

of a tenant merely because the landowner is prepared to consent to the same. This only means that in an appropriate case, the Assistant Collector may after holding necessary enquiry record a finding against the tenant, on any one of the issues without proving which he cannot succeed, and thereupon reject his application. This would be within and not "outside the control of the authorities under the Act" in the course of the purchase proceedings. Once, however, the Assistant Collector, Grade I, has allowed an application under section 18 of the Act, and his order is not set aside in appeal or revision the same becomes final, and remains immune to an attack against its validity on any ground including that of collusion, before the co-ordinate authorities under the Act dealing with the question of determination of surplus area. It is quite possible that the juxtaposition of the sentence in question in the relevant passage in my judgment in *Amar Singh's case* was not very happy, but, as observed by my Lord Shamsher Bahadur, J., it cannot be construed to lead to an inference that where the purchase of the land had been effected in consequence of an order passed by the Collector with the consent of a landowner, it should fall within the inhibition contained in clause (c) of section 10-A. To so construe any observation in my judgment in *Amar Singh's case* would be to completely demolish the decision given therein to the effect that the expression "other authority" in section 10-A(c) does not include an Assistant Collector Grade I, who might have allowed an application under section 18. Subject to this clarification of my observations in the judgment of this Court in *Amar Singh's case*, I entirely agree with the judgment of the Full Bench prepared in this case by my learned Brother Shamsher Bahadur, J.

K. S. K.

FULL BENCH

Before Mehar Singh, C.J. Ranjit Singh Sarkaria and B. R. Tuli, JJ.

JUGRAJ SINGH,—Appellant

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Letters Patent Appeal No. 202 of 1968

April 24, 1969.

Punjab Civil Service Rules Volume I, Part I—Rules 2.9, 2.49 and 2.58—Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rule 9—"Probationer"—Whether has a substantive status—Temporary post held substantively—Such post—Whether becomes substantive—Holder of the post—Whether acquires

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lien thereon—Temporary post—Whether can be substantive vacancy—Cadre of service—Whether can consist entirely of temporary posts—“Substantive” and “non-substantive” vacancy—Distinguishing test of—Stated—“Probationer”—Meaning of.

Held, per majority (Mehar Singh, C.J. and B. R. Tuli, J., Sarkaria, J, Contra) that in Rule 2.49 of Punjab Civil Service Rules, Volume I, Part I, when considered with the notes under it, it becomes clear that a distinction has been drawn between a ‘probationer’ and a person ‘on probation’. Note 3 to this rule proceeds to explain the difference between the two and refers to situations to which the same apply, but it is clear from Note I, that the status of a probationer is not a substantive status though it is to be considered as having the attributes of a substantive status. It is, therefore, apparent that a probationer does not have a substantive status though he might be considered to have attributes of such a status, which is not the same thing as to have the status itself. (Para 5)

Held, that according to Rule 2.58 of the Rules a temporary post can be held substantively, but because a temporary post is held substantively, that does not make the post substantive. It is the holder who holds the temporary post substantively, that determines his status; it does not determine the status of the post that he holds in spite of his holding it substantively the post will remain a temporary post and does not become a substantive vacancy. (Para 8)

Held, that a temporary post or a temporary vacancy cannot possibly be said to be independent or self-existent or having an independent status and not being dependent upon something else, for such a post or vacancy is contingent upon its being continued. It cannot be described as enduring or permanent and must be described as transitory. So even according to the ordinary dictionary meaning, a temporary post cannot be a substantive vacancy because it does not have enduring and permanent existence which is not transitory. It has not independent or self-existent status, for it is dependent upon its continuance in future by a subsequent order of the authority concerned. (Para 9)

Held (per Sarkaria, J. Contra), that reading the definition of “cadre” in rule 2.49 together with rule 2.58 and note 3 under rule 4.21, it seems quite clear that a ‘cadre’ may consist only of permanent posts, or, partly of permanent posts and partly of temporary posts. Even the entire strength of the service may consist of temporary posts; and if it is sanctioned as a single unit, and thus satisfies the criterion laid down in Rule 2.49, it will be the cadre of the service. While it may be true that in the context of rule 4.21 and note 3 thereunder, there may be an addition of temporary posts to the permanent cadre of a service, it does not necessarily follow, as a corollary therefrom that the entire cadre of a service cannot consist of temporary posts, if it satisfies the requirement of Rule 2.49.

(Paras 16 and 17)

Held, that there is nothing in the context or scheme of the rules which warrants a departure from the ordinary dictionary meaning of the expression "substantive vacancy" as used in rule 2.49 of the Rules. The real test for distinguishing a 'substantive' from a 'non-substantive' vacancy is, whether the vacancy is existing by itself and is not dependent or contingent upon or subsidiary to something else. If the answer to this query is in the negative, the vacancy is a 'non-substantive' vacancy; and if it is in the affirmative, the vacancy is a 'substantive' vacancy, it being immaterial in either case whether the cadre post which has fallen vacant is a temporary or a permanent post. (Para 25)

Held, that if there is a self-existent vacancy in a cadre post created from year to year, but which post is likely to continue indefinitely, and a person is employed on probation in such a vacancy by direct selection through the Public Service Commission, he being appointed in or against a substantive vacancy in the cadre of the Department, will be a 'probationer'. The position, however, would be otherwise if the temporary post to which he is appointed is an isolated and unclassified ex-cadre post, the tenure of which is entirely uncertain, wholly transient and extremely precarious. (Para 25)

LETTERS PATENT APPEAL *under Clause 10 of the Letters Patent against the Judgment of the Hon'ble Mr. Justice P. C. Pandit, dated 29h February, 1968 passed in Civil Writ No. 1466 of 1966.*

KULDIP SINGH AND R. P. BALL, ADVOCATES, for the Appellant.

ABNASHA SINGH, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—This judgment will dispose of two appeals (Nos. 202 and 203 of 1968) under clause 10 of the Letters Patent, the first by Jugraj Singh, appellant and the second by Jasmer Singh, appellant, from the judgment and order, dated February 29, 1968, of a learned Single Judge dismissing the petition of each appellant under Articles 226 and 227 of the Constitution, in which Jugraj Singh, appellant sought the quashing of the order of the State of Punjab, respondent 1, of May 11, 1966, terminating his services as Principal of the Industrial Training Institute at Kaithal, and Jasmer Singh, appellant similarly sought quashing of the order of the same respondent, of April 20, 1966, reverting him from the post of Principal of the Industrial Training Institute at Palwal.

(2) The question in these appeals is whether each one of the two appellants is a 'probationer' as that expression is used in rule 2.49 of the Punjab Civil Services Rules, Volume I, Part I, hereafter to be referred as 'the Services Rules', and thus the order terminating the services of Jugraj Singh appellant, and the order reverting

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Jasmer Singh appellant, could not be made without compliance with rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, hereafter to be referred as 'the Appeal Rules' ? Admittedly, no show-cause notice before action taken against either appellant was given to him under rule 9 of the Appeal Rules to render an explanation why it should not be taken. So there was no compliance with the provisions of rule 9 of the Appeal Rules. But that rule only applies to a 'probationer', and that is how the question arises whether each one of the appellants was a probationer as that expression is used in rule 2.49 of the Services Rules.

(3) An announcement, as an information for the candidates, was issued by the Punjab Public Service Commission, Patiala, on December 3, 1963, in regard to the recruitment to twenty posts of Principals/Assistant Directors, Government Industrial Training Institutes in the Punjab Industrial Service, Class II. The announcement among other matters said that the posts were temporary, sanctioned up to February 29, 1964, but were likely to continue indefinitely, that the same were non-pensionable, and that the selected candidates will be on probation for a period of two years, and if the work and conduct of the incumbents during the trial/probationary period is in the opinion of the Government not satisfactory, their services may be terminated at any time without notice if recruited direct, or they may be reverted to their original posts if recruited otherwise, and after the expiry of the period of trial/probation the services may be terminated on one month's notice or on payment of one month's pay and allowances in lieu thereof, and with further conditions that in case of abolition of the posts, the candidates appointed shall have to vacate the posts without any notice, and in case of resignation the candidate concerned shall have to give one month's notice or one month's pay in lieu thereof. The Punjab Public Service Commission selected both the appellants for two of such temporary posts. The order with regard to Jugraj Singh appellant's appointment was made on May 21, and that with regard to Jasmer Singh appellant on May 17, 1964. The order in each case stated the terms and conditions upon which each appellant was appointed and of those terms and conditions these are material for the purpose of the present appeals —

“(i) The post is purely temporary but is likely to continue.

(ii) You will be on probation for a period of two years from the date of your joining the post but confirmation, if and

when due, will be according to combined seniority in the cadre.

- (iv) If at any time your work and conduct are not found satisfactory, you will be liable to revert to your substantive post/parent department. In case you are a new entrant in Government service, your services will be terminated without any notice.
- (v) Other conditions of service will be governed by the rules and instructions issued by the Government from time to time.
- (vi) You will have to vacate the post at any time, without notice, in case the post is abolished or there is no vacancy for any reason".

The order terminating the services of Jugraj Singh appellant was made on May 11 (Annexure 'B' to his petition), and the order of reversion with regard to Jasmer Singh appellant was made on April 20, 1966 (Annexure 'J' to his petition). After reciting how each appellant was appointed Principal, Assistant Director, Industrial Training Department, Punjab, in the Punjab Industrial Service, Class II, on two years' probation with effect from the date of his joining service, the impugned order in the case of each one of the appellants read that in accordance with the terms and conditions of his service, as contained in Punjab Government Memorandum (concerning the appointment of each one of the appellants as already referred to above) 'he should be relieved of his post immediately after handing over charge to a Foreman Supervisor', and in the case of Jasmer Singh appellant it further said that on reversion he should be posted as Supervisor in the grade for that post.

(4) Either appellant in his petition under Articles 226 and 227 of the Constitution sought that the order with regard to him bringing to an end his service as Principal/Assistant Director be quashed. In their petitions the appellants said that the order made against each was against rule 9 of the Appeal Rules, which was not complied with. Jugraj Singh appellant merely pointed out that an order of termination even of a probationer amounts to punishment and casts a stigma on his career so that he is entitled to the protection of Article 311. Similarly, Jasmer Singh appellant said that his

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reversion from the probational post was a punishment and was liable to be set aside for non-compliance with Article 311. Some other grounds were also taken by the appellants in their petitions, including the ground of *mala fide* by Jugraj Singh appellant, but those grounds were not urged before the learned Single Judge and no reference to the same during the arguments in these appeals was made. It is a significant fact that neither appellant in his petition said that he was a probationer as that expression is used in rule 2.49 of the Services Rules. If anything, there was a vague reference to what happened in the case of a probationer when his service was terminated by way of punishment in so far as the petition of Jugraj Singh appellant is concerned, and all that was said by Jasmer Singh appellant was that his reversion from a probational post was a punishment. This was far from a claim by either appellant that he was a probationer in the sense of the rule as above. In the return to the petition of Jugraj Singh appellant the respondents said that he was appointed a Principal for a period of two years from the date of joining the post and since the post on which he was appointed was purely on year to year basis, his contention that he was due to get confirmation was hardly tenable. It was further said that this appellant was appointed against a temporary post and was to be on probation for a period of two years and so he could not claim to be a 'probationer', but was merely 'on probation'. Similarly, in the return on the side of the respondents to the petition of Jasmer Singh appellant it was said that he was appointed against a temporary post as Principal and was to be on probation for a period of two years, and thus he could not claim to be a probationer, but was merely on probation. It was pointed out that in either case rule 9 of the Appeal Rules was not attracted. Either appellant then filed a replication to the return of the respondents, and it was in such replication that either of them came out with a clear statement that he was appointed a probationer against a substantive post and, therefore, rule 9 of the Appeal Rules was attracted to his case. Jugraj Singh appellant also said that it was wrong that the post against which he was appointed was a temporary post. Somewhat exactly the same position was taken on the side of the respondents in the affidavits of the Joint Director of Industries, Haryana, the State of Haryana having been made a party to the petitions of the appellants because of the reorganisation of the former Punjab State in the meanwhile. The respondents having taken the position that rule 9 of the Appeal Rules had no

application to the case of either appellant, obviously Article 311 of the Constitution could not be attracted either. The reason why I have given all these details is that it is surprising that in the original petitions neither appellant made his position clear and not until either appellant came to file replication, as a reply to the return of respondents, did he turn round and make his case clear. These are not the only cases in which this has happened, but it is becoming too common, a practice which is much to be deprecated. Although in the petition of Jugraj Singh appellant *mala fide* was alleged against the respondents, but this matter was not even argued before the learned Single Judge and this is another matter which is too often alleged in such like petitions and is generally so unfounded that it is never even urged subsequently at the hearing of the petitions. This is done merely to obtain a rule *nisi* in a petition and not because it has any substance. This again is a practice which is much to be deprecated. So the only question which was canvassed in the end before the learned Single Judge was whether each one of the appellants was or was not a probationer as that expression is used in rule 2.49 of the Services Rules. The learned Judge answered the question in the negative relying in this respect on a decision of Falshaw, C.J. and Grover, J. in *Raghubir Singh v. State of Punjab* (1), in which the learned Chief Justice observed that obviously under the definition (referring to rule 2.49 of the Services Rules) the petitioner was a probationer and so was entitled to the benefit of rule 9 (of the Appeal Rules) if he was occupying a substantive post, but if the post which he was occupying was only a temporary post, he would not be covered by the definition. The learned Single Judge also referred to *P. C. Kunhikrishanan Nambiar v. State of Kerala* (2), in which the learned Judges observed that the word 'substantive' means 'permanent', so that a substantive vacancy would be a permanent vacancy and obviously not a temporary vacancy. The learned Judge, therefore, proceeded to dismiss the petition of each appellant, leaving the parties to their own costs.

(5) The rules in the Services Rules that are relevant for the matter of decision of the question that arises in these appeals are—

“2.9. Cadre means the strength of a service or a part of a service sanctioned as a separate unit.

(1) L.P.A. No. 130 of 1964 decided on September 28, 1964.

(2) A.I.R. 1965 Kerala 84.

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2.35. Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, in which he has been appointed substantively.

2.42. *Officiate*.—A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. A competent authority may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

Note.—In the case of a Government servant with a substantive post on a permanent establishment who is appointed to officiate in a permanent post which is substantively vacant or which is temporarily vacant in consequence of the substantive incumbent on extraordinary leave or on transfer to foreign service, and is allowed to draw the full officiating pay or salary admissible under the rules, the difference between the substantive pay and officiating pay or salary counts as emoluments for pension.

2.46. Permanent post means a post carrying a definite rate of pay sanctioned without limit of time.

2.49. Probationer means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department. This term does not, however, cover a Government servant who holds substantively a permanent post in a cadre and is merely appointed 'on probation' to another post.

Note 1.—The status of a probationer is to be considered as having the attributes of a substantive status except where the rules prescribe otherwise.

Note 2.—No person appointed substantively to a permanent post in a cadre is a probationer unless definite conditions of probation have been attached to his appointment, such as the conditions that he must remain on probation pending the passing of certain examinations.

Note 3.—The provisions of this rule and note 2 above are to be taken as complementary and not as mutually exclusive. Taken together, they contain the essence of the tests for determining when a Government servant should be regarded as a probationer, or as merely 'on probation' irrespective of whether he is already a permanent Government servant or is merely a Government servant without a lien on any permanent post. While a probationer is one appointed in or against a post substantively vacant with definite conditions of probation, a person on probation is one appointed to a post (not necessarily vacant substantively) for determining his fitness for eventual substantive appointment to that post. There is nothing in this rule to prevent a Government servant substantive in one cadre from being appointed (either through selection by a departmental committee or as a result of competitive examination through the Punjab Public Service Commission) as a 'probationer' in or against a post borne on another cadre, when definite conditions of probation such as the passing of departmental examinations are prescribed. In such a case, the Government servant should be treated as a probationer, and (subject to specific rules, if any, to the contrary) allowed only, as initial and subsequent pay the rates of pay prescribed for the probationary period, irrespective of whether these rates are actually included in or shown separately from the time-scales of the services concerned. The case of departmental candidates of the same department promoted by selection is, however, different. If the Departments of the Government of Punjab concerned consider it expedient, these 'promoted' men may properly be put 'on probation' for a period to see if they make good in the actual work of the post to which they are promoted and have liens (active or suspended) retained for them on their former posts meanwhile to provide for their possible reversion; whatever the departmental arrangements be to test their capacity, etc., during the 'on probation' period, their initial pay should be fixed under the operation of the normal rules regulating pay fixation.

- 2.55. Substantive pay means the pay, other than special pay, personal pay or emoluments classed as pay by the competent authority under rule 2.44(a)(iii), to which a Government servant is entitled on account of a post to which he has been appointed substantively or by reason of his substantive position in a cadre.

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Note 1.—Substantive pay includes the pay drawn by a probationer in a post to which he has been appointed on probation.

Note 2.—Substantive pay does not include overseas pay.

2.58. Temporary post means a post carrying a definite rate of pay sanctioned for a limited time. Such a post can either be held substantively or in an officiating capacity.

Note.—An extension of a temporary post necessary to cover the period of leave granted to its holder, is expedient only when the grant of leave involves, 'no expense to Government', but improper in the absence of this condition.

3.12. Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

4.21. When a temporary post is created which will probably be filled by a person who is already a Government servant, its pay shall be fixed by the competent authority with due regard to—

- (a) the character and responsibility of the work to be performed; and
- (b) the existing pay of Government servants of a status sufficient to warrant their selection for the post.

Note 3.—(1) Temporary posts may be divided into two categories, viz., posts created to perform the ordinary work for which permanent posts already exist in a cadre, the only distinction being that the new posts are temporary and not permanent, and isolated posts created for the performance of special tasks unconnected with the ordinary work which a service is called upon to perform. An example of the latter type of post would be a post on a Commission of enquiry. A distinction by strict verbal definition is difficult, but in practice there should be little difficulty in applying the distinction in individual cases. The former class of posts should be considered to be a temporary addition to the cadre of a service whoever may be the individual appointed to the post; while the latter

class of temporary posts should be considered as unclassified and isolated ex-cadre posts.

(2) Temporary posts which by this criterion should be considered as temporary additions to the cadre of a service should be created in the time-scale of the service, ordinarily without extra remuneration. Incumbents of these posts will, therefore, draw their ordinary time-scale pays. If the posts involved decided increases in work and responsibility in comparison with the duties of the parent cadre generally, it may be necessary to sanction a special pay in addition. Such special pay may only be allowed with the approval of the competent authority."

In these rules, rule 2.9 gives the definition of the word 'cadre', which is the sanctioned strength of a service or part of a service as a separate unit, but it does not indicate whether there may be a temporary cadre. Rule 4.21 deals with the filling of temporary posts, and in Note 3, paragraphs (1) and (2) make it clear that ordinarily a cadre consists of permanent posts, though temporary posts may be created for performance of the ordinary work for which permanent posts already exist in a cadre, and another class of temporary posts may be created for the performance of special tasks unconnected with the ordinary work which a service is called upon to perform. With regard to the former class of temporary posts, it is said that the same should be considered to be a temporary addition to the cadre of a service. This only refers to the case where there are permanent posts in a cadre and there is an increase by the creation of temporary posts which are then considered as an addition to the cadre but not to temporary cadre of a service altogether by itself. Rules 2.9 and 4.21 do not indicate that there may be a temporary cadre. The rules apparently envisage a cadre which is for permanent posts for the performance of the ordinary work of such posts, though temporary posts may be created as an addition to a cadre obviously to meet a contingency and for a time. In rule 2.49, when considered with the notes under it, it becomes clear that a distinction has been drawn between a 'probationer' and a person 'on probation'. Note 3 to this rule proceeds to explain the difference between the two and refers to situations to which the same apply, but it is clear from Note 1 that the status of a probationer is not a substantive status though it is to be considered as having the attributes of a substantive

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status, and this is of course unless the rules have otherwise prescribed, and no such rule has been referred to during the hearing of these appeals. So it is apparent that a probationer does not have a substantive status though he might be considered to have attributes of such a status, which is not the same thing as to have the status itself.

(6) What is urged on behalf of the appellants first is that their recruitment was not merely to temporary posts but to a temporary cadre. I have said above that while it appears from the notes to rule 4.21 of the Services Rules that there may be addition of temporary posts to a permanent cadre, but there is nothing in the rules which takes into consideration a temporary cadre standing by itself. But even if this is assumed, the decision of these appeals must depend mainly on the second matter urged by the learned counsel for the appellants. Rule 2.49 of the Services Rules has already been reproduced above. On the language of that rule a person is a probationer when he is employed—(a) on probation, (b) in or against a substantive vacancy, and (c) in the cadre of a department. Even if it is assumed that there may be a temporary cadre of a department, the appellants to succeed must answer the remaining two conditions in the rule. They answer the first of those two conditions. The question is whether they do so in so far as the second condition is concerned, that is to say, whether each of the appellants was employed in or against a substantive vacancy? The learned counsel for the appellants contends that each of the appellants was so employed. The reasons given by him are (i) that each appellant held the post in his own right in the temporary cadre, (ii) that according to rule 2.58 of the Services Rules, a temporary post can be held substantively, and so each appellant was holding his temporary post substantively, (iii) that in the facts and circumstances of these appeals 'substantive vacancy', as that expression is referred to in rule 2.49 of the Services Rules, means vacancy for each one of the appellants, and (iv) that every vacancy which is not held in an officiating capacity is held substantively because the word 'substantive' is used in contradistinction to the word 'officiating' in the Services Rules. The learned counsel seeks support for this view from two cases. The first of those cases is *Ram Saran Dass v. State of Punjab* (3), but in that case the Government servant concerned had been recruited to the Punjab Civil Service (Executive) through a competitive examination held by the Punjab Public

(3) 1965 P.L.R. (Supplement) 586.

Service Commission. He was thus appointed to the cadre and after the completion of his probationary period of three years his services were terminated without recourse to rule 9 of the Appeal Rules. The learned Judges held, and obviously the decision could not be otherwise, that the Government servant concerned in that case was a probationer within the meaning and scope of rule 2.49 of the Services Rules. So, the case, on facts, is of no assistance to the appellants. The second case is *Tirath Dass v. State of Punjab* (4), but in that case the learned Judge held in so many words that the Government servant concerned had been employed against a substantive vacancy in the cadre of the Panchayat Department of the State. So even that case does not advance the argument on the side of the appellants. The reply on the side of the respondents is that according to rule 2.35 of the Services Rules, lien of a Government servant means his title to hold substantively a permanent posts, and the holder of temporary post or a person filling a vacancy in an officiating capacity never has a lien on the post that he holds. Consequently the holder of a temporary post cannot be said to have been employed in or holding a substantive vacancy. There may be a substantive appointment to a temporary post, but it is explained that that would only be of a Government servant already a member of a permanent cadre who is then appointed substantively to a temporary post, so that if and when such a post should come to an end he goes back to his permanent appointment in his own cadre. The learned counsel for the respondents has also made reference to three cases. The first of those cases is *Raghubir Singh's case*, to which reference has already been made, which supports the argument of the learned counsel for the respondents completely. To the same effect is the opinion of Shamsheer Bahadur, J. in *V. P. Rehbar v. Punjab State* (5), which was also a case of an appointment to a temporary post. In both cases the learned Judges held that a temporary post is not a substantive vacancy within the meaning and scope of rule 2.49 of the Services Rules. The third case of *Madan Gopal v. The State of Punjab* (6), is of no assistance to the respondents because in that case a permanent Government servant had been appointed to another post on probation. On reversion he came back to his original post. The learned Judge held that he was not a probationer but was on probation as

(4) 1968 Services Law Reporter 232.

(5) A.I.R. 1965 Punj. 94.

(6) 1966 P.L.R. 776.

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that distinction is maintained by rule 2.49, and in the notes thereunder, of the Services Rules. So that *Madan Gopal's case* is easily distinguishable from the facts of the present cases.

(7) The learned counsel for the respondents has also referred to *P. C. Kunhikrishnan Nambiar's case*, upon which the learned Single Judge also relied, to urge that reference to substantive vacancy in rule 2.49 of the Services Rules is to a permanent vacancy. The Services Rules, however, do not give the definition of the expression 'substantive vacancy', but I agree with the learned Judges in that case that in such circumstances ordinary dictionary meaning of the word 'substantive' have to be taken into consideration and as a guide to a decision in appeals like the present.

(8) It is true that according to rule 2.58 of the Services Rules a temporary post can be held substantively, but because a temporary post is held substantively that does not make the post substantive. It is the holder who holds the temporary post substantively, that determines his status; it does not determine the status of the post that he holds in spite of his holding it substantively and admittedly the post will remain a temporary post and does not become a substantive vacancy. It was observed by their Lordships of the Supreme Court in *Parshotam Lal Dhingra v. Union of India* (7), at page 42, that 'the substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on the same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules promulgated in 1949, to which reference will hereafter be made, his service had ripened into what is called a quasi-permanent service.' In *Rattan Lal Gulati v. Union of India* (8) AIR 1955 Punj. 229, a Division Bench of this Court held that a person who is appointed substantively to a temporary post cannot acquire a lien to the said post, for a lien can be acquired only on a permanent post. It was further observed that it follows as a consequence that a person holding a temporary post in a substantive capacity has no right to hold that post indefinitely and may be removed or transferred to a post carrying a lower salary without contravening the provisions of the Fundamental Rules. So

(7) A.I.R. 1958 S.C. 36.

(8) I.L.R. 1957 Punj. 229=A.I.R. 1955 Punj. 229.

the effect of a substantive appointment to a temporary post in the wake of rule 2.58 of the Services Rules is no more than to give the Government servant concerned certain advantages with regard to pay and leave, he acquires no lien on such a post for it admits of no lien, not being permanent, and merely because he holds it substantively, he does not alter thereby the status of the post converting it to a substantive vacancy from a temporary vacancy. The note to rule 2.42 clearly draws out a distinction between a post which is 'substantively vacant', and a post which is 'temporarily vacant.' But while a substantive vacancy may leave a substantive post temporarily vacant, a temporary post cannot become substantively vacant. This of course is supported by two cases of *Raghubir Singh* (1) and *V. P. Rehbar* (5). No case holding to the contrary has been cited on behalf of the appellants. There is no merit in the argument on the side of the appellants that each appellant held the post in his own right in the temporary cadre because what happened was that he was appointed to a temporary post on the terms and conditions attached to his appointment. He held his appointment to such a temporary post on those terms and conditions, which included discharge from service before the expiry of the period of probation on the work not being found satisfactory. There are no circumstances which indicate in these appeals that the posts held by the appellants were substantive vacancies. The same being temporary posts, the conclusion is rather to the contrary. If the argument of the learned counsel for the appellants in this behalf was accepted, it will wipe out the distinction between a substantive vacancy and a temporary post.

(9) The expression 'substantive vacancy' or the word 'substantive' are not defined in the Services Rules. So ordinary dictionary meaning of the terms has to be taken. In the *Shorter Oxford Dictionary* some of the meanings of the word 'substantive' are—"That stands of or by itself; independent, self-existent, self-sufficient. Having an independent existence or status; not dependent upon, subsidiary to, or referable to something else. Belonging to the substance of a thing. Of the nature of, equivalent to, or employed as a substantive. Denoting a substance." And a meaning of the word 'substance' in the same dictionary, relevant for the present purpose, is—"A solid or a real thing, as opposed to an appearance or shadow." In *Webster's Dictionary*, the meaning of the word 'substantive' given is—"Having the character of an independent self-subsistent entity or thing : existing in its own right : not derivative or dependent: having the character or status of or referring to something that is real rather

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than apparent: enduring or permanent as distinguished from transitory." A temporary post or a temporary vacancy cannot possibly be said to be independent or self-existent or having an independent status and not being dependent upon something else, for such a post or vacancy is contingent upon its being continued. It cannot be described as enduring or permanent and must be described as transitory. So even according to the ordinary dictionary meaning, a temporary post cannot be a substantive vacancy because it does not have enduring and permanent existence which is not transitory. It has not independent or self-existent status, for it is dependent upon its continuance in future by a subsequent order of the authority concerned. On the dictionary meaning of the expression 'substantive vacancy' in rule 2.49 of the Services Rules, a conclusion different from that reached by the Division Bench in *Raghubir Singh's case* and by the learned Judge in *V. P. Rehbar's case* cannot be arrived at.

(10) The learned counsel for the appellants has contended that a vacancy which is not held in an officiating capacity is held substantively as the word 'substantive' is used in contradistinction to the word 'officiating' in the Services Rules, but while a temporary vacancy may be held substantively, as pointed out, it does not become a substantive vacancy. Even if it is held in an officiating capacity, it still does not become a substantive vacancy. It is not quite clear how this approach is of any assistance to the argument on the side of the appellants.

(11) The consequence then is that the only argument on the side of the appellants does not succeed that either is a probationer as that word is used in rule 2.49 of the Services Rules. He was, therefore, not entitled to the privileges of rule 9 of the Appeal Rules or those conferred by Article 311 of the Constitution. The approach of the learned Single Judge is thus endorsed. The two appeals fail and are dismissed with costs, counsel's fee being Rs. 100 in each.

Sarkaria, J.—I have gone through the judgment prepared by my Lord the Chief Justice. With great respect, I venture to differ from the conclusions arrived at in it.

(13) The precise question for determination before this Full Bench is: whether each of the two appellants in these appeals 202 and 203

of 1968 under clause X of the Letters Patent, was a 'probationer' within the definition of the term given in rule 2.49 of the Punjab Civil Services Rules, Volume I, Part I (hereinafter referred to as the 'Services Rules', and as such, entitled to the protection of rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter called the 'Appeal Rules').

(14) Before dealing with this question, it will be useful to set out the material facts. Jugraj Singh and Jasmer Singh writ petitioners in both these cases were directly recruited and appointed as Principals/Assistant Directors in the Punjab Industrial Service, Class II, by identical orders (Annexures A to the respective writ petition), the material part whereof reads as follows:—

"Recruitment to 22 temporary posts of Principal/Assistant Directors, Industrial Training in P.I.S. II.

The Governor of Punjab, in consultation with the Punjab Public Service Commission, Patiala, is pleased to select you for *direct recruitment* as Principal (A) Grade/Assistant Director, Industrial Training Department, Punjab, in P.I.S., Class II, in the time-scale of Rs. 250—25—500/25—750 plus such allowances as are admissible under the rules, under the Director of Industrial Training, Punjab. Orders regarding your posting are being issued separately.

- (2) The above appointment is subject to the following terms and conditions:—
- (i) The post is purely temporary but is likely to continue.
 - (ii) You will be on probation for a period of two years from the date of your joining the post but confirmation, if and when due will be according to combined seniority *in the Cadre.*
 - (iii) Before taking over the new post, you will have to produce a medical certificate of fitness, in case you have not already submitted before your appointment on a Gazetted post in P.I.S., Class II.

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- (iv) If at any time your work and conduct are not found satisfactory, you will be liable to revert to your substantive post/parent Department. In case you are a new entrant in Government service your services will be terminated without any notice.
- (v) Other conditions of service will be governed by the Rules and instructions issued by the Government from time to time.
- (vi) You will have to vacate the post at any time, without notice, in case the post is abolished or there is no vacancy for any reason.
- (vii) Your pay will be fixed under and in accordance with the normal operation of Rules.....

* * * * *

The appointment order of Jugraj Singh is dated the 21st May, 1964, while that of Jasmer Singh, is dated the 17th May, 1964. By an order, dated the 11th May, 1966 (Annexure B), the Governor of Punjab terminated the services of Jugraj Singh. The material part of this order reads as follows:—

“The Governor of Punjab is pleased to order the termination of services of Shri Jugraj Singh, Principal, Industrial Training Institute, Kaithal, under the Directorate of Industrial Training, Punjab, in P.I.S., Class II (Rs. 250—25—550/25—750), to which post he has been appointed by direct recruitment on two years’ probation with effect from 8th July, 1964, in accordance with the terms and conditions of his appointment as contained in Punjab Government Memo No. 4255-51B-II-64/15388, dated the 21st May, 1964.”

Jasmer Singh, appellant in L.P.A. No. 203 of 1968, was reverted to his original post of Supervisor by an order, dated the 20th April, 1966 (Annexure J), the material part of which reads:—

“The Governor of Punjab is pleased to order the reversion of Shri Jasmer Singh, at present posted as Principal, Industrial

Training Institute, Palwal, from the post of Principal 'A' Grade/Assistant Director, Industrial Training Department, Punjab, in P.I.S., Class II (Rs. 250—25—550/25—750), to which he had been appointed by direct recruitment on two years probation with effect from 26th July, 1964, in accordance with the terms and conditions of his appointment, as contained in Punjab Government Memo No. 4255-51B-II-64/15235, dated the 11th/13th May, 1964."

(15) In the writ petitions under Articles 226 and 227 of the Constitution, the only question canvassed before the learned Single Judge, was, that since each of the petitioners was a 'probationer', their services could not be terminated without affording them an opportunity of showing cause as required by the mandatory Rule 9 of the Appeal Rules. It is not disputed that the protection afforded by Rule 9 is available only to 'probationers' as distinguished from those who are merely 'on probation'. "Probationer" is defined in rule 2.49 of the Services Rules. His Lordship read rule 2.49 and continued.

(16) Each of the appellants before us was *directly recruited* to Punjab Industrial Service, Class II. Consequently, the second part of the definition which pertains to a Government servant holding substantively a permanent post in a cadre and merely appointed 'on probation' to another post, is not material for the discussion which follows. An analysis of the definition given above shows that before a Government servant is deemed as a 'probationer', he must satisfy three conditions—(a) He has been employed on probation; (b) such employment is in or against a substantive vacancy; (c) and such vacancy is in the cadre of a department. So far as (a) is concerned, there is no dispute that the appellants in both the cases were employed on probation. As regards (c) also, it appears to be manifest from the record that the posts against which the appellants were appointed were posts *in the cadre* of the department. The very orders of appointment of the appellants (*vide* Annexure A), show that they were directly recruited to and appointed Principals 'A' Grade/Assistant Directors, Industrial Training, Punjab, in Punjab Industrial Service, Class II, in the time-scale of Rs. 250—25—550/25—750 "Cadre" has been defined in rule 2.9 of the Services Rules as follows:—

"Cadre means the strength of a service or a part of a service sanctioned as a separate unit."

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His Lordship then read Rule 4.21 and continued :—

Reading the definition of "cadre" in rule 2.49 together with rule 2.58 and note 3 under rule 4.21, it seems quite clear that a 'cadre' may consist only of permanent posts, or, partly of permanent posts and partly of temporary posts. Even the entire strength of the service may consist of temporary posts; and if it is sanctioned as a single unit, and thus satisfies the criterion laid down in Rule 2.49, it will be the cadre of the service. A cadre of the last mentioned kind may be necessitated for performance of the ever-expanding welfare functions of the State: such as, family planning and population control, or for the construction of a big dam which project may take several years for its completion. Instances of such services, the entire cadres of which are temporary, are well known. Till recently, the entire cadres of Consolidation Officers and Assistant Consolidation Officers in the former Punjab consisted of temporary posts. Now, in the instant cases, as is apparent from the order of appointment (Annexure A), Government created 22 temporary posts of Principals/Assistant Directors in the Industrial Training Department of Punjab in Punjab Industrial Service, Class II, in the time-scale of the service Rs. 250—25—500/25—750 plus usual allowances. The appointment orders, *ex-facie*, show that these two temporary posts (out of the 22 temporary posts) against which appellants were appointed were cadre posts, being classified and created for the performance of ordinary work of the service and not, what note 3 under rule 4.21 calls, "isolated temporary posts created for the performance of special tasks unconnected with the ordinary work of the service." The fact that the posts held by the appellants were not non-cadre posts, can also be inferred from conditions (i) and (ii) given in the orders of appointment (Annexure 'A'). Condition (i) says that the post though temporary is likely to continue. Further, condition (ii) contemplates confirmation of the Government servant after successful completion of his two years probation "in accordance with the combined seniority in the cadre". The words enclosed in inverted commas, dispel all doubt about the posts held by the appellants, being cadre posts.

(17) The respondents have not produced any record to show that the recital in the appointment orders saying that they were being appointed to the Punjab Industrial Service, Class II, against two out of the twenty-two temporary posts in the service, was factually incorrect. Indeed, the main stand taken by Mr. Abnasha Singh,

the learned counsel appearing for the respondent State of Punjab, is that element(b) of the definition of 'Probationer' is lacking in this case, because the appellants were not employed in or against a substantive vacancy, but against purely temporary posts. In the first place, no official record has been produced by the respondent to show that no permanent posts already existed in the cadre of Punjab Industrial Service, Class II of the Industrial Training Department of Punjab when these twenty-two temporary posts of Principals/Assistant Directors in the aforesaid service were created. Secondly, even if it is assumed for the sake of argument that this service consisted entirely of twenty-two temporary posts of Principals/Assistant Directors, then also, such service having been sanctioned as a separate unit, will be fully covered by the definition of "cadre" given in rule 2.9. Rule 4.21 does not deal with the definition of 'cadre'; it only provides how the pay of a person, who is already in Government service, appointed to a temporary post, shall be fixed. It is for that purpose that note 3 appended to it divides temporary posts into two categories, posts created to perform the ordinary work for which permanent posts already exist in a cadre and temporary isolated posts created for the performance of special tasks unconnected with the ordinary work of the service. Rule 4.21 will not apply to the case of a direct recruit to a service, the entire cadre of which is temporary. While it may be true that in the context of rule 4.21 and note 3 thereunder, there may be an addition of temporary posts to the permanent cadre of a service, it does not necessarily follow, as a corollary therefrom that the entire cadre of a service cannot consist of temporary posts, if it satisfies the requirement of Rule 2.9. In note 3, the engrafting of temporary posts to the permanent cadre of a service has been described only in contradistinction to isolated, unclassified temporary posts which are ex-cadre posts created for the performance of a special or extraordinary task. In the instant case, the twenty-two posts of Principals/Assistant Directors could not, by any stretch of reasoning, be called "isolated and unclassified" temporary posts. I do not think it is prudent to add to or subtract anything from the self-contained definition of "cadre" given in rule 2.9 by reading into it something said in note 3, under rule 4.21 in another context. In the absence of anything else brought on the record by the respondent to rebut the clear recitals in the Government orders (Annexure A) to the effect, that the appellants were being appointed to classified temporary posts, i.e., posts in the Punjab Industrial Service,

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Class II, there is no escape from the conclusion that they were employed against temporary posts borne on the cadre of the Department and, as such, satisfied condition (c), also, of the definition of "probationer".

(18) Thus the question resolves itself into the narrow issue: "Were the appellants employed in or against a 'substantive vacancy'? That is to say, can there be a substantive vacancy in a temporary post borne on the cadre of a Department? Well then, what is a 'substantive vacancy'? The expression or its constituent words are not defined anywhere in the Services Rules. In the absence of anything to the contrary in the context and scheme of the Rules, we have to assign the expression "substantive vacancy" its ordinary dictionary meaning. The Shorter Oxford Dictionary says that "substantive" (adj.) in the context of persons, nations, etc., means "that stands of or by itself; independent, self-existent, self-sufficient"; in the context of immaterial subjects, it means "having an independent existence or status; not dependent upon, subsidiary to, or referable to something else"; in the context of military, it means "definitely appointed to the rank specified"; it also means "having a firm or solid basis; not slight; weak, or transitory". Webster also, in his New International Dictionary, gives the following meaning of "substantive" (adj.)—(1) having the character of an independent, self-subsistent entity or thing; existing in its own right; not derivative or dependent; self-contained; (2) having the character or status of, or referring to, that which is real rather than apparent; firm solidness, enduring or permanent as opposed to transitory or transitive"; (in the context) of appointments, it means definite rather than contingent in status".

(19) It is significant to note that the dictionary connotation of the term 'substantive' is not restricted to or identical with that of the word 'permanent'. Of course, 'substantive' does involve a notion of permanency, but that permanency need not be absolute. It is sufficient if it is only relative as opposed to that which is purely transitory, illusory or unreal. The very inclusion of a temporary post in the cadre of the Department, assures it a measure of permanency sufficient to make a self-existent vacancy in such a post 'a substantive vacancy'. The temporary or permanent nature of the post in the cadre, is not decisive of the question whether a certain vacancy

occurring in it is a substantive vacancy. This is clearly indicated by Rule 2.58 of the Services Rules which provides :—

“Temporary post means a post carrying a definite rate of pay sanctioned for a limit time. *Such a post can either be held substantively or in an officiating capacity.*”

The crucial words are those that have been underlined. It has been contended on behalf of the respondent that the underlined words envisage *only* the case of a permanent Government servant in the cadre who is posted in a temporary post without prejudice to his substantive status. The argument is that if a person is employed substantively in a temporary post, such employment only determines the status of the post which will remain a temporary post and not become a ‘substantive vacancy’ in spite of its being held substantively. The argument is attractive, but not sound. The language of Rule 2.58 is plain enough to show that there can be a substantive appointment to a temporary post. To restrict the scope of such appointment to Government servants already holding a permanent post in the cadre, would be, it is respectfully submitted, to read into the Rule words which are not there. In the absence of anything in Rule 2.58 to the contrary, it is quite clear to my mind that substantive appointment to a temporary post envisaged in that Rule, may also be of a person who is not already a permanent Government servant. With due deference, it may be further pointed out that the argument under consideration, ignores the distinction between a ‘post’ and a ‘vacancy’. While a ‘post’ is an ‘office’ or ‘situation to which one is appointed’, ‘vacancy’ means ‘the condition of the office or post being, becoming or falling vacant’. The distinction between the meaning of these terms, if overlooked, may lead to the strange proposition that while all temporary posts in a cadre are non-substantive vacancies of a purely temporary and transient nature, all vacancies in permanent posts are substantive vacancies.

(20) There is also authority for the proposition that a post in a cadre, be it permanent or temporary, can ordinarily be held by the incumbent in three capacities, namely; on probation or on an officiating basis or substantively. This was lucidly pointed out by their Lordships of the Supreme Court in the well-known case of *Parshotam Lal Dhingra v. Union of India* (7). At page 42, paragraph

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11 of the Report. S. R. Das, C. J., made these illuminating observations:—

“An appointment to a permanent post in Government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial, is found unsuitable and his service is terminated by a notice. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post, is on leave or when the permanent post is vacant no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. Likewise, an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation of any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period. In such a case the servant so appointed acquires a right to his tenure for that period The substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on the same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules——his services had ripened into what is called a quasi-permanent service.”

Thus, if there can be a direct substantive appointment to a temporary post, (as is clearly contemplated by rule 2.58 also), it logically follows that there can also be a substantive vacancy in a temporary post provided such post is in the cadre.

(21) In *Rattan Lal Gulati v. Union of India* (8), the question before the Division Bench was: whether a permanent Government servant who is holding a temporary post in a substantive capacity, can be transferred to a post carrying lesser pay without being afforded reasonable opportunity of showing cause against the action proposed to be taken. The question was answered in the affirmative. The exposition of the law made by Bhandari, C.J., is summed up in headnote (a) as follows—

“A person, who is appointed substantively to a temporary post cannot acquire a lien on the said post, for a lien can be acquired on a permanent post or a tenure post and not on a temporary post. It follows as a consequence that a person holding a temporary post in a substantive capacity has no right to hold that post indefinitely and may be removed or transferred to a post carrying a lower salary without contravening the provisions of the Fundamental Rules. Therefore, a permanent Government servant, who is holding a temporary post in a substantive capacity, can be transferred to a post carrying a lesser pay without being afforded a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.”

It may, however, be noted that no question arose in that case whether *Rattan Lal Gulati* was or was not a probationer and whether or not he was entitled to the protection of rule 9 of the Appeal Rules. The only contention of Gulati was that when he was appointed substantively to the post of Assistant he acquired a lien in the said post and had a right to hold it as long as the post continued to exist and consequently his transfer from a post in which he was drawing higher salary to a post carrying a lower salary, could not be ordered except after compliance with the statutory formalities set out in Article 311 of the Constitution.

(22) As I understand the points canvassed before us, it is not the case of the appellants before us that they had been appointed substantively to these temporary posts, and, as such, had a lien on or right to hold those posts. Their case is that the vacancies in or against which they were employed, were ‘substantive vacancies’ because on successful completion of the period of probation they could be confirmed or substantively appointed in those

vacancies (notwithstanding the fact that they were occupying temporary posts in the cadre of the Department), and thus they satisfied all the conditions necessary to give them the status of a 'probationer' and the consequent protection of Rule 9 of the Appeal Rules. Before us, they are not invoking the constitutional protection of Article 311 of the Constitution. An enquiry into the question, therefore, whether the appellants did or did not have a lien on or right to hold the temporary posts, is, it is respectfully submitted, not really helpful, if not besides the point.

(23) Rules 3.11 and 3.12 in Chapter III of the Services Rules relate to substantive appointment and lien. According to rule 3.11, a Government servant cannot be appointed substantively to a post on which another Government servant holds a lien. Rule 2.35 defines 'lien' as the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively. Rule 3.12 is in these terms:—

“Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.”

All that the rules relating to substantive appointment and lien, show, is that the lien or title of a Government servant to hold a post accrues only if he is appointed substantively to a permanent post. The converse proposition that no person can be appointed substantively to a temporary post, because he does not thereby acquire a lien to that post, is not true in view of the express rule 2.58. The only difference would be that in the case of a substantive appointment to a temporary post, the appointee will not acquire a right or title to hold that post. This is what was held by the Division Bench in *Gulati's case*, which was approved by the Supreme Court in *Parshotam Lal Dhingra's case* *ibid.*

(24) Rule 2.55 defines “substantive pay” as pay other than special pay, personal pay or emoluments classed as pay by the competent authority under rule 3.44(a)(iii), to which a Government servant is entitled on account of a post to which he has been appointed substantively or by reason of his substantive position in a cadre. Note 1 under rule

2.55 makes it clear that the substantive pay includes the pay drawn by a probationer in a post to which he has been appointed on probation.

(25) The purpose of this brief survey of the various rules in which the words "substantive" and "temporary" have been used in relation to appointments and posts is that there is nothing in the context or scheme of the rules which warrants a departure from the ordinary dictionary meaning of the expression "substantive vacancy", as used in rule 2.49. I have already said above that the real test for distinguishing a 'substantive' from a 'non-substantive' vacancy is, whether the vacancy is existing by itself and is not dependent or contingent upon or subsidiary to something else. If the answer to this query is in the negative, the vacancy is a 'non-substitutive' vacancy; and if it is in the affirmative, the vacancy is a 'substantive' vacancy, it being immaterial in either case whether the cadre post which has fallen vacant is a temporary or a permanent post. Some illustrations of substantive vacancies in permanent posts are given in the Note appended to rule 2.42 of the Services Rules. These illustrations are not exhaustive of the subject and are in my opinion, equally applicable to vacancies occurring in temporary posts borne on the cadre of the Department. The first illustration is of a vacancy caused by the substantive incumbent proceeding on extraordinary leave. A similar vacancy can be caused in a temporary post borne on the cadre, by the regular incumbent proceeding on long leave (of course not exceeding the tenure of the post). The second instance is of a vacancy caused by the transfer of the substantive incumbent to Foreign Service. The vacancies caused in all these illustrations cannot be called 'substantive' vacancies, because those vacancies are not self-existent or self-subsistent, but are dependent or contingent upon the regular incumbent remaining on leave or deputation. A other instance if a 'non-substantive vacancy' will be where a certain post falling vacant is reserved for or intended to be filled substantively by a person of a certain class or category for instance, by a promotee or direct recruit and, for the time being a person of the class or category for which it is reserved is not available : a person of another category appointed as a stop-gap in an officiating or provisional capacity in that post, will not be occupying that post in a substantive vacancy. The reason for such a vacancy being non-substantive' vacancy, is, that its existence is dependent upon the person of the right category or class by whom it is intended to be filled, not being available. As soon as the eligible

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person is available and appointed, the vacancy will come to an end. Conversely, if in these illustrations, the regular incumbent of the posts quits the service for good by retirement, death, permanent transfer to another service or otherwise, the vacancy thus caused being self-existent and independent, would be a substantive vacancy irrespective of the fact that the cadre post which has fallen vacant is a temporary or a permanent post. I will, therefore, hold, even at the risk of repetition, that if there is a self-existent vacancy in a cadre post created from year to year, but which post is likely to continue indefinitely, and a person is employed on probation in such a vacancy by direct selection through the Public Service Commission, he being appointed in or against a substantive vacancy in the cadre of the Department, will be a 'probationer'. The position, however, would be otherwise if the temporary post to which he is appointed is an isolated and unclassified ex-cadre post, the tenure of which is entirely uncertain, wholly transient and extremely precarious.

(26) Now, I would advert to the cases cited at the Bar. The first is *Raghubir Singh Balhara v. State of Punjab* (1), by a Division Bench consisting of Falshaw, C.J.; and Grover ; J. On May 14, 1963, a communication was sent to Balhara informing him that under the terms and conditions of service, his services would stand terminated on the expiry of the one month's notice. In the writ petition under Articles 226 and 227 brought by him, it was argued that he being a probationer, was entitled to show-cause notice against the proposed termination of his services, under rule 9. It was contended on behalf of the State that the petitioner was not a 'probationer' but a person 'on probation'. After referring to rule 2.49, Falshaw, C.J., speaking for the Letters Patent Bench, observed :—

"When this case was being argued at a previous hearing the question at once arose whether the post held by the petitioner while serving on probation was a substantive vacancy in the cadre of the department. Obviously under the definition, the petitioner was a probationer, and so entitled to the benefit of rule 9, if he was occupying a substantive post, but if the post which he was occupying was only a temporary post he would not be covered by the definition.....an affidavit has been

filed by Mr. R. P. Ojha, I.A.S., Excise and Taxation Commissioner, in which it is stated that the petitioner-appellant was employed at Taxation Sub-Inspector on probation in an *ex-cadre* temporary post and not against a substantive vacancy in the cadre of the department. This appears to remove the basis of the argument now advanced on behalf of the petitioner, whose only course, if he disputes the correctness of the statement, is to challenge it in a regular suit in which the matter can be thoroughly investigated."

It will be seen, from what has been quoted above, that there was absolutely no discussion as to what is meant by "substantive vacancy". Without assigning any reason, the learned Judges took it for granted that there could never be a substantive vacancy in a temporary post. However, the decision could be supported on the peculiar feature of that case, namely, that the vacancy in which Balhara was appointed, was a vacancy in a temporary post which was *not in the cadre* of the Department, and, as such, pre-requisite (b) of the definition of 'probationer' was not satisfied in that case. Thus, apart from being in the nature of an *obiter dictum*, *Balhara's case* inasmuch as it seems to enunciate the general proposition that there can never be a substantive vacancy in a temporary post—does not, it is respectfully submitted, lay down the law correctly.

(27) The learned single Judge has referred to a judgment of the Kerala High Court, also, in *P. C. Kunhikrishanan Nambiar and another v. State of Kerala and others* (2). In that case, the learned Judges, while considering the meanings of the words "officiating" and "substantive" in relation to Indian Administrative Service (Appointment by Promotion) Regulation, 1955, observed :—

"In the ordinary sense of the words in the context of service, "to officiate" is to "perform the duties of an office", and "substantive" means "permanent". Substantive service, therefore, means service as a permanent holder of an office and in contradistinction, officiating service means service rendered as a non-permanent holder.....In fact, all service which is not substantive is officiating and it seems clear that the words "whether officiating or substantive" are used in the regulation to mean "whether substantive or not".

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It will be seen that the interpretation in *Nambiar's* case was in another context. The precise question, whether there can be a *substantive vacancy* in a temporary post in the *cadre* of a Department, was not under consideration in that case. As observed already, "substantive" does involve a notion of some permanency of a relative kind and in contradistinction to officiating. It was in that context that the learned Judges held that in contradistinction to 'officiating', the word "substantive" would mean permanent. In this connection, it is noteworthy that even the Services Rules do not use the words "substantive" and "permanent" interchangeably; on the other hand, they have used the word "substantive" even in respect of an appointment to a temporary post. (See Rule 2.58). 'Substantive provisional appointments' are also within the rules, for instance, where the permanent incumbent has proceeded on deputation to Foreign Service and his lien is suspended. If his lien is terminated for good, the 'substantive provisional' appointment of the person occupying his post, would be converted into a 'substantive permanent appointment'. In such cases, both the words "substantive" and "permanent" are used conjunctively to denote the nature of the appointment. All this shows that the word "substantive" as used in the Services Rules in relation to vacancies and appointments, does not mean the same thing as "permanent". There is a clear distinction between the terms "permanent" and "substantive" in the dictionary sense, and the rules do not obliterate that distinction. Nor is there anything in the context of rules 2.40 and 2.58 which would justify a departure from their ordinary dictionary meaning.

(28) Out of all the cases cited, *Ram Saran Dass v. State of Punjab* (3), is the nearest parallel to the case before us. Ram Saran Dass was selected to the P.C.S. (Executive Branch) as a result of the competitive examination held by the Punjab Public Service Commission in 1956. After December, 1960, he was transferred to Hissar and posted as Revenue Assistant in the Department of Agrarian Reforms, in a temporary post. He apparently completed his probationary period of three years on the 16th May, 1960. During the probationary period he was allowed four increments, the last of which was given to him about two months before the impugned order, on the 3rd August, 1962, terminating his services under rule 23 of the Punjab Civil Service (Executive Branch) Rules, 1930, was

passed by the Governor of Punjab. In his writ petition under Articles 226 and 227 of the Constitution, it was contended that he was a 'probationer' and not merely a Government servant on probation' and, consequently, his services could not be terminated without compliance with rule 9 of the Appeal Rules. It was urged that a 'substantive vacancy' means a vacancy which is self-existing, and, therefore, he was appointed in or against a 'substantive vacancy' and his case was fully covered by rule 2.49 of the Services Rules. It was urged that as soon as the petitioner was appointed he became a member of the Punjab Civil Service, and, on first appointment, all the candidates are, according to rules, to remain on probation.' Reference was also made to rule 2.58 of the Services Rules. In reply, it was contended on behalf of the State that the petitioner was merely officiating against a temporary post, at Hissar, when his services were terminated and was not holding a substantive post. In support of this contention, reliance was inter-alia placed on *Raghubir Singh Balhara's case supra*.

(29) Dua, J. (with whom Capoor, J. agreed), distinguishing all the cases then cited at the bar, accepted the contentions of Ram Saran Dass petitioner with these observations:—

"The question whether the petitioner in the present case is a probationer within the contemplation of rule 9 of the Punishment and Appeal Rules and thus entitled to an opportunity to show cause against the termination of his employment or whether he can be removed from service without assigning any reason under rule 23 of the Executive Branch Rules, is not free from difficulty, but on considering the various aspects canvassed at the Bar, as discussed above, I am inclined, as at present advised, to take the view, that the petitioner is a 'probationer' entitled to an opportunity to show cause against the termination of his employment and he cannot be removed from service by resorting to rule 23 read with Rules 21, 22 and 24 of the Executive Branch Rules without affording him such an opportunity. On the facts and circumstances of this case, rule 23 does not seem to be available to the respondent. It cannot be denied that action against the petitioner has been promoted and is being taken as a result of unsatisfactory record or unfavourable reports,

if not also for specific faults. Opportunity to show cause would in the circumstances seem to be necessary."

It is important to note that Ram Saran Dass, at the date of the termination of his services, was holding a *temporary* post in the *cadre* of the P.C.S. (Executive Branch). Though the learned Judges have not discussed it in so many words, they seem to have accepted the contention of the petitioner that even if employed in or against a temporary post, he would, in view of rule 2.58, be deemed to be employed in or against a 'substantive vacancy' in the *cadre* of the Department', for the purpose of rule 2.49, and, as such, was a probationer entitled to the protection of rule 9 of the Appeal Rules. At this place, it may also be remembered that the definitions given in the Services rules including that of 'probationer' in rule 2.49, are subject to repugnancy, if any, in the context,—(*vide* rule 2.1 of Chapter II-definitions). For this reason, also, the expression "substantive vacancy" in the *cadre* of a Department consisting entirely or partly of temporary posts, is to be read subject to necessary adaptations. I, therefore, think that Ram Saran Dass's case is of great assistance for determination of the point involved in the appeals before us. Here also, there can be no dispute that the appointment of the appellants was to the *cadre* of Punjab Industrial Service Class II, though against temporary posts. On principle, therefore, I see no real distinction between *Ram Saran Dass*' case *supra* and that of the appellants.

(30) Apart from *Raghubir Singh Balhara*'s case, reliance has been placed on behalf of the respondents on two other cases namely *V. P. Rehbar v. Punjab States* (6), and *Madan Gopal v. State of Punjab* (6). In the first of these two cases, V. P. Rehbar was appointed as Block Development Officer on September 21, 1961, on probation for a period of two years against a temporary post, which was likely to continue. It was a term of his appointment that his services could be terminated without notice, if administrative exigencies so dictate. The Services Rules were made applicable to the post. On July 1, 1963, the Financial Commissioner passed an order terminating Rehbar's services on the ground that there were "no longer required". One of the contentions raised was that Rehbar being a probationer, his services could not be terminated without complying with rule 9 of the Appeal Rules. This contention was rejected by Shamsheer Bahadur, J.,

on the ground that the petitioner was only a temporary Government servant. It was observed:—

“There is a difference between a ‘probationer’ and a ‘person on probation’. The probationer is one appointed in or against a post substantively vacant with definite conditions of probation, while the ‘person on probation’ is one appointed to a post (not necessarily vacant substantively) for determining his fitness for eventual substantive appointment to that post. It is in the latter sense that the petitioner was appointed on probation, for two years and the Government was free to make up its mind whether it would retain the services of the petitioner after the expiry of the period. It is in the exercise of that power that the Government decided to dispense with the services of the petitioner.”

The points which are now being considered, including the one whether there can be a substantive vacancy in a temporary cadre post, was not discussed or considered, nor was the effect of rule 2.58, which says that a temporary post can be held substantively, considered. It was simply assumed that a temporary post cannot fall vacant substantively, in any circumstances. For reasons aforesaid, I may respectfully submit, that this assumption is not correct so far as a temporary post *in the cadre* of the Department is concerned. From the facts as appearing in the Report, it is not clear whether the temporary post to which Rehbar was appointed, was a post in the cadre of the Department or an ex-cadre temporary post. Indeed, in that case, nobody was alive to this aspect of the matter. It was taken for granted that the post held by Mr. Rehbar was purely a temporary post, which could not fall vacant, substantively.

(31) *Madan Gopal v. State of Punjab* (6), is the next case relied on by the respondents. In that case, Mr. Gopal was appointed a Foot Constable in Radio Section of the Punjab Police and, later on, was absorbed as Officiating Radio Operator in the grade of Rs. 80—5—120/8—200/10—220 and was confirmed in that post. At his request, he was transferred and absorbed as an Assistant Sub-Inspector of Police on three years' probation and his pay was fixed

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at Rs. 94 plus Re. 1 as personal pay, but his lien on his original post was retained. After about three years, since he was not confirmed as Assistant Sub-Inspector in the Punjab Armed Police, he was sent back to his parent Department and his pay was fixed at Rs. 95 though he was drawing Rs. 98 per month as Assistant Sub-Inspector. His representation for fixation of his pay at Rs. 110, after allowing him increments in his own grade of the Radio Operator, was rejected. In his suit, the Court fixed his pay at Rs. 98 which he was getting at the time of his transfer. The only question for decision was, whether his service in the Punjab Armed Police would be covered by Rule 3.17 of the Services Rules. It was urged on behalf of Madan Gopal that he had been treated as a probationer and would have been confirmed if his work during the probation was found satisfactory. P. C. Pandit, J., after referring to the definition of 'probationer' in rule 2.49, observed:—

“The appellant was not appointed as Assistant Sub-Inspector either through selection by a Departmental Committee or as a result of competitive examination through the Punjab Public Service Commission and there is nothing on the record to indicate that any definite conditions of probation, such as the passing of departmental examinations, were prescribed in his case. That being so, it cannot be said that he was a probationer. He had only been appointed 'on probation' for determining his fitness for eventual substantive appointment to the post of Assistant Sub-Inspector.”

It will be seen that the *ratio* of *Madan Gopal's* case is not helpful for determining the specific issue before us. That was a case of a person holding a permanent post, merely appointed on probation to another post.

(32) For all the foregoing reasons, the conclusion is irresistible that both the appellants were 'probationers' and, as such, entitled to the protection of Rule 9 of the Appeal Rules. Since the pronouncement of their Lordships of the Supreme Court in *Ranendra Chandra Banerjee v. Union of India and another* (9), it is settled law that

(9) A.I.R. 1963 S.C. 1552.

termination of the services of a probationer without compliance with the provisions of Rule 9 of the Appeal Rules, is illegal.

(33) In the result, I would allow both these appeals with costs and set aside the impugned orders. Counsel's fee in each case: Rs. 100.

TULI, J.—I have carefully read the judgments prepared by my Lord the Chief Justice and my brother Sarkaria J., and with very great respect I find myself in complete agreement with the reasoning and conclusions of my Lord the Chief Justice.

(35) In the result, the two appeals fail and are dismissed with costs. Counsel's fee Rs. 100 in each appeal.

ORDER OF FULL BENCH

(36) In view of the majority opinion, the appeals of the appellants fail and the same are dismissed with costs, counsel's fee being Rs. 100 in each appeal.

K. S.