V, rule 20 of the Code, was not valid as there could not be any valid satisfaction of the Court that the defendant could not be served in the ordinary way. The substituted service by publication in the Daily Ranjit, Patiala, was hardly of any help as this newspaper has little or no circulation in the district of Gurdaspur and particularly in the rural area were the petitioners reside. There is no satisfactory evidence on the record that *munadi* was effected in the village. I have, therefore, no reason to disbelieve the version of the petitioners that they did not have the knowledge of the pendency of the suit or of the *ex-parte* decree. In these circumstances, the application is to be considered to be within time.

(11) Consequently, I allow this revision petition and set aside the order of the learned trial Court and the judgment of the learned Additional District Judge in appeal I allow the application under Order IX, rule 13 of the Code filed by the petitioners and set aside the *ex-parte* decree dated 4th September, 1981. There shall, however, be no order as to costs.

(12) The parties through their counsel are directed to appear before the learned trial Court on 17th August, 1987 when the petitioners shall put in appearance in the suit as defendants and on their entering upon defence further proceedings shall be taken by the trial Court in accordance with law.

S.C.K.

Before S. S. Kang and M. M. Punchhi, JJ.

BALWANT KAUR,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 5603 *of* 1986.

July 24, 1987.

Punjab Civil Services Rules, Volume II—Rule 6.17—Family pension—Withholding of such pension—Ground of withholding that some claim is pending against the deceased employee—Such withholding—Whether permissible.

Held, that family pension scheme embodied in rule 6.17 of the Punjab Civil Services Rules, Volume II, is meant to benefit persons specifically designated, though connected with the government employee by relationship. But the benefit is personal in nature Sub-rule (4) of Rule 6.17 specifically says that the pension will be admissible in the case of a widow upto the date of her death or remarriage, whichever ie earlier. The benefit conferred is not qualified or capable of exceptions. Pension due to the widow cannot be confused with pension which would have been due to the husband had he been alive. Her pension being personal in character cannot be withheld by the respondents on the supposition that if something was due from the husband of the petitioner she should be held responsible for the same as if a liability inherited by her. The idea is totally misconceived. Her right to his estate as an heir cannot be confused with her personal right to pension.

(Para 4)

Petition under Articles 226/227 of the Constitution of India praying that the petition may kindly be accepted and:—

(i) *the respondents may kindly be directed to produce the entire record of the case;*

(ii) *a writ of Mandamus or any other writ, order or direction be issued directing the respondents to make payment of family pension, amount of gratuity, provident fund, cash equivalent to unutilised earned leave and other amounts due to the petitioner being the widow of the deceased Mukhtiar Singh;*

(iii) *any other relief to which the petitioner is found entitled in the circumstances of the case may also kindly be allowed to her;*

(iv) *cost of the writ petition may be allowed to the petitioner.*

Surjit Singh, Advocate, *for the Petitioner.*

S. K. Syal, A.A.G., Punjab, *for the Respondents.*

JUDGMENT

(1) The petitioner is the widow of a Headmaster by the name of Mukhtiar Singh. He served the Punjab Government first as a teacher and then as Headmaster for almost 32 years till he died on March 5, 1985. He was drawing salary of Rs. 1,580.20 at the time of his death. The petitioner being his widow claims family pension in accordance with the provisions of rule 6.17 of the Punjab

Civil Services Rules, Volume II. Thereunder, family pension benefits are admissible to the family of the deceased employee. And the widow is entitled to a family pension upto the date of her death or remarriage, whichever is earlier.

(2) The petitioner claims that family pension was sanctioned by the State of Punjab and she was accordingly informed on November 14, 1985, that such pension had been sanctioned and that she could get payment from the Treasury Officer, Faridkot, respondent No. 2. This is evident from the letter of the Accountant General, Punjab, dated November 14, 1985. When the letter was not obeyed and she stood deprived of the family pension by the indifference of the respondents, she moved this Court under Article 226 of the Constitution for appropriate relief.

(3) Both the respondents have filed returns. They do not deny that the petitioner is entitled to family pension but claim that since the government dues are outstanding against the petitioner's husband those have to be adjusted against the claims of pension, gratuity and provident fund etc. The said dues, they claim, are on account of an embezzlement case initiated by the department against the petitioner's husband. The said sum is said to be to the tune of Rs. 1,13,135.70. Death of the husband of the petitioner obviously has scuttled the proceedings against him in the embezzlement case.

(4) We have heard the learned counsel for the parties. We are of the view that the petition must succeed. Family pension scheme embodied in rule 6.17 of the Punjab Civil Services Rules, Volume-II, is meant to benefit persons specifically designated, though connected with the government employee by relationship. But the benefit is personal in nature. Sub-rule (4) of Rule 6.17 specifically says that the pension will be admissible in the case of a widow upto the date of her death or remarriage, whichever is earlier. The benefit conferred is not qualified or capable of exceptions. Pension due to the widow cannot be confused with pension which would have been due to the husband had he been alive. Her pension being personal in character cannot be withheld by the respondents on the supposition that if something was due from the husband of the petitioner she should be held responsible for the same as if a liability inherited by her. The idea is totally misconceived. Her right to his estate as an heir cannot be confused with her personal right to pension. We have no hesitation to hold accordingly.

(5) The end result is that this petition succeeds. The respondents are directed to release the widow's family pension to the petitioner forthwith and without any delay for it is a matter of sustenance for her.

*The petitioner shall have the costs.

S.C.K.

Before J. V. Gupta, J.

STATE BANK OF INDIA AND ANOTHER,—*Appellants.*

versus

B. R. Vaid,—*Respondent.*

Regular Second Appeal No. 2611 *of* 1986.

August 6, 1987.

State Bank of India (Supervising Staff) Services Rules—Rule 50(3) (ii) and 51(2)—Domestic inquiry against an employee—Inquiry Officer exonerating the employee of certain charges—Disciplinary authority not agreeing with the report—ORDER of disciplinary authority without notice to the employee—Such employee proceeded ex-parte throughout—Requirement of fresh notice—Validity of order of Disciplinary authority—Domestic inquiry—Scope of interference by Civil Court.

Held, that it was for the disciplinary authority to go into the matter of sufficiency or insufficiency of the evidence. The disciplinary authority was within its jurisdiction to disagree with the finding of the inquiry officer under Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Services Rules and to record its own finding on such charges on the basis of the evidence already on the record for the purpose. The employee was being proceeded *ex parte throughout and, therefore, it was not at all necessary for the disciplinary authority to issue any fresh notice to him while reversing the finding of the inquiry officer on certain charges.*

(Paras 10 and 11)

Held, further that in the disciplinary proceedings after holdin domestic inquiry the scope of interference by the Civil Court i very limited and the courts are not supposed to go into the merit of the controversy and to sit in appeal over the findings given b the disciplinary authorities. Therefore, the Civil Courts are not t interfere with the findings of the domestic tribunals. (Para 14

(5) Apart from this we are also of the view that *Kundan Lal Narang's case* (supra) is a case relating to a set of employees of a municipal committee who had retired after the enforcement of the Act. The claim for gratuity was denied to them on the ground that the local authorities were notified as 'establishments' under the Act only subsequently. The ultimate order of the learned Judges was that the local authorities were 'establishments' within the meaning of the Act and the notification was unnecessary and that, therefore, all the municipal employees in Haryana who had retired after the coming into force of the Act were entitled to payment of gratuity in accordance with the provisions of the Act.

(6) The learned counsel contends that it is not stated any where in the judgment that "only" those employees who had retired after the coming into force of the Act would be entitled to the gratuity, and, therefore, the ratio of the judgment should not be treated as holding that only those employees who had retired after the enforcement of the Act were entitled to payment of gratuity. The learned counsel may be right in this submission but we would take it that if the ratio were otherwise, the learned Judges could have simply decided it without going into the question whether the notification was valid or was necessary, and even if the Act had been brought into force by the notification of the Government declaring the local authority as an establishment for the purpose of the Act for the time even then all the petitioners in the case are entitled to gratuity because even with refernce to that date when the notifications was made bringing the Act into force in regard to the establishment those employees who retired earlier to that date also could be entitled to the gratuity. We are satisfied that the Act is applicable only to those persons who retired after the commencement of Act in respect of establishment, and not in respect of those who had retired before the enforcement of the Act. The appeal accordingly fails and is dismissed.

S.C.K.

Before M. M. Punchhi and M. R. Agnihotri, JJ.

H. L. RANDEV AND OTHERS,—*Petitioners.*

versus

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH AND OTHERS,—*Respondents.*

Civil Writ Petition No. 7013 *of* 1987 and

Civil Misc. No. 5454 *of* 1987.

May 27, 1988.

Punjab Superior Judicial Service Rules, 1963—*Rules* 7 *and* 12—*Expression 'post in the service'—Meaning of—Quota for promotees*

and direct recruits fixed—Promotees occupying in officiating capacity posts in excess of quota—Determination of seniority inter-se.

Held, that the expression 'post in the service' in the context of Rule 12 of Punjab Superior Judicial Service Rules, 1963 governing seniority, obviously means that seniority *inter se* of the members of the service is to be determined by length of continuous service on a post meant in the respective quota, irrespective of the date of confirmation. In other words, on entry to the service occupation of a post in excess of the respective quota, would not qualify towards computation of length of continuous service and then towards reckoning it for purposes of seniority. The rule is so clear that it bears no other interpretation. (Para 3).

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

(i) *An appropriate writ, direction or order including the writ of certiorari quashing the impugned seniority list dated February 27, 1982 Annexure 'P-3'.*

(ii) *A writ of* mandamus *directing respondent No. 1 to declare petitioners Nos. 1 to 5 senior to respondents Nos. 2 to 4 according to their length of continuous officiation; to declare petitioners Nos. 6 to 9 senior to respondents No. 5 to 7; petitioners Nos. 10 to 15 senior to respondents Nos. 8 to 10 petitioners Nos. 16 to 19 senior to respondents No. 11 and petitioners Nos. 20 to 25 senior to respondent Nos. 12 according to their length of continuous officiation in terms of rule 12 of the rules read with directions of the Supreme Court.*

(iii) *Writ of certiorari qudshing the notification dated September 12, 1986 confirming Shri Amar Dutt respondent No. 12 against the post in the quota of promotees with a mandamus to respondent No. 1 to confirm him against the quota of direct recruits.*

(iv) *Appropriate writ, order or direction directing respondents Nos. 1 to review the promotions made on the impugned seniority list and to decide the same afresh in the light of the seniority claimed by the petitioners.*

(v) *A writ of prohibition certiorari against respondent No. 1 restraining it from acting upon the impugned seniority list for the grant of any promotion to the direct recruits.*

(vi) *Pass such other and further orders this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

(vii) filing of certified copies of Annexures P-1 to P-6 be dispensed with.

CIVIL MISC. No. 5454 of 1987

Application under section 151 of the Code of Civil Procedure praying that copies of appointment orders/notifications may please be allowed to be placed on the record of the petition.

R. S. Mongia, Sr. Advocate with J. S. Sathi, Advocate, *for the Petitioners.*

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, *for Respondent No. 1.*

J. L. Gupta, Sr. Advocate with T. S. Bagga, Advocate, *for Respondent Nos. 2 to 5.*

H. L. Sibal, Sr. Advocate with S. C. Sibal, Advocate, *for Respondent Nos. 6 to 12.*

JUDGMENT

This again is an instance of one of the many controversies between promotees and direct recruits embedded in the Punjab Superior Judicial Service Rules, 1963 (for short, the Rules). The parties herein had a bout of litigation in the Supreme Court in the famous case *Pritpal Singh* v. *State of Punjab* (1).

(2) This Court on the administrative side obeyed the dictates of the Supreme Court in the aforesaid case and reframed seniority of the direct recruits and promotees *inter se,* way back in 1982. Now the promotees are here again to contend that officiating service rendered by the on posts meant for direct recruits shall reckon in their favour while determining seniority *inter se.* Their claim is based on rule 12 of the Rules, which we reproduce below, culled as is relevant :—

> "12. *Seniority* :—The seniority, *inter se,* of the members of the service, shall be determined by the length of continuous service on a "post in the service" irrespective of the date of confirmation" (quoting ours).

(1) AIR 1981 SC 561.

(3) It has been contended on behalf of the petitioners that since the petitioners had been in continuous service "on posts in the service", even though on posts meant for direct recruits, their length of continuous service was more than that of the private respondents. The argument on the face of it has no basis. Rules 7 and 8(2) of the Rules provide a clear answer to the claim of the petitioners. Relevant part of rule 7 reads as follows :—

> "7. Posts in service.—The service shall comprise the posts specified in Appendix 'A' to these rules."

The posts in the service are permanent or temporary and mean cadre posts [see rule 2(2)]. Rule 2(2) specifies that out of the total number of cadre posts, two/third shall be manned by promotee officers and one/third by direct recruits. So the promotees have two/thirds of the cadre posts and thus two/third posts in the service. Similarly direct recruits have one/third of the cadre posts and thus one/third in the service. The actual split up of posts in the service is that 29 posts are meant for promotees and 14 for direct recruits; as is stated in the affidavit of the Registrar of the High Court. Undeniably, the promotees have always held their 29 posts but besides those had been occupying in addition in officiating capacity the posts meant for direct recruits. So, the quoted expression "post in the service" in the context of rule 12, governing seniority, obviously means that seniority *inter se* of the members of the service is to be determined by length of continuous service on a post meant in the respective quota, irrespective of the date of confirmation. In other words, on entry to the service occupation of a post in excess of the respective quota, would not qualify towards computation of length of continuous service and then towards reckoning it for purposes of seniority. The rule is so clear that it bears no other interpretation. We reject unhesitatingly the interpretation suggested by the learned counsel for the petitioners. The promotees cannot have the cake and eat it too.

(4) No other point has been urged.

(5) Before parting with the order, we take note that the respondents' learned counsel addedly raised the plea of laches and neglect on the part of the petitioners, but in view of the interpretation of the rule aforemade, there is no need to dwell upon these points.

Dismissed in limine.

S.C.K.

Before D. V. Sehgal, J.

I. S. CHAHAL AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Amended Civil Writ Petition No. 4636 *of* 1984

May 10, 1988.

Punjab Excise and Taxation Department (*State Service Class II*) *Rules,* 1956—*Rls.* 5(c)(*iii*) *and* 6—*Constitution of India,* 1950—*Art.* 226—*Promotee officiating for number of years against post reserved for direct recruit—Promotee—Whether has right of appointment to said post.*

Held, that the process of selection and the selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a writ of *mandamus.*

(Para 7)

Held, that the claim made by the Assistant Excise and Taxation Officers for appointment to the post of Excise and Taxation Officers nine years after the appointment cannot be maintained. Acceptance of such a claim would disturb the seniority of number of officers who are promoted or recruited as E.T.Os. from time to time.

(Para 8)

Held, that when it is mandatory to fill in a particular per centage of vacancies occurring in a service from time to time by direct recruitment these have to be set apart and filled in by direct recruitment. In case by way of an interim arrangement the posts meant for direct recruits are filled in by promotion, the promotees have to make place for the direct recruits. They have to be pushed down below the direct recruits in case more posts are available. Otherwise they have to revert to their substantive ranks.

(Para 11)

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:

(*i*) *to produce the complete records of the case;*

(*ii*) *the orders at Annexures P-8 and P-9 appended with the writ petition be quashed;*