and also the answer keys thereto. The response of the State was that the test had been

outsourced to University Institute of Applied Management Sciences, Punjab University, Chandigarh, hence the department was not at fault,

however, finding merit in the issues raised the answer sheets were directed to be re-evaluated, in terms of the error found. The revised result was

supplied by the University to the department concerned on 19.5.2011, but still no action was taken on the basis of the revised result, in terms of

which the marks obtained by some of the candidates had increased, whereas in cases of some of the candidates, the same decreased. It was only

in response to the enquiry under the Right to Information Act, 2005 (for short, "the 2005 Act") that copy of the revised result was supplied to the

petitioners. As per the revised result, the last selected candidate in general category at Sr. No. 643 secured 46.58% marks, as compared to the

earlier figure at 44.35% marks. All the private respondents, who have been permitted to continue in service, have secured marks below 46.58%

marks. Some of them were appointed out of the first select list, whereas some were appointed out of the waiting list. The petitioners have secured

marks more than the private respondents in the revised result, hence, they deserve to be appointed.

4. It was submitted that when under the 2005 Act, the revised result was intimated to the petitioners, CWP Nos. 20226 of 2011 Pawan Bishnoi

and another v. State of Punjab and others, 22596 of 2011 Sahil Aggarwal v. State of Punjab and others and 3170 of 2012 Sonu Sharma v. State

of Punjab and another were filed claiming appointment on the plea that persons already appointed were having marks less than the petitioners

therein. The same were disposed of by this court by directing the authorities to consider their representations. In terms thereof, in CWP Nos.

12835 and 14158 of 2012, vide orders dated 31.5.2012, the claim of the petitioners therein was rejected.

5. While impugning the aforesaid order, learned counsel for the petitioners argued that the stand taken therein is not tenable in law. Once it is found

that in terms of the revised result, the candidates, who do not figure upto 643 in merit list and had been appointed earlier on the basis of erroneous

result, they were required to be thrown out and the appointments were to be made on merit only. Though the revised result had been received by

the department concerned on 19.5.2011, but no action was taken immediately. Last appointments were made upto March, 2011. All the selected

candidates were on probation at that time. They could very well be removed and appointments could be made strictly on merit. The point raised in

the impugned order that two years having been passed after the appointments were made, removal of the selected candidates will result in loss to

the exchequer as they have gained experience and were imparted training as well is not tenable as they were allowed to continue in service despite

the revised result being available, in terms of which they did not find place in the select list. Even as per the figures mentioned in the impugned

order, only 97 candidates were required to be removed and not all of them, out of 643 in general category. That exercise could be done very

easily. Even no notice was required to be issued to them as they were beneficiary of a wrong committed by the agency conducting the written test.

The prayer of the petitioners, in terms of the directions issued by this court in the earlier writ petitions, was required to be considered in the light of

the fact that persons, who secured lesser marks than the petitioners in the revised result had been permitted to continue. The petitioners being

aggrieved had been agitating their claim. No other person was before the court having accepted the result, hence, they could very well be offered

appointment without even disturbing the selected candidates if the department so desired.

6. It was further submitted that even after the revised result, when 55 new candidates found place in the select list, only 29 of them had joined

service and 26 did not join, hence, the posts were and are still available. It was further submitted that even if there was error in preparation of merit

list and the persons lower in merit were appointed, more meritorious candidates, who had been left out, had preferential right and they were to be

appointed. In support of their arguments, reliance was placed upon Khushi Ram Vs. The Banking Service Recruitment Board and Another, and

Jagminder Singh @ Joginder Singh and another v. State of Haryana and others, 2006 (3) SLR 793.

7. On the other hand, learned counsel for the State submitted that the petitioners do not have a case at all. Their claim is totally misconceived. It is

for the reason that after the revised result was received by the department, 643 posts, which were originally advertised, were filled up as per the

revised merit. The last selected candidate in terms thereof secured 46.58% marks which had gone down to 45.86% marks in second counselling.

The highest marks secured by one of the petitioners in the bunch of petitions are 45.14%. As the same are less than the last selected candidate,

even in terms of the revised merit list, they cannot claim appointment. They cannot compare their case with the candidates, who were appointed in

terms of the result declared first time, which had to be revised finding certain errors in the questions and answer keys. 53 candidates were found

beyond the cut-off marks. As they had gained sufficient experience on the posts after their selection, it was decided not to remove them. They

were allowed to continue. They were adjusted on humanitarian grounds against the vacant posts beyond 643. The petitioners could stake their

claim only upto the vacancies advertised. If they do not find place in the merit upto that stage, they cannot claim appointment.

8. Learned counsel for the State further argued that the only issue raised in the present petitions is as to whether 53 candidates who, according to

the petitioners, had secured marks lower than them in the revised merit list, should be permitted to continue or removed from service and in the

alternative, whether the petitioners deserve to be appointed considering the fact that the candidates securing marks less than them are being

allowed to continue. It was argued that the petitioners will not have a preferential right as there are number of candidates, who had secured marks

in between the last candidate selected and the marks obtained by the petitioners, firstly they will have to be given a chance. It was further submitted

that the reason as assigned in the impugned order while permitting 53 candidates, who could not find place in the revised merit list, is totally

justified. There is no plea of fraud or misrepresentation by them. It was on account of an error by the selecting agency, which was assigned the job

of conducting written test, on the basis of which they were offered appointment. They having already completed about two years of service should

not be ousted now as they have been imparted training and have gained experience on the post. In support of the plea, reliance was placed upon

judgments of Hon''ble the Supreme Court in Tejinder Kaur and Others Vs. Lady Constable Raj Kumari and Others, Tridip Kumar Dingal and

Others Vs. State of West Bengal and Others, Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., and Vikas Pratap Singh and

Others Vs. State of Chhattisgarh and Others,

9. Learned counsel for the State further submitted that in pursuance to the advertisement, 60,000 candidates applied and 40,000 candidates

appeared in the written test. Most fair procedure was adopted as the selection was on the basis of written test only, the job of which was entrusted

to Panjab University, an independent agency. Seniority of the candidates selected in the process either at the first instance on the basis of

erroneous result or at the second time after the revised result, will be fixed strictly in terms of the guide-lines laid down in Rajesh Kumar''s case

(supra).

10. Learned counsel appearing for the selected candidates/private respondents, who could not find place in the merit list in the revised result,

submitted that they being not a party to any misrepresentation or fraud at the time when the result was declared first time, cannot be ousted, having

been appointed in terms thereof. Most of the candidates had either left their earlier job for joining the service in question or had preferred the

present service despite having been selected in other departments/institutions. Having been selected, the private respondents did not apply or

compete for any other post as a result of which they missed number of opportunities and, therefore, they will suffer irreparable loss in case

removed from service without they being at fault. They have their families to support. Some of them have become over-age for government

service. Considering these factors and the law laid down by Hon''ble the Supreme Court, they should not be removed from service. They have

been performing their duties to the best of their ability. The department has no complaint.

11. It was further submitted that the claim in the present petitions is barred on the principle of constructive res judicata as in the earlier petitions

filed by them, the selection and appointment of the private respondents was not impugned. The only prayer made was that the petitioners therein

being more meritorious than the last selected candidate, should be appointed. He further submitted that without even disturbing the private

respondents, as there may be posts still lying vacant in the department, if the State so desires as the petitioners are agitating their claim from the

very beginning, they can be offered appointment as no other person, who may be more meritorious, is aggrieved as no one claimed appointment

even if he was higher in merit. He further submitted that the petitioners otherwise have no locus to file the present petition and seek relief from this

court. It is for the reason that even if the revised result is applied as such, the petitioners do not find place in the merit list. It is not in dispute that

both the petitioners as well as the selected candidates are fully eligible. It was by way of process of elimination that selections were to be made, the

criteria for which the written test only. It was further submitted that the selection and appointments made on the basis of first result, which was later

on revised finding error, cannot be set aside for the reason that it will not be restricted to general category only. Out of 1,289 posts advertised,

only 643 were general category candidates. Rest all belonged to reserved categories. There was change in the marks obtained by all the

candidates in the revised result. Even in those categories, some of the appointed candidates may have to be removed, whereas some will find

place. Application of revised result cannot be partial.

12. One of the private respondents is stated to be in Physically Handicapped Category, whereas one has been selected in Sports Category and

not general, as is sought to be the issue raised in the present petitions.

13. In response to the submissions made by learned counsel for the respondents, learned counsel for the petitioners submitted that the principle of

constructive res judicata will not be applicable in the present case as when some of the petitioners had earlier filed the writ petitions, the revised

result had not been given effect to. It was only after disposal of the earlier writ petitions that revised result was given effect to in July, 2012

thereafter the impugned order was passed on 31.5.2012. Even if some of the selected candidates had left other job or did not apply elsewhere

after their selection, they had taken a calculated risk as all the selections are generally challenged in court. It was further submitted that the

judgments sought to be relied upon by learned counsel for the respondents will not be applicable in the facts and circumstances of the case for the

reason that in those cases, the candidates, who did not find place in the merit list on the basis of revised result, were removed from service and

they had challenged the action of the State. These were not the cases where the petitioners raised the issue that they being more meritorious than

the selected candidates be offered appointment.

14. Heard learned counsel for the parties and perused the paper book.

The issues, which require consideration by this court are:

1) Whether the private respondents, who had been appointed in terms of their merit on the basis of result initially declared, but later on when the

result was revised finding certain errors therein, should be removed from service as in the revised result, they do not find place in the merit list?

2) Whether the petitioners, who have secured marks more than the private respondents, who have been permitted to remain in service, deserve to

be appointed or not?

Issue No. 1

15. The issue as to whether the candidates who had been appointed on the basis of an erroneous result declared at the first instance without there

being any allegation of fraud or misrepresentation on the part of the selected candidates, should be removed from service as they had secured

marks less than the last selected candidate in terms of the revised list, has been gone into by Hon''ble the Supreme Court on a number of

occasions.

16. In Rajesh Kumar''s case (supra), finding that an erroneous ""model answer key"" was applied for evaluation of the answer scripts of the

candidates appearing in a competitive examination, the High Court directed for conduct of fresh examination and to re-draw the merit list on the

basis thereof. The issue there was raised by the candidates, who had already been appointed on the basis of an erroneous evaluation of the answer

scripts. The learned Single Judge of the High Court directed cancellation of the entire result and the appointments made on the basis thereof.

However, the Division Bench, on an appeal, held that the entire examination need not be cancelled as there was no allegation of any corrupt motive

or malpractice qua all the question papers. The fresh examination in one subject was held to be sufficient to rectify the mistake. The candidates

already selected were allowed to continue till the fresh result was to be declared. Hon''ble the Supreme Court opined that once it was found that

the answer key to some of the questions was not correct, the same was bound to affect the result of examination qua all the candidates whether

they were party to the proceedings or not. The result itself was vitiated on account of application of a wrong key. All the appointments made

would also be rendered unsustainable. The High Court under these circumstances was entitled to mould the relief prayed for in the writ petition and

issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an

undeserved advantage over others by application of an erroneous key. It was held that instead of directing fresh examination, the appropriate way

was to correct the answer key and get the answer scripts reevaluated on the basis thereof when there was no allegation of any malpractice, fraud

or corrupt motive, which can possibly vitiate the entire examination. This process was less expensive and quicker as well.

17. Hon''ble the Supreme Court in the aforesaid judgment accepted the submission made on behalf of the selected candidates on the basis of

alleged incorrect answer key that in case they do not fall within the select list prepared after re-evaluation of the answer sheets with the help of

correct answer key, they should not be ousted. The reason was that they were not responsible for the error committed and further they had served

the State without any complaint for nearly 7 years. Most of them may have become over-age for fresh recruitment in the State or outside the State.

They had lost opportunity to appear in any subsequent examination held after their selection. Their ouster from service, once selected on the basis

of a competitive examination without there being any allegation of malpractice, misrepresentation or other extraneous consideration, will cause

undue hardship to them and ruin their careers and lives. It was found that the selected candidates did not, in any manner, contributed to the

preparation of erroneous key or the distorted result. In these circumstances, ouster of the candidates, who may not fall in the select list after re-

evaluation of the result, need not be an inevitable and inexorable consequence. However, reevaluation process may additionally benefit those who

have lost the hope of appointment on the basis of a wrong key applied for evaluating the answer sheets at the first place. The candidates, who find

place in the merit list after re-evaluation, would certainly be entitled to appointment and place in the seniority list as per their merit position.

Relevant paragraphs of the judgment and the directions issued by Hon''ble the Supreme Court in the aforesaid judgment are extracted below:

20. That brings us to the submission by Mr. Rao that while reevaluation is a good option not only to do justice to those who may have suffered on

account of an erroneous key being applied to the process but also to the writ petitioners. Respondents 6 to 18 in the matter of allocating to them

their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the appellants should they be found to fall below the

cut-off mark in the merit list. Mr. Rao gave two reasons in support of that submission. Firstly, he contended that the appellants are not responsible

for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the appellants were

guilty of any fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the court or justified their ouster.

Secondly, he contended that the appellants have served the State efficiently and without any complaint for nearly seven years now and most of

them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear

in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted

competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them

and ruin their careers and lives. The experience gained by these appellants over the years would also, according to Mr. Rao, go waste as the State

will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long

time. Mr. Rao, therefore, prayed for a suitable direction that while re-evaluation can determine the inter se position of the writ petitioners and the

appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cutoff line.

21. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any

manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the

appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the

appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may

additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of

those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-

evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

22. In the result, we allow these appeals, set aside the order passed by the High Court and direct that:

22.1 Answer scripts of candidates appearing in "A" series of competition examination held pursuant to Advertisement No. 1406 of 2006 shall be

got reevaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) C.N. Sinha and Prof. K.S.P. Singh and the

observations made in the body of this order and a fresh merit list drawn up on that basis.

22.2 Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn

their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit

whatsoever.

22.3 In case the writ petitioners, Respondents 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall

relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back

wages or other incidental benefits.

22.4 Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of

selected candidates based on the first selection in terms of Advertisement No. 1406 of 2006 and the second selection held pursuant to

Advertisement No. 1906 of 2006.

22.5 The needful shall be done by the respondents, State and the Staff Selection Commission expeditiously but not later than three months from

the date a copy of this order is made available to them.

[Emphasis supplied]

18. In Vikas Pratap Singh''s case (supra), Hon''ble the Supreme Court considered the issue in the case of the candidates, who were removed from

service having not found place in merit list in terms of the revised result. When they approached the court, the High Court allowed them to continue

in service. The issue considered by Hon''ble the Supreme Court was as under:

Whether the VYAPM (respondent-Board) after publication of the select list and passing of the appointment orders also on the basis of evaluation

of questions, could have done the exercise of re-evaluating the answers after editing and reframing answers, and prepare the second select list for

fresh recruitment of the candidates, cancelling the first select list?

19. While considering the issue and relying upon an earlier judgment of Hon''ble the Supreme Court in Rajesh Kumar''s case (supra), Hon''ble the

Supreme Court held that as the candidates, who had been appointed in terms of erroneous evaluation of answer sheets at the first time and having

served the State for considerable length of time but do not find place in the merit list drawn after re-evaluation, should be permitted to continue,

however, they were to be placed at the bottom of fresh merit list. While referring to maxim of fraus et jus nunquam cohabitant (fraud and justice

never dwell together), it was opined that the same principle continues to dwell in spirit and body of service jurisprudence. No right is vested in a

candidate who obtains employment by fraud, mischief, misrepresentation or malafide. He cannot be permitted to reap the benefits of wrongful

appointment. However, the cases of the candidates, who were appointed without any mistake on their part, the courts have always taken a

sympathetic view. Relevant paras of the judgment are extracted below:

20. The pristine maxim of fraus et jus nunquam cohabitant (fraud and justice never dwell together) has never lost its temper over the centuries and

it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests

in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: District Collector and Chairman,

Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, S.P. Chengalvaraya Naidu

(dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, It

is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of

the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of

the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of

various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (See:

Vinodan T. and Others Vs. University of Calicut and Others, ; State of U.P. Vs. Neeraj Awasthi and Others,

21. In Girjesh Shrivastava and Others Vs. State of M.P. and Others, the High Court had invalidated the rule prescribing selection procedure which

awarded grace marks of 25 per cent and age relaxation to the candidates with three years'' long non formal teaching experience as a consequence

of which several candidates appointed as teachers at the formal education institutions under the said rule stood ousted. This Court while concurring

with the observations made by the High Court kept in view that upon rectification of irregularities in appointment after a considerable length of time

an order for cancellation of appointment would severely affect economic security of a number of candidates and observed as follows:

28. ...Most of them were earlier teaching in Non-formal education centers, from where they had resigned to apply in response to the

advertisement. They had left their previous employment in view of the fact that for their three year long teaching experiences, the interview process

in the present selection was awarding them grace marks of 25 per cent. It had also given them a relaxation of 8 years with respect to their age.

Now, if they lose their jobs as a result of High Court"s order, they would be effectively unemployed as they cannot even revert to their earlier jobs

in the Non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families.

Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in

fact awaiting their salary rise at the time of quashing of their appointment by the High Court.

Therefore, mindful of the aforesaid circumstances this court directed non-ouster of the candidates appointed under the invalidated rule.

22. In Union of India (UOI) and Another Vs. Narendra Singh, this Court considered the age of the employee who was erroneously promoted and

the duration of his service on the promoted post and the factor of retiring from service on attaining the age of superannuation and observed as

follows:

31. The last prayer on behalf of the respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior

Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so, that only few days have remained. He will be

reaching at the age of superannuation by the end of this month, i.e. December 31, 2007. In our view, therefore, it would not be appropriate now to

revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior

Accountant (Functional) till he reaches the age of superannuation, i.e. upto December 31, 2007. At the same time, we hold that since the action of

the Authorities was in accordance with Statutory Rules, an order passed by the Deputy Accountant-General cancelling promotion of the

respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as

Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral

benefits would be fixed accordingly by treating him as Accountant all through out.

32. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant

(Functional) till he reaches the age of retirement i.e. December 31, 2007 and salary paid to him in that capacity will not be recovered, his retiral

benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of the case, there shall be no order

as to costs.

23. This Court in Gujarat State Dy. Executive Engineers'' Association Vs. State of Gujarat and Others, although recorded a finding that

appointments given under the ''wait list'' were not in accordance with law but refused to set aside such appointments in view of length of service

(five years and more).

24. In Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, even though the appointments were held to be improper, this Court

did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed:

We have extended equitable considerations to such selected candidates who have worked on the posts for a long period.

(See: M.S. Mudhol and Another Vs. S.D. Halegkar and Others, and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others,

25. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be

attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit

list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would

have justified their ouster upon re-evaluation and deprived them of any sympathy from this court irrespective of their length of service.

26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent - State for more than

three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also

adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous

evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue

prejudice to the candidates selected qua the revised merit list.

27. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The

candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

28. We clarify that their appointment shall be for all intents and purpose be fresh appointment which would not entitle the appellants to any back

wages, seniority or any other benefit based on their earlier appointment.

[Emphasis supplied]

20. The facts in Tejinder Kaur''s case (supra) were peculiar where the answer sheets of B1 test held for the purpose of sending the Constables to

lower school training course, were directed to be re-evaluated by the High Court, for which there was no provision, as only a candidate could

seek re-evaluation of own answer sheet and not of others. However, in that case, the candidates, who got the benefit of the result on the basis of

first evaluation of the answer sheets, were not disturbed as there was no plea of fraud or misrepresentation against them.

21. The enunciation of law, as emerges from the aforesaid cases, is that in case some candidates are appointed on the basis of result of competitive

examination and later on it was found that there was some error either in the questions or any answer key, their appointments is not to be set aside

if they had worked on the selected post for three years or more, unless there are allegations of fraud, mischief or misrepresentation against the

selected candidates. In the present case, the selection and appointments were made as a consequence of the result of the written test declared on

2.5.2010. The test was out-sourced to an independent agency, i.e., Panjab University. Undisputedly the last appointment from the waiting list was

made in March, 2011, meaning thereby for the last three years they are working. The appointments on the basis of revised result after correction of

the answer keys were made subsequently, hence, the appointment of the candidates, who got merit position in terms of the result declared at the

first place cannot be set aside even if they have not got merit position in terms of the revised result declared after correction of the answer keys.

22. However, as stated by learned counsel for the State, the seniority and benefits accruing to the candidates earlier selected and who were

appointed on the basis of revised result shall be strictly in terms of the guidelines given in judgment of Hon''ble the Supreme Court in Rajesh

Kumar''s case (supra).

23. Hence, the selection and appointment of the candidates, who were appointed on the basis of evaluation of answer sheets at first time and who

do not find place in revised merit list, does not deserve to be set aside.

Issue No. 2

24. In the present case, 1289 posts of Inspector Grade-II in Food and Civil Supplies Department were advertised, out of which 643 posts were

of general category. The appointments were to be made strictly on the basis of marks obtained in the written test. The last selected candidate

secured 44.35% marks and the last person appointed from the waiting list had secured 43.15% marks. After the declaration of result, when the

issues were raised regarding wrong questions and the answer keys, the answer sheets were got re-evaluated. New merit list was prepared, in

terms of which the candidate at Sr. No. 643 secured 46.58% marks. The private respondents in the petitions had secured marks less than 46.58%

in terms of the revised merit list. In fact, respondent No. 4 in CWP No. 12835 of 2012 had secured minimum of them, namely, 42.63%. All the

petitioners in the present petitions had secured marks more than him in terms of the revised merit list.

25. The stand of learned counsel for the State was that after the answer sheets were re-evaluated, 643 candidates were appointed in terms

thereof, as was the number of posts advertised in general category. However, seven of them did not join and 636 candidates joined service. After

re-evaluation of the answer sheets, when the cut off marks were upto 46.58% which went down to 45.86%, in 2nd counselling, 584 candidates,

who were earlier selected, found place in the merit list. Remaining 52 candidates, who were appointed in the first round but could not find place in

the merit list after re-evaluation of the answer sheets, were permitted to continue on compassionate grounds against the posts lying vacant with the

department other than 643 posts, which were advertised. As 584 posts were filled up in terms of the merit position after re-evaluation of the

answer sheets, out of 643 posts advertised, 59 posts remained vacant. Inadvertently, 55 candidates in order of their merit on the basis of result

declared after reevaluation of the answer sheets were called for verification of the documents. Out of 55 candidates, 35 candidates joined service,

hence, the total posts filled in general category were 584+35, i.e., 619 and 24 posts remained vacant. It was submitted that even if those 24 posts

are filled up as per the second merit list, the petitioners do not figure, hence, they cannot seek appointment.

26. In the present set of petitions, there are total 10 petitioners. Their definite case is that they have secured marks more than the candidates, who

have been retained in service, though securing less marks than the petitioners even in the revised result. It is not that as a consequence of re-

evaluation of the answer sheets the result of only general category candidates would have been affected. In general category, there were merely

643 posts as against total 1289 posts, but none of the candidates in other categories is before this court raising any grievance, hence, that issue is

not being gone into. The petitioners herein are agitating their claim before the court. Four of them had earlier filed petitions claiming that they

deserve to be appointed as persons lower in merit were still in service. Their petitions were disposed of with a direction to the authorities to

consider their claim, which was rejected. Their plea that at that stage the appointment of the candidates, who could not find place in the merit list

on the basis of revised result, could not be challenged as the revised result was not made known to the public. It was supplied subsequently in

response to an application filed under the 2005 Act. Thereafter, by challenging the order passed in pursuance of the directions issued by this court

in the first found of litigation, the appointment of the candidates, who did not find place in the merit list after re-evaluation of the answer sheets, was

also challenged. Under these circumstances, the plea of constructive res judicata raised by learned counsel for the private respondents deserves to

be rejected, as there was no occasion to challenge the selection in the first round of litigation.

27. However, as far as the plea of the petitioners that the candidates, who secured marks less than the petitioners in terms of the merit list prepared

after re-evaluation of the answer sheets having been appointed, the petitioners also deserve to be offered appointment is certainly meritorious. It is

the admitted case of the official respondents that 24 posts out of 643 posts advertised initially remained vacant. The petitioners in the bunch of

petitions are 10 in number. The plea of learned counsel for the State that in case those 24 posts are to be filled up now, the offer of appointment

has to be made on the basis of merit is merely to be noticed and rejected for the reason that advertisement pertains to the year 2010. The last

appointment on the basis of first merit list was made in March, 2011. No other candidate than the petitioners felt aggrieved, who approached the

court seeking any relief. The petitioners are agitating their claim. CWP Nos. 20226 and 22596 of 2011 and 3170 of 2012 were filed earlier, in

which four petitioners had raised the issue, however, after the revised result was made public, the present petitions were filed by merely 10

candidates and no other candidate felt aggrieved. In Tridip Kumar Dingal''s case (supra), Hon''ble the Supreme Court, while refusing to set aside

the appointment of the candidates, directed appointment of the candidates who approached the court within reasonable time while declining relief

to others before the court on account of delay and laches. Considering the aforesaid facts, the petitioners also deserve to be offered appointment.

However, it is made clear that they will be entitled to all the benefits from the date they are appointed in service.

RELIEF

(1) For the reasons stated above, it is held that selection and appointment of the candidates, who were appointed on the basis of evaluation of the

answer sheets at the first time, who do not find place in the revised merit list, does not deserve to be set aside. Ordered accordingly.

(2) The petitioners, who have secured more marks than the last appointed candidate either in the process of selection in the first round or the

second round be offered appointment. The needful be done within a period of two months from the date of receipt of copy of the order. It is made

clear that they shall be entitled to all the benefits from the date they join the service. With the above observations, the writ petitions stand disposed

of.