

abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.

19. Although in *Bhajan Lal's case* (supra), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.”

20. The trial Court has committed grave error in proceeding to frame charges based on final report in this case wherein the investigation could have been done only after complying with the provisions of law, as contemplated. In view of the caveat illustrated in the afore cited decisions, the proceedings initiated against the petitioner are untenable, especially when the raid leading to lodging of FIR itself was from the threshold marred by procedural irregularity. Thus same is a ground sufficient to quash the FIR and consequent proceedings in order to prevent abuse of process of law and secure of ends of justice.

21. As sequel thereto, the present petition is allowed. FIR No. 98 dated 25.7.2020, Annexure P-1 and the consequent proceedings arising therefrom are hereby quashed.
SS

(2022-4)208 PLR 692

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Mahabir Singh Sindhu.

KAMAL KANT and others – Petitioners,

Versus

STATE OF PUNJAB and others – Respondents.

CWP-11409-2021 (O&M)

Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020, Rule 6(10) – Consumer Protection Act, 2019 (35 of 2019) – Whether the State Government while exercising power under Rule 6(10) is free to choose any candidate from the panel prepared by the Selection Committee for appointment to the post of President, District Commission, irrespective of his/her merit position without assigning any valid reason’s – Chief Minister, in utter disregard of the recommendation made by the Selection Committee, ignored the merit position of the petitioners without assigning any reason and simply followed the ‘pick and choose’ policy while preferring private respondents for appointment to the post(s) in question – If the State Government is allowed to choose any candidate from the panel irrespective of his or her merit, without assigning any valid reason, then recommendation made by the Selection Committee would be rendered otiose and that would be complete negation of the Rule 6 - Besides this, Rule 6(1) clearly envisages that President, District Commission shall be appointed by the State Government on the recommendation of the Selection Committee - As such, the State Government has to follow the recommendation of the Selection Committee and it cannot ignore the merit without assigning any valid reason(s) in view of the provisions of Rule 6 - Action of the State Government while ignoring the genuine claim of petitioners and issuing impugned orders of appointment – Set aside.

[Para 9, 19, 24]**Cases referred to:-**

1. (2010)12 SCC 687, *S. Chandramohan Nair v. George Joseph*.
Mr. Amit Jhanji, Senior Advocate with Mr. Abhishek K. Premi, for the petitioners. *Ms. Anu Chatrath, Addl.A.G., Punjab. Mr. D.S. Patwalia, Senior Advocate with Mr. A.S. Chadha*, for respondent Nos.5, 7, 8 & 9. *Mr. P.S. Poonia*, for respondent No.4. *Mr. J.S. Mundi*, for respondent No.6.

Mahabir Singh Sindhu, J. – (15th September, 2022) –

“The Courts have recognized that the Minister cannot be impartial in the way that a Judge would be.”

Prof. Paul Craig’s
 Administrative Law
 (Ninth Edition, 2021)
 by Thomson Reuters.

1. Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned order dated 11.06.2021 (P-8), vide which, respondent Nos.4 to 9 were shortlisted for appointment to the post(s) of President, District Consumer Disputes Redressal Commission, (for short, ‘President, District Commission’) by the Department of Food, Civil Supplies and Consumer Affairs, Government of Punjab (hereinafter referred as ‘State Government’); further prayer is for quashing of the impugned order dated 23.06.2021 (P-10) whereby, respondent Nos.5 to 9 have been appointed to the aforesaid posts. Also prayed that respondent Nos.1 to 3 be directed to appoint petitioners against the posts in question as per order of merit prepared by the Selection Committee in terms of Rule 6 of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (for short, ‘Rules of 2020’).

2. Facts are not in dispute.

3. The State Government vide Public Notice dated 09.01.2021 invited applications for filling up 9 (nine) posts of President, District Commissions on whole time basis. In response to the aforesaid public notice, petitioner along with other candidates, including respondent Nos. 4 to 9, submitted applications within stipulated period. After scrutiny of their applications, provisional list of 42 eligible candidates (P-5) was uploaded for interview as per schedule given below:-

“Schedule of Interviews

Venue: Committee Room of Hon’ble High Court of
 Punjab and Haryana at Chandigarh

| Date | Roll Nos. | Reporting time |
|------------|-----------|---------------------------------|
| 02.04.2021 | 01 to 21 | 9.00 A.M. (in Court Room No. 5 |
| | 22 to 42 | 11.00 A.M. (in Court Room No. 5 |

4. Upon assessing suitability of all the eligible candidates, the Selection Committee made district-wise recommendation in order of merit and forwarded the same through Registrar General of this Court for appointment to the State Government vide communication dated 06.04.2021 (P-7).

5. After taking into consideration the above recommendation, the State Gov-

ernment, vide impugned order dated 11.06.2021, shortlisted total 8 candidates, (including respondent Nos.4 to 9) for medical examination; but finally, 7 candidates (including respondent Nos.5 to 9) were offered appointment vide order dated 23.06.2021. All the petitioners are claiming to be higher in merit than private respondents, but despite that they have been ignored; hence, present writ petition.

6. Learned Senior Counsel contended on behalf of petitioners that they are higher in merit than respondent Nos.4 to 9; yet all of them have been ignored by the State Government while passing the impugned orders; thus, the same are not legally sustainable being violative of Rule 6 of the Rules of 2020. Further contended that while ignoring the legitimate claim of petitioners, the State Government did not assign any reason; rather adopted method of pick and choose policy; thus, their action is arbitrary being in violation of Articles 14 & 16 of the Constitution. Also contended that in view of the provisions of Rule 6(10), it is obligatory upon the State Government to follow the recommendation strictly in order of merit prepared by the Selection Committee, but private respondents have been appointed in total disregard of the rules; thus, the same is not legally sustainable. Further contended that recommendation made by the Selection Committee is sacrosanct for appointment to the post(s) in question and as such, action of the State Government is indefensible in law. Again submitted that at the time of consideration of the recommendation under Rule 6(10), the role of State Government is only to verify the credentials and antecedents of the recommended candidates with reference to Rule 6(11) and they cannot re-assess or tinker with the merit of candidates which has already been assessed by the Selection Committee; nor the State Government can ignore a candidate who is higher in merit, unless he or she is suffering from any disqualification under Rule 5.

7. On the other hand, learned State counsel as well as learned counsel for private respondents submitted that Rules of 2020 have been framed by the Union of India, but has not been impleaded as party and as such writ petition is liable to be dismissed for non-joinder of necessary party. Further submitted that as per settled legal proposition, a candidate has only a right of consideration in accordance with law for public employment, but no one can claim appointment as a vested right. Also submitted that mere inclusion of a candidate in the selection panel does not confer any indefeasible right for appointment against a post; rather it is the prerogative of the appointing authority to choose the best suitable candidate from the panel in public interest. Further submitted that as per Rule 6(1), the State Government is the appointing authority for the post of President, District Commission and the only fetter placed under the Rules is to select a candidate from the panel of names recommended by the Selection Committee and nothing beyond that. Again contended that in view of the provisions of Rule 6(10), the State Government is fully empowered to make appointment from the panel, but it is not obligatory to follow the order of merit in the manner as recommended by the Selection Committee. Learned counsel for private respondents vehemently argued that the State Government is free to choose a candidate from the panel prepared by the Selection Committee, unless there is breach of any legal provision(s) while following such a course. Also contended that it is not the case of petitioners that respondent Nos.4 to 9 were ineligible for the post(s) in question; nor there is any allegation of mala fide against the authorities and as such, action of the State Government is in conso-

nance with Rule 6. Further contended that Consumer Protection Act, 2019 (for short, the Act of 2019) & Rules of 2020 do not define the words ‘recommendation’ or ‘in order of merit’ or ‘consideration’ and as such, these are to be construed in an ordinary manner for the purpose mentioned in the context. Also contended that as per Rules of 2020, the Selection Committee shall finalize a panel for consideration of the State Government and the Government is bound only to the extent that appointment(s) cannot be made beyond the panel so recommended by the Selection Committee. Learned State counsel while making reference to para No.9 of preliminary objections, specifically submitted that “Government is not bound to show reasons for making the appointments.” and the impugned orders have been passed while exercising power under Rule 6(10); thus, the same do not deserve any interference by this Court under Article 226 of the Constitution.

8. Heard learned counsel for the parties and perused the records.

9. The points for consideration of this Court would be as under:-

(i) Whether the State Government while exercising power under Rule 6(10) is free to choose any candidate from the panel prepared by the Selection Committee for appointment to the post of President, District Commission, irrespective of his/ her merit position without assigning any valid reason(s)?

(ii) Whether in view of facts and circumstances of the present case, impugned orders dated 11.06.2021 & 23.06.2021 passed by the State Government are legally sustainable?

10. There is no quarrel that appointment to the post(s) in question is governed under the provisions of the Act of 2019 as well as Rules of 2020 and relevant provisions of the same read as under:-

Act of 2019

“Chapter IV

Consumer Disputes Redressal Commission

28. *Establishment of District Consumer Disputes Redressal Commission.*- (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State:

Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.

(2) Each District Commission shall consist of—

(a) a President; and

(b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

29. *Qualifications, etc., of President and members of District Commission* -- The Central Government may, by notification, make rules to provide for the qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.”

Rules of 2020

“2. *Definitions.*—(1) In these rules, unless the context otherwise requires, -

(a)

(b) “Selection Committee” means the Selection Committee referred to in sub-rule (1) of rule 6;

(2)

4. *Qualifications for appointment of President and member of District Commission.*—(1) A person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge.

(2)

5. *Disqualification for appointment of President or member of State Commission and District Commission.*—A person shall be disqualified for appointment as the President or a member of a State Commission or District Commission if he –

(1) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(2) has been adjudged to be insolvent; or

(3) is of unsound mind and stands so declared by a competent court; or

(4) has been removed or dismissed from the service of the State Government or Central Government or a body corporate owned or controlled by such Government; or

(5) has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the President or a member.

6. *Procedure of appointment.*—(1) The President and members of the State Commission and the District Commission shall be appointed by the State Government on the recommendation of a Selection Committee, consisting of the following persons, namely: –

(a) Chief Justice of the High Court or any Judge of the High Court nominated by him Chairperson;

(b) Secretary in charge of Consumer Affairs of the State Government – Member;

(c) Nominee of the Chief Secretary of the State— Member.

(2) The Secretary in charge of Consumer Affairs of the State Government shall be the convener of the Selection Committee.

(3) No appointment of the President, or of a member shall be invalid merely by reason of any vacancy or absence in the Selection Committee other than a vacancy or absence of the Chairperson.

(4) The process of appointments shall be initiated by the State Government at least six months before the vacancy arises.

(5) If a post falls vacant due to resignation or death of a member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.

(6) The advertisement of a vacancy inviting applications for the posts from eligible candidates shall be published in leading newspapers and circulated in such other manner as the State Government may deem appropriate.

(7) After scrutiny of the applications received till the last date specified for receipt of such applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee.

(8) The Selection Committee shall consider all the applications of eligible applicants referred to it and if it considers necessary, it may shortlist the applicants in accordance with such criteria as it may decide.

(9) The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.

(10) The Selection committee shall recommend a panel of names of candidates for appointment in the order of merit for the consideration of the State Government.

(11) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.

(12) Every appointment of a President or member shall be subject to submission of a certificate of physical fitness as indicated in the annexure appended to these rules, duly signed by a civil surgeon or District Medical Officer.

(13) Before appointment, the selected candidate shall furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as a President or member.”

11. Rule 2 (ibid) defines the Selection Committee. According to which, the Selection Committee means the Selection Committee referred to in Sub-rule (1) of Rule 6.

12. Rule 6(1) says that Selection Committee shall be consisting of the following persons:-

(i) Chief Justice of the High Court or his nominee Judge as Chairperson;

(ii) Secretary, Incharge of Consumer Affairs of the State Government as member;

(iii) Nominee of the Chief Secretary of the State as member.

13. In present case, the Selection Committee was constituted on 24.09.2020, headed by a nominee Judge of the Hon'ble Chief Justice along with two other members viz. :-

(i) Principal Secretary, Food, Civil Supplies and Consumer Affairs, Government of Punjab; &

(ii) Principal Secretary, Water Supply and Sanitation, Government of Punjab.

14. Rule 6 inter alia delineates complete procedure for appointment to the post of President, District Commission and the journey, right from scrutiny of application forms, till appointment, would be as under:-

Stage I : As per sub-rule 1, a Selection Committee of the following persons shall be constituted:-

(i) Chief Justice of the High Court or his nominee as Chairperson;

(ii) Secretary, Incharge of Consumer Affairs of the State Government;

(iii) nominee of the Chief Secretary of the State.

Stage II : After scrutiny of the applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee (sub-rule 7).

Stage III : The Selection Committee shall consider all the applications of eligible candidates and if it considers necessary, may shortlist the applicants in accordance with such criteria as it may decide (sub-rule 8).

Stage IV : Keeping in view the requirements of the District Commission, the Selection Committee shall determine its procedure for making recommendation (sub-rule 9).

Stage V : After taking into account (i) suitability, (ii) record of past performance, (iii) integrity and (iv) adjudicatory experience, the Selection Committee “shall recommend a panel of names of candidates for appointment in the order of merit for consideration of the State Government” (sub rules 9 & 10).

Stage VI : The State Government “shall verify or cause to be verified the cre-

dentials and antecedents of the recommended candidates” (sub rule 11).

Stage VIII: The President, District Commission shall be appointed by the State Government on recommendation of the Selection Committee (sub rule 1).

Stage IX : Every appointment of a President shall be subject to the submission of a Certificate of physical fitness, issued by the Civil Surgeon or District Medical Officer (sub rule 12).

Stage X: Before appointment, the selected candidate shall furnish an undertaking that he/she does not or will not have any financial or other interest, which is likely to prejudice his/her functioning as President (sub rule 13).

15. As evident from records, the Selection Committee in its meeting held on 02.04.2021 decided criteria and procedure for appointment to the post(s) of President, District Commission, in the following manner:-

“The appointment of the Presidents of the District Consumer Disputes Redressal Commissions in the State of Punjab are to be made by the Selection Committee as provided under Sections 28 and 29 of the Consumer Protection Act, 2019 and the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and Members of the State Commission and District Commission) Rules, 2020. The Selection Committee has discussed the matter regarding fixation of criteria and procedure for allocation of marks, selection and recommendation of suitable names to the State Government for appointment to the vacant posts of President of District Consumer Commissions in the State of Punjab. For the aforesaid selection, an interview of the candidates is required to be conducted. The Selection Committee resolves to adopt the following criteria/procedure for allocation of marks out of a total of 100 marks.

Academic qualification

For the post of President, minimum qualification is LL.B. Thus, marks for academic qualification (maximum 10 marks) will be as follows:-

| | | |
|---------------------------------|---|---------|
| LLB (1st Division) | - | 4 Marks |
| LLB (2nd Division) | - | 2 Marks |
| LLM (1st Division) | - | 3 Marks |
| LLM (2nd Division) | - | 2 Mark |
| Additional Post Graduate Degree | - | 1 Mark |
| Ph.D. | - | 2 Mark |

Marks for only one Additional Post Graduation Degree/Ph.D. shall be allowed.

Experience

As per rules, a person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge. Thus, 0.5 mark (maximum 20 marks) shall be awarded for every year of service/practice at Bar.

Interview

There shall be an interview/viva-voce of 70 marks. The candidates would be assessed on the basis of the following:-

- (i) knowledge and ability to apply law in different facts and circumstances;
- (ii) ability to communicate with counsels, witnesses and parties calmly and courteously;
- (iii) integrity on the basis of record;
- (iv) ability to handle the workload; and,
- (v) alertness, intelligence, outlook and bearing of the candidate.

The Selection Committee shall award marks to the candidates according to the aforementioned norms.

Final result shall be prepared by adding marks of academic qualification, experience and interview.

Sd/- Sd/- Sd/-
Member Member Chairman”

16. After assessing all the eligible candidates as per above criteria, the Selection Committee resolved to recommend ‘in order of merit for District-wise appointments to the State Government’ and for reference, the relevant part of recommendation is recapitulated as under:-

“The Committee has perused the Roll Number wise final result as at Annexure ‘B’ and District wise Merit List of Ropar, Kapurthala, Fatehgarh Sahib, Jalandhar, Sangrur, Barnala, Bathinda, Sri Muktsar Sahib and Faridkot as at Annexures ‘C’ to ‘K’, respectively, and the same are approved. The Committee resolves to recommend the following panel of names, in order of merit, for District-wise appointment, as under:-

Ropar

1. Sh. Kuljit Pal Singh
2. Sh. Ranjit Singh
3. Ms. Vikramjit Kaur Soni

Kapurthala

1. Sh. Rajesh Bhatia
2. Ms. Sunita Kumari Sharma
3. Sh. Lalit Pathak

Fatehgarh Sahib

1. Sh. Kamal Kant
2. Sh. Pushvinder Singh
3. Sh. Inderjit Kaushal

Jalandhar

1. Ms. Harveen Bhardwaj
2. Sh. Chander Shekhar Marwaha
3. Sh. Aanand Sagar Narang
4. Sh. Jagdeep singh Marok

Sangrur

1. Sh. Sant Prakash Sood
2. Ms. Amrit Anjana
3. Sh. Kanwaljeet Singh

Barnala

1. Sh. Sanjay Kumar Sachdeva
2. Sh. Ashish Kumar Grover
3. Sh. Tejinder Singh Sidhu

Bathinda

1. Ms. Gagandeep Gosal
2. Sh. Phool Singh
3. Sh. Kanwar Sandeep Singh

Sri Muktsar Sahib

1. Sh. Ashok Kumar Garg

2. Ms. Sukhdeep Kaur
3. Sh. Rajinder Kumar Sachdeva

Faridkot

1. Sh. Rakesh Kumar
2. Sh. Gurpal Singh
3. Sh. Ajit Aggarwal

The recommendation of the names is as per their ranking in merit for the purpose of appointment. The appointment shall be offered to the candidates after thorough scrutiny of documents.

Sd/- Sd/- Sd/-
Member Member Chairman”

A bare perusal of above extract clearly reveals that Selection Committee made “recommendation of names is as per their ranking in merit for the purpose of appointment” and specially observed that the “appointment shall be offered to the candidates after thorough scrutiny of documents”.

17. Also noteworthy that as per recommendation made by the Selection Committee, petitioners are higher in merit than respondent Nos.4 to 9 and for brevity, their inter se merit position can be culled out as under:-

| District | Name (Petitioner No.) | Merit position | Appointee(s) Respondent No. (s) | Merit Position |
|-------------------|---------------------------------|----------------|---------------------------------|----------------|
| Fatehgarh Sahib | Kamal Kant (P. No.1) | 1 | Pushvinder Singh(R. No.6) | 2 |
| Sri Muktsar Sahib | Ashok Kumar Garg (P. No.2) | 2 | Sukhdeep Kaur (R.No. 9) | 2 |
| Bathinda | Phool Singh (P. No.3) | 3 | Kanwar Sandeep Singh (R. No.8) | 3 |
| Ropar | Kuljit Pal Singh (P. No.4) | 1 | Ranjeet Singh (R.No. 4) | 2 |
| Barnala | Sanjay Kumar Sachdeva (P. No.5) | 1 | Ashish Kumar Grover (R.No. 7) | 2 |
| Kapurthala | Sunita Kumari Sharma (P. No.6) | 2 | Lalit Pathak (R.No. 6) | 3 |

Mere glance at above tabulation clearly reveals that all the petitioners are higher in merit than the respondent Nos.4 to 9; yet they have been ignored by the State Government, without assigning any reason; much less to say, valid reason(s).

18. Although, respondents tried to justify the impugned orders on the premise that after consideration of the recommendation of Selection Committee, the State Government while exercising power under Rule 6(10), thought it appropriate to appoint respondent Nos.5 to 9 being more suitable for the posts in question; but there is neither any legal, nor factual basis to substantiate the same.

19. In order to ascertain the true picture, this Court has gone through the entire original records and after careful examination of same, it transpires that Chief Minister, Punjab approved the names of respondent Nos.4 to 9 on 03.06.2021 just as a routine matter, but without adverting to the merit position of the petitioners vis-à-vis private respondents while observing as under:-

“Office of The Chief Minister, Punjab

After careful consideration of the recommendation of the Committee, the following persons are approved for appointment as President, District Consumer Dispute Redressal Commission for the District mentioned against each name –

1. Ropar – Sh. Ranjit Singh s/o Kuldip Singh
2. Kapurthala – Sh. Lalit Pathak s/o Sh. Dalip Chand Sharma
3. Fatehgarh Sahib – Sh. Pushvinder Singh s/o Sh. Niranjana Singh
4. Jalandhar – Smt. Harveen Bhardwaj w/o Anil Bhardwaj
5. Sangrur – Sh. Sant Parkash Sood s/o Sh. Jai Kishan Sood
6. Barnala – Sh. Ashish Kumar Grover s/o Sh. Subhash Chand Grover
7. Bathinda – Sh. Kanwar Sandeep Singh s/o Sh. Sadhu Singh
8. Sri Muktsar Sahib – Smt. Sukhdeep Kaur w/o Onamdeep Singh
9. Faridkot – Sh. Ajit Aggarwal s/o Jawahar Lal Aggarwal

Order may be issued accordingly.

Sd/-
Chief Minister
3/6/2021”

A bare perusal of the above extract clearly reveals that Chief Minister, in utter disregard of the recommendation made by the Selection Committee, ignored the merit position of the petitioners without assigning any reason and simply followed the ‘pick and choose’ policy while preferring private respondents for appointment to the post(s) in question. As already noticed, the Selection Committee after taking into account suitability of candidates on the basis of (i) record of past performance, (ii) integrity and (iii) adjudicatory experience, recommended district-wise panel for appointment in order of merit for consideration of the State Government. Thus, in the opinion of this court, consideration by the Government under Rule 6(10) does not give any leverage to choose a candidate from the panel, who is lower in merit at the cost of a candidate with higher merit, without assigning any valid reason. No doubt, if during verification of credentials & antecedents of a candidate in terms of Rule 6(11), something adverse has surfaced or it transpires that such a candidate is suffering from any disqualification within the parameter of Rule 5 i.e. (a) conviction and sentence for an offence involving moral turpitude; or (b) adjudged insolvent; or (c) declared of unsound mind; or (d) removed or dismissed from public employment on earlier occasion (e) having any financial interest which is likely to affect his/her functioning as President; then certainly he or she can be confronted by the State Government. But even in such a scenario also, fairness demands that consideration shall be with due application of mind and if a candidate with higher merit really deserves to be ignored, then only, the ‘next in merit’ can be considered. Thus, except in the circumstances discussed hereinabove, there is no power with the State Government to ignore a candidate higher in merit and choose a person of lesser merit, just as a matter of course, as has happened in the present case. Resultantly, point No.1 is answered accordingly.

20. In the present case, as already noticed, no reason at all has been assigned by the Chief Minister while ignoring the claim of petitioners, despite the fact that they all are higher in merit, than respondent Nos.4 to 9. Although, for completion of the narration, the decision of the Chief Minister dated 03.06.2021 (supra) is said to be taken “After careful consideration of the recommendation of the Committee”, but

the Chief Minister did not disclose as to why he had ignored the petitioners and preferred private respondents in complete disregard of their inter se merit position assessed by the Selection Committee. In fact, there is not even a whisper in this regard and as such, it cannot be countenanced that Chief Minister had considered the matter in terms of Rule 6 (ibid).

21. A fortiori, if the State Government is allowed to choose any candidate from the panel irrespective of his or her merit, without assigning any valid reason, then recommendation made by the Selection Committee would be rendered otiose and that would be complete negation of the Rule 6. Besides this, Rule 6(1) clearly envisages that President, District Commission shall be appointed by the State Government on the recommendation of the Selection Committee. As such, the State Government has to follow the recommendation of the Selection Committee and it cannot ignore the merit without assigning any valid reason(s) in view of the provisions of Rule 6 discussed hereinabove.

22. In support of above conclusion, reference can also be made to *S. Chandramohan Nair v. George Joseph & others*,¹ (2010) 12 SCC 687, wherein, Hon'ble Supreme Court while dealing with the appointment of Member, Kerala State Consumer Disputes Redressal Commission, inter alia observed:-

“17. An analysis of these provisions shows that appointment of judicial and other members is required to be made by the State Government on the recommendation of the Selection Committee. If the Chairman and/or the members of the Selection Committee do not agree on the candidature of any particular person, then opinion of the majority would constitute recommendation of the Selection Committee. Though, the State Government is not bound to accept the recommendation made by the Selection Committee, if it does not want to accept the recommendation, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendation of the Selection Committee. If the appointment made by the State Government is subjected to judicial scrutiny, then it is duty-bound to produce the relevant records including recommendation of the Selection Committee before the court to show that there were valid reasons for not accepting the recommendation.”

23. Moreover, the State Government must realize that:

(i) Selection Committee was headed by a nominee Judge of Hon'ble the Chief Justice;

(ii) Two senior Government officers were associated as members of the Committee;

(iii) Recommendations were unanimous.

Thus, in such a situation, instead of ignoring recommendation of the Selection Committee, the same ought to have been respected by the State Government so as to lend credence to the appointment of President, District Commissions, who are discharging quasi judicial functions in a welfare State.

24. The argument raised by learned State counsel that Rules of 2020 are not framed by the State Government; rather promulgated by the Central Government and as such, it was necessary to implead the Union of India as party-respondent is not helpful for the reason that there is neither any challenge to the action of Central Government, nor the rules. On the other hand, petitioners have merely raised their claim on the basis of aforesaid rules. Thus, non-impleadment of Union of India as a

party-respondent is not fatal in any manner.

25. In view of the facts and circumstances discussed hereinabove, the irresistible conclusion would be that actions of the State Government while ignoring the genuine claim of petitioners and issuing impugned orders dated 11.06.2021 & 23.06.2021 in favour of respondent Nos.4 to 9 for appointment to the post(s) in question are incompatible with Rule 6(10) & (11) (ibid); hence, not legally sustainable. Point No.2 is answered accordingly.

26. As a result thereof, writ petition is allowed; impugned orders dated 11.06.2021 & 23.06.2021 are quashed and set aside; the State Government is directed to proceed in the matter afresh, strictly in accordance with the recommendation dated 05.04.2021 made by the Selection Committee, duly conveyed vide communication dated 06.04.2021.

27. Records be returned forthwith to learned State counsel.

28. Pending application(s), if any, shall stand disposed off.

R.M.S.

-

Petition allowed.

(2022-4)208 PLR 703

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Manjari Nehru Kaul.

SAHIB SINGH SABI – Petitioner,

Versus

M/S BALBIR SINGH & SONS and another – Respondents/

CR-3773-2022

Evidence – Witness – Suit filed through attorney holder- Submission that plaintiff could not later on step into the witness box in support of his case - The respondent/plaintiff being the best witness in support of his case cannot be precluded from examining himself due to the suspicion of the petitioner that the plaintiff was attempting to fill in the lacunae in the case.

Cases referred to:-

1. 2019(2) AIR Kar. 111, *Smt. Leela Vijay Kumar v. Smt. Pooja P Kamath.*

Mr. Balram Singh, for the petitioner.

Manjari Nehru Kaul, J. (Oral) – (27th September, 2022) - The petitioner is impugning the order dated 15.07.2022 passed by the learned Trial Court vide which the application for rejection of the plaintiff's affidavit was dismissed.

2. Learned counsel submits that the impugned order is not in consonance with the settled principles of law. He has vehemently argued that the suit in question had been filed by the respondent/plaintiff through his power of attorney holder Balbir Singh. The said attorney holder had appeared in witness box as PW-2 and tendered his duly sworn affidavit in his examination-in-chief wherein he had categorically stated that he was fully conversant with the facts of the case. Not only this, thereafter said Balbir Singh was cross-examined by the counsel of the petitioner/defendant as well. However, subsequently to the utter surprise of the petitioner, the respondent/plaintiff himself appeared in the witness box as PW-3 and tendered his duly sworn affidavit in his examination-in-chief. Learned counsel has urged that once the attorney holder through whom the suit in question had been instituted and who while stepping into the witness box as PW-2 had categorically deposed that he was fully conversant with the facts of the case, therefore, the plaintiff in the circumstances could not subsequently get himself examined in support of