throughout and cross-examined the only witness for the prosecution, at length. The mere non-mention of certain facts in the examination under section 313, Code of Criminal Procedure, is not shown to have caused any prejudice to the respondents and the same is, therefore, of no avail. In our view, the case against the respondents was proved beyond doubt and the trial Court fell into a palpable error in acquitting respondent No. 1, on a point which was extraneous to the matters which required attention.

(9) In view of the above circumstances, we accept the appeal and convict respondent No. 1, Shri Ram Parkash Bali who is the proprietor of the Firm, for contravention of section 13(2)(b) of the Employees' Provident Funds and Family Pension Fund Act, 1952, punishable under section 14 of the Act, read with Para 76 of the Employees' Provident Funds Scheme 1952. For the said offence, we sentence him to pay a fine of Rs 300. In default of payment of fine, he shall undergo one month's imprisonment.

S. C. Mital, J.—I agree.

S. C. K.

Before S. S. Sandhawalia, C.J. and G. C. Mital, J.

MALKIAT SINGH,—*Petitioner*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 1039 *of* 1979

May 22, 1979

Constitution of India 1950—*Article* 16—*Presidential Order providing a scheme for regularisation of service* of ad hoc *employees—Completion of one year's minimal service—Whether a pre-requisite for such regularisation—Terminus from which the said period is to be determined—Calculation of such period—How to be made.*

Held, that sub-para (1) of paragraph 3 of the Presidential Order lays down in no uncertain terms that the *ad hoc* employee holding the post on the 31st of March, 1976 must have completed a minimal of one year's service on the 31st of March, 1976. It then proceeds to

lay down the mode of calculating this period of one year and included therein are breaks in service which would either be condonable or otherwise. Even the bare language of this sub-paragraph is so plain and pre-emptory that it does not admit of any serious doubt that the crucial date on which the prescribed minimal of one year's service is to be calculated is obviously the 31st of March, 1977. It is thus self evident that for claiming the benefit of the Presidential Order the factum of the *ad hoc* employee being in service on this material date is absolutely vital. (Para 7).

Held, that an over-all reading of the opening part and the material parts of sub-para (1) hardly leaves any manner of doubt that the minimal qualifying period of one year or more must precede the crucial date on 31st of March, 1977. Even though the word 'precede' has not been expressly used in the order, the specific reference to the nature of breaks which can be ignored and those which cannot be so done would plainly indicate the intention of the framers that this period of one year must be either actually continuous or notionally in accordance with the prescription of the Presidential Order. If it were otherwise there would have been necessity or even the desirability of specifying breaks in continued service which would be condonable and those which would not be so. It appears that the basic rule laid down was that one year or more of continuous service as on 31st of March, 1977 to which exceptions were laid in narrow and specific terms for condoning the breaks therein, if they had occurred. These were limited first to breaks of notional nature falling between *ad hoc* appointments and herein again the further qualification was that these must be in the same category of posts and in the same department. With regard to sub-para (6) it is specific that no notional breaks upto a period of one month may be condoned with the obvious result that beyond this period of time, these could not be ignored. The second class of condonable breaks was again limited to administrative exigencies and an example thereof was the summer vacations during which the services of teachers were some times terminated as a matter of policy in order to avoid the liability of payment for the said period. Sub-para (1) was again specific and particular in laying down two situations in which the break in the *ad hoc* service would not be condoned. (Para 9).

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—

(*i*) *send for the records of case and after a perusal of the same ;*

(*ii*) *command the respondents to implement the policy decision of the Government as circulated on 3rd May, 1977 (Annexure 'P-1') ;*

(*iii*) *regularise the services of the petitioner keeping in view his past services rendered by him so that he may not suffer in the matter of pay, seniority etc. ;*

(*iv*) *By issuing a writ of prohibition restraining the respondents from terminating the services of the petitioner till his case for regularisation of services is not finalised and not to post any regular employee against the post on which the petitioner is working in view of the orders issued by the Respondents No. 2 on 22nd November, 1977, (Annexure 'P-2')* ;

(*v*) *the requirement of rule 20(2) of the writ jurisdiction rules may kindly be dispensed with.*

It is further prayed that during the pendency of the writ petition the respondents be restrained from terminating the services of the petitioner by issuing an injunction against the respondents as prayed.

Costs of the petition may also be awarded to the petitioner.

R. K. Chopra, Advocate, *for the appellant.*

I. S. Tiwana, Addl. A. G. (Pb.), *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) Whether an *ad hoc* employee must complete a minimal one year's continuous service (except for condonable notional breaks) preceding the crucial date of the 31st March, 1977, in order to be considered for the regularisation of his services under the Presidential Order, dated the 3rd of May, 1977. (Annexure P/1) is the primary question which has been debated in these two connected writ petitions.

(2) In view of the primarily legal nature of the aforesaid issue, the facts are of no great significance. Nevertheless it becomes necessary to notice those in Civil Writ No. 1039 of 1979 *Malkiat Singh v. State of Punjab,* to give the adequate background against which the issue has arisen. Malkiat Singh petitioner joined service as an Art and Craft teacher on a purely *ad hoc* basis on the 8th of September, 1973. Despite a number of breaks in his service, he claims to have completed a total of more than one year's service in all by the 31st of March, 1977 and at the material time of presenting the petitioner, he was posted in the Government Middle School, Nangal Khurd, District Ludhiana. It has been averred on his behalf that the Punjab Services Selection Board was constituted on

the 15th of October, 1974, whilst an Education Department Recruitment Committee had been constituted earlier on the 24th of October, 1973, yet on account of delay in making regular appointments through the aforesaid agencies a very large number of employees came to be appointed on an *ad hoc* basis in almost every Government department. In order to alleviate the hardship which would have been involved in terminating the service of all such *ad hoc* employees on the appointment of regular incumbents and also in the administrative interest in view of the experience gained by these employees, the President of India (at that time the State of Punjab was under President Rule), promulgated the Order, dated the 3rd of May, 1977, prescribing in great detail the pre-conditions upon which an *ad hoc* employee's services may be considered for regularization. One of and indeed the primary condition herein was that the *ad hoc* employee of the specified category must have completed a minimal of one year's service on the 31st of March, 1977 and it was further specified that in calculating this period of service only the specified kinds of breaks in the service may be ignored. The petitioner claims that having rendered a total of more than one year's service despite breaks therein, he is covered by the Presidential Order and is, therefore, entitled to the regularization of his services. It is then his claim that despite the forwarding of his case by the District Education Officer, Ludhiana to the appropriate authority for the regularization of his services, he nevertheless apprehends to be relieved from his post on the joining of a regular employee. It is averred that though the petitioner has not been able to get the copy of the orders by which another teacher has been posted in his place, yet being an *ad hoc* employee, his services can be terminated at any moment without assigning him any notice. Reference and reliance is placed on the Full Bench judgment of this Court in *Daljit Singh* v. *The State,* (1) wherein the validity of the Presidential Order (annexure P/1) was upheld, and also consequential instructions were issued by the State Government,—*vide* exhibit P/2. The ultimate relief which the petitioner claims is that the respondent—State, be restrained from terminating his services and in fact seeks a *mandamus* that the petitioner's services be regularised in implementation of the Presidential Order.

(3) In the return filed on behalf of the respondents by Pritam Singh, District Education Officer, Ludhiana, it is admitted that the

(1) 1978 S.L.R. 32.

petitioner originally joined on the 8th of September, 1973 and worked at Government High School, Nathowal till the 19th of December, 1974. Thereafter, he was appointed to another school at village Ranguwal with effect from the 20th of December, 1974 to 8th of May, 1975. He was again appointed in the Government Middle School, Gaddowal after a break of more than a week on the 15th of May, 1975 where he worked till the 9th of October, 1975 when he was relieved from service. The material and the crucial break, however, was of more than nine months thereafter and it was only on the 21st of July, 1976 that he was appointed afresh. It is, therefore, disputed on behalf of the respondents that the petitioner has been in continuous service for a period of more than one year on the 31st of March, 1977. In para No. 4 of the return, it is again highlighted that the petitioner does not fulfil one of the essential conditions prescribed for the regularisation of his services as the break in his service exceeds the limit of condonation, namely, a notional break upto one month or those for the summer vacations. It is then pointed out that the case of the petitioner for regularisation was duly considered in the light of the Presidential Order (annexure P/1), but because he did not fulfil the conditions thereof, his case was rejected by the order annexure R/1 on the ground that the period of the break in his service far exceeded the condonable and notional breaks upto one month. It has been repeatedly reiterated that the petitioner does not fulfil the prescribed conditions and does not satisfy the requirement of continuous service from 1st of April, 1976 to 31st of March, 1977 even after ignoring the premissible notional break upto the extent of a month. It has been, however, averred that as yet the services of the petitioner have not been terminated.

(4) In a replication filed on behalf of the petitioner, the gravamen of the song is that annexure P/1 does not require that the continuous service rendered by an employee should be from the 1st of April, 1976 to the 31st of March, 1977, with notional breaks. It is sought to be claimed that even if the fractions of service rendered by an *ad hoc* employee, despite large breaks total upto more than one year, he would nevertheless be entitled to the benefit and concession accorded by the Presidential Order. Reliance is also sought to be placed on annexure P/4 being a communication from the Chief Secretary, spelling out certain guidelines which may be kept in view for the condoning of notional breaks upto one month.

(5) In a further affidavit allowed to be placed on record, by the District Education Officer, it has then been pointed out that on the admitted facts, the petitioner was not in service on the 31st of March, 1976 and as such the exclusion of the post from the purview of the Departmental Recruitment Committee did not arise and the petitioner on this ground also was not entitled to regularisation. It has then been reiterated that the petitioner having not completed a minimum of one year's continuous service on the 31st of March, 1977 was further disentitled from being regularized. With regard to annexure P/4, and other matters, it has been categorically averred that no screening committee in terms of para-4 of annexure P/1 has at all been constituted by the Government and the District Education Officers, who are the appointing authorities alone, have screened the cases of the *ad hoc* teachers. The Government has not associated any officer with the appointing authority. However, on the administrative side, a committee consisting of an Under-Secretary with the Director of Public Instructions, Deputy Director of Public Instructions or the Additional Deputy Director of Public Instructions checks 5 or 10 *per cent*, cases screened by the appointing authority. With regard to the functioning of this Committee, it has ben perovided that in case the Under-Secretary cannot go out on tour for the purpose, he may even appoint the Section Officer of his office to do the needful. It has been denied that the Order annexure P/1, has in any way been violated in the petitioner's case. IIt has then been reiterated that the letter annexure P/4, is merely a guideline issued to the concerned authority and confers no legal right upon the petitioner.

(6) Inevitably the issue which first arises at the very threshold is with regard to the terminus from which the period of one year's service is to be determined. The question has obviously to be viewed in the light of the Presidential Order and the relevant paragraph thereof is para-3, in the following terms:—

> "3. Whereas by continuation of the *ad hoc* appointments made as above as an administrative necessity, the *ad hoc* employees have acquired necessary experience, and their ouster after a considerable period of service would entail hardship to *ad hoc* employees as a whole and accentuate the problem of unemployment, the President of India is pleased to decide in terms of proviso to item 7(a) under the Heading "Functions" of Notification

No. 8018-SII (ASO)-74/33252, dated 15th of October, 1974 that in vacancies/posts occupied by such *ad hoc* employees who fulfil the conditions enumerated hereunder on 31st of March, 1976 shall stand excluded from the purview of the Subordinate Services Selection Board or the Education Department Recruitment Committee as the case may be:

(1) The *ad hoc* employee of the category referred to above must have completed a minimum of one year's service on the 31st March, 1977. While calculating the period of service, the following type of breaks in service rendered on *ad hoc* basis may be ignored:—

(i) Where the break was of notional nature falling between *ad hoc* appointments in same category of posts in the same Department.

(ii) Where the break was on account of some administrative conditions, such as the summer vacations during which the service of teachers are tendered so as to avoid the liability of payment for the said period.

In other words the breaks in *ad hoc* service would not be ignored in cases where:—

(i) The employees concerned left service of his own volition whether to join some other Department or for some other reasons; or

(ii) The *ad hoc* appointment was against a post/vacancy for which no regular recruitment was intended/required to be made e.g. leave arrangements of filling or other short term vacancies.

(2) They fulfil the academic qualifications including experience if any prescribed for the job/post, including the conditions of age at the time of their first appointment as such;

(3) Their names had been recommended for such appointment by the Employment Exchange or their applications had been received in response to the advertisement made for filling of such posts;

(4) Their work and conduct has been satisfactory;

(5) A regular post/vacancy is available for regularisation, and ;

(6) Notional break upto a period of one month may be condoned."

Now it appears to me that so far as this primary issue of the crucial date with regard to which the minimal of one year's service is to be computed, is so plain on the language of the order itself that it would be obviously wasteful to overly elaborate the point. What perhaps deserves pointing out is the fact that it is evident from the very opening part of this para No. 3, that the President has been pleased to exclude from the purview of the Subordinate Services Selection Board or the Education Department Recruitment Committee (as the case may be) only those vacancies or posts, which were occupied by such *ad hoc* employees on the 31st of March, 1976 who fulfil the necessary pre-conditions enumerated thereafter. It is thus plain that the first material date herein is the 31st of March. 1976 and unless the *ad hoc* employee occupied the post on that date no question of excluding the said posts from the purview of Subordinate Services Selection Board or the Education Department Recruitment Committee would arise and consequently the very corner stone of the scheme for regularization would be missing. Even in the larger perspective, it is evident that all the posts to which the Presidential Order applies were normally in the purview of the Punjab Subordinate Services Selection Board or the Education Department Recruitment Committee itself and these could be filled only on the basis of selections made by them. Only as an exceptional measure, these posts had first to be excluded from their purview and then alone the question of regularisation of *ad hoc* employees holding such posts could arise. It appears to me, therefore, that in order to be able to invoke the provisions of the Presidential Order, it is incumbent on the claimant—*ad hoc* employee. to show that he occupied the post on the 31st of March, 1976 and then alone the question of his fulfilling the conditions spelt out in sub-paras (1) to (6) of paragraph-3 would come into play.

7. Now sub-para (1) of the aforesaid paragraph-3 again lays down in no uncertain terms that the *ad hoc* employee holding the post on the 31st of March, 1976 must have completed a minimal of

one year's service on the 31st of March, 1977. It then proceeds to lay down the mode of calculating this period of one year and included therein are breaks in service which would either be condonable or otherwise. Even the bare language of this sub-paragraph is so plain and pre-emptory that it does not admit of any serious doubt that the crucial date on which the prescribed minimal of one year's service is to be calculated is obviously the 31st of March, 1977. It is thus self-evident that for claiming the benefit of the Presidential Order, the factum of the *ad hoc* employee being in service on this material date is absolutely vital. Now this position was admitted on all hands and Mr. Surjit Singh, the learned counsel for one of the petitioners expressly took this stand. Neither did Mr. R. K. Chopra appearing for Malkiat Singh petitioner lay any serious challenge to this proposition.

Proceeding further from this Pole Star of 31st of March, 1977, all that remains to be determined is the manner in which the minimal of one year's service with regard to this date is to be computed. Mr. R. K. Chopra had attempted to argue that this minimal of one year's service need neither be continuous nor need it precede the crucial date aforesaid. According to him, all that is required is that the sum total of all the fractions of service rendered at any time by the claimant as an *ad hoc* employee (irrespective of the number and the nature of the breaks therein) should exceed one year. And, if this is so the *ad hoc* employee would be within the entitlement of regularisation. Mr. Sarjit Singh, on the other hand had sought to submit that para 3(1) does not expressly use the word 'precede' with regard to the 31st of March, 1977 and therefore the service need not be continuous therefrom.

9. The arguments aforesaid bring some credit to the ingenuity of the learned counsel for the petitioners yet even a superficial examination of the afore-quoted provisions of para No. 3 would plainly indicate that the stand taken on their behalf is obviously fallacious. As has already been noticed earlier, the post against which an *ad hoc* employee is to be regularised is first to be excluded from the purview of the constituted selecting authorities and must have been occupied as such by the claimant on the 31st of March, 1976. It is only after the post has been excluded from the purview that the question of the computation of a minimal of one year service arises. The two material dates, therefore, on which the claimant must have occupied the posts are the 31st of March, 1976 and the 31st of March, 1977 divided from each other by precisely one year. An over-all

reading of the opening part of paragraph-3 and the material parts of sub-para (1) hardly leaves any manner of doubt that the minimal qualifying period of one year or more must precede the crucial date on 31st of March, 1977. Even though the word 'precede' has not been expressly used in the Order, the specific reference to the nature of breaks which may be ignored and those which cannot be so done would plainly indicate the intention of the framers that this period of one year must be either actually continuous or notionally in accordance with the prescription of the Presidential Order. If it were otherwise then where was the necessity or even the desirability of specifying breaks in continued service which would be condonable and those which would not be so. It appears that the basic rule laid down was of one year or more of continuous service as on 31st of March, 1977, to which exceptions were laid in narrow and specific terms for condoning the breaks therein, if they had occured. These were limited first to breaks of notional nature falling between *ad hoc* appointments and herein again the further qualification was that these must be in the same category of posts and in the same department. With regard to this sub-para (6) it is specific that notional breaks upto a period of one month may be condoned with the obvious result that beyond this period of time, these could not be ignored. The second class of condonable breaks was again limited to administrative exigencies and an example thereof was the summer vacations during which the services of teachers were sometimes terminated as a matter of policy in order to avoid the liability of payment for the said period. Sub-para (1) was again specific and particular in laying down two situations in which the break in the *ad hoc* service would not be condoned.

10. Now if the stand of the learned counsel for the petitioner that each and every fraction of *ad hoc* service is to be counted and added up to complete a period of one year was of any validity then where was the need or anxiety for either pin-pointing the notional or administrative nature of the breaks or specifying the maximum time of such notional breaks and also those which would not be allowed to be ignored. Mr. I. S. Tiwana, learned Additional Advocate-General, therefore, appeared to be on firm ground that the construction sought to be canvassed on behalf of the petitioners runs plainly counter to both the letter and spirit of sub-para (1) of the Presidential Order and if accepted would virtually render it nugatory.

11. Repelled on his basic stand and apparently unable to sustain the same, on the language of the Presidential Order, Mr. R. K. Chopra

then attempted to fall back on annexure P/4, which is no more than a letter addressed by the Chief Secretary to the Heads of Departments concerned. This letter, in terms says that certain guidelines may be kept in view for condoning of notional breaks upto one month and that too, on the analogy of instructions dated the 1st of December, 1973 long prior to the Presidential Order. The stand of the respondent — State with regard thereto is that apart from the fact that even this letter is of no great aid to the petitioner's case, the same confers no legal right upon the petitioner and is merely a letter suggesting a guideline to the concerned appointing authorities. I am wholly inclined to uphold the respondent-State's stand in this regard. It is unnecessary to go into the slightly ticklish and perhaps the vexed questions whether a mere instruction can be of legal binding force or not? Herein, both the nature and the contents of annexure P/4 appear to be plainly indicative of the fact that this neither is nor was intended to be of a binding nature. Firstly, annexure P/4 is only an internal communication made by the Chief Secretary and does not even purport to be a governmental order as such issued in the name of the Governor or an instruction issued under the executive exercise of power by the State. As already noticed, it, in terms suggests that a guideline may be kept in view far from prescribing anything in terms mandatory. It only points out that it was issued on the analogy of an earlier letter of the 1st of December, 1973. I would, therefore, first hold that annexure P/4 does not confer any right on the petitioner or a legal liability on the respondent-State, but is a mere guideline for the appointing authority whilst considering the cases entrusted to them for regularisation under the Presidential Order. In my view, it is a mere inter-departmental communication suggesting and advising administrative procedures and cannot, therefore, be raised to the pedestal of having a legal sanction or a binding force.

12. Assuming entirely, for the sake of argument, that annexure P/4 could be relied upon by the petitioners, it again, in its application, does not in the least advance their case. It has been, in terms pleaded on behalf of the respondent-State, that as regards the petitioners no screening committee as such had been constituted for considering the case of regularisation and the power to do so under the Presidential Order is, therefore, vested in the appointing authority, i.e. the District Education Officer, in the present case.

13. As a matter of administrative procedure alone, and in order to over-see that the appointing authorities remain within the four

corners of the Presidential Order, certain percentage of the cases decided by them are screened by the authorities. It is in this context that annexure P/4 mentions as follows :—

> "Notional break upto a period of one month may be condoned where the vacancies have to be renotified to the Employment Exchange/other prescribed selection agencies. If there are any individual cases in which the break exceeds, this limit under some special/justified circumstances such cases be examined on merits in consultation with the Departmental of Personnel and Administrative Reforms (Personnel Policies Branch)."

It is evident from the above that herein also, the condonation of a notional break as a rule is still limited to one month. However, if the appointing authority, who is the screening authority feels in an individual case that there was some special or justifying circumstances which led to the exceeding of the time limit, then alone he would have an option to have them examined in consultation with the department of personnel and administrative reforms. The panel constituted therefor has already been referred to. Mr. Tiwana forcefully pointed out that this has application only in individual cases of hardship, where the appointing authority feels convinced that there are some special and justified circumstances calling for further examination of a notional break perhaps marginally beyond one month. It was pointed out that these special or justified circumstances were peculiar cases where an order of re-appointing of an *ad hoc* employee was passed and made within one month of his previous termination, but had not been delivered in time to such employee to enable him to rejoin and therefore entailing hardship without any default by him. Secondly, in this class were the cases where though the order of re-appointment was passed well within the period of one month of the previous termination, yet the *ad hoc* employee, had for reasons beyond his control not been able to join his post within the prescribed period of one month's notional break. Learned counsel for the State, therefore, contended that the letter, annexure P/4, was meant to govern these peculiar and exceptional cases and that too if the appointing authority, in a particular case felt the need of reconsideration and consultation with the higher authority. It is plain that in the present cases, there is not a vestige of averment or fact which would involve the attraction of annexure P/4 to the case of either of the petitioners whose break in service ranges from more than 7 to 9 months each.

14. In the light of the foregoing discussion I must conclude that the minimal period of one year's service visualised by the Presidential Order is one preceding the crucial date of the 31st of March, 1977 except for breaks condonable thereunder. The answer to the question posed at the out-set is, therefore, rendered in the affirmative.

15. As a necessary consequence of the above, both the Writ Petitions, are without merit and are hereby dismissed with costs.

G. C. Mital, J.—I agree.

N.K.S.

Before S. P. Goyal, J.

SIMPLEX HOSIERY FACTORY and another,—*Petitioners.*

versus

CHANCHAL KUMARI ETC.,—*Respondents.*

***Civil Revision** No. 2 of 1979*

May 25, 1979.

Code of Civil Procedure (V of 1908)—Order 14 Rules 1. 2 & 5 and Order 15 Rule 3—Relative scope of—Power under rule 3 of Order 15—Whether can be exercised at a stage subsequent to the framing of issues.

Held, that sub-rule (5) of rule 14 enjoins upon the court to frame all the issues, whether they be of fact or law, arising from the pleadings of the parties and the court can postpone the framing of all the issues only where the provisions of rule 2(2) are attracted and the suit can be disposed of on purely issue of law which does not require the leading of any evidence by the parties for its disposal. If no such issue of law on which the suit can be disposed of arises from the pleadings of the parties, the Court has no discretion in the matter and has to frame all the issues arising from the pleadings of the