

Tribunal, Amritsar, and at the instance of the Revenue, the following question has been referred for opinion of this Court :—

“Whether on the facts and in the circumstances of the case, the ITAT is right in law in upholding the finding of AAC that the assessee is entitled to set off the loss against the income of the firm in subsequent years in view of provisions of Section 77(1) of the I.T. Act, 1961 ?”.

The decision in *B. S. Dall Mills's case* (supra) is on all fours in favour of the assessee, and, therefore, the question arises is whether it lays down correct law. After considering the provisions of Section 77(1) of the Act and other relevant provisions, we are of the opinion that the Karnataka High Court has come to the correct conclusion on the interpretation of Section 77(1) of the Act, that if an un-registered firm becomes registered firm in the subsequent years, the loss incurred by the un-registered firm can be carried forward in the subsequent years in spite of the registration. One of the pre-requisites for doing this is that the firm should be the same. If there is a change in the constitution of the firm, then different consequences may flow. Here, there is no change in the constitution of the firm, and, therefore, the word “firm” used in the end of Section 77(1) of the Act would include both, registered as well as un-registered firm. The registration of the firm does not take away the benefit, which would have accrued to it under section 77(1) of the Act, if it had remained un-registered. Accordingly, we agree with the view taken by the Karnataka High Court and hold that carry forward was rightly allowed and the referred question is decided in favour of the assessee, that is, in the affirmative, with no order as to costs.

P. C. G.

FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJ.

KARTAR SINGH and others.—Petitioners.

versus

STATE OF PUNJAB and others.—Respondents.

Civil Writ Petition No. 2157 of 1986.

May 29, 1989.

Punjab Revenue Patwaris Class III Services Rules, 1966—Rls 10(IV) and 15—Punjab Land Revenue Act, 1887—S. 28(1)—Fixation of seniority—Retrenched officials of Consolidation Department

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absorbed as Revenue Patwaris—Length of service rendered in former department—Whether should be counted towards seniority in revenue department.

Held, that Rule 10 of the Punjab Revenue Patwaris Class III Service Rules, 1966 deals with method of appointment to the service and one of the methods i.e. (iv) is by absorption. This amendment was made by a notification of the Government. Rule 15 for determining seniority *inter se* of the members of the service in each cadre has to be maintained districtwise and has to be determined by the length of continuous service on a post in that cadre. As interpreted by the Division Bench, employees of the Consolidation Department after absorption will have the benefit of the length of their service in the Consolidation Department and that length of service will be considered as service on the post in the cadre under the Rules. (Para 35).

Held, in case of absorption Rules regarding probation etc. are also held to be inapplicable. (Para 36).

Held by M. M. Punchhi, J.

Held, that on absorption an employee becomes part and parcel of the department absorbing him and partakes the same colour and character of the existing employees of the department, classified as promotees, direct appointees or transferees on the loss of his identity. If this is understood in this perspective there is no difficulty in assigning the absorbees seniority in accordance with seniority rule 15. (Para 40).

Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice D. V. Sehgal to a larger Bench for decision of an important question of Law involved in the case of 19th August, 1986. The Larger Bench consisting of Hon'ble Mr. Justice Ujagar Singh, Hon'ble Mr. Justice M. M. Punchhi and Hon'ble Mr. Justice A. P. Chowdhri finally decided the case on 29th May, 1989.

Civil Writ Petition under Articles 226/227 the Constitution of India praying as under :—

- (i) *that a Writ of mandamus or a writ of Certiorari or any other writ, Direction or Order be issued for quashing the impugned Order of the Commissioner, Ferozepur Division, Ferozepur.*
- (ii) *that till the decision of the present Writ petition, operation of impugned order be stayed ;*

- (iii) *that prior service on the respondents and filing of certified copies of Annexures be dispensed with ;*
- (iv) *that respondents be directed to produce the record relating to the case ;*
- (v) *that any other relief to which the Petitioners are found entitled in the circumstances of the case be also granted;*
- (vi) *that petitioner be allowed with costs throughout.*

Ram Lal Gupta, Advocate, for the petitioners.

Gopi Chand, Advocate, for A. G. Punjab, for the respondents.

JUDGMENT

Ujagar Singh, J.

(1) This petition challenges the impugned order of January, 1986 passed by the Commissioner, Ferozepure Division setting aside the final seniority list of Patwaris made by the District Collector, Bhatinda,—*vide* his order, dated 17th December, 1980 on the grounds that the final seniority list prepared by the District Collector after hearing and deciding the objections filed by the patwaris was prepared on the basis of continuous service rendered as Revenue Patwaris by all the Patwaris shown in the list Annexure P. 1. This list has been set aside by the Commissioner,—*vide* his order Annexure P-2 which has caused prejudice to the petitioners. No opportunity was given to the petitioners before passing Annexure P-2. Giving the earlier history leading to the filing of this petition it is mentioned that S/Shri Sita Ram, Shanti Parkash, Pyre Lal and Atma Ram who were shown in the final seniority list at Serial Nos. 108, 106, 91 and 117 were initially appointed as Revenue Patwaris in District Bhatinda and were trained revenue patwari candidates. They were later on transferred to the Consolidation Department and subsequently absorbed in the Revenue Department in that District. They challenged the seniority list, dated 17th December, 1980 *qua* their rights in the Civil Court at Bhatinda. However, all the revenue patwaris candidates in the District were not impleaded as parties. Petitioners No. 3, 11, 14 to 27, 35 and 36 were also not impleaded as parties. The said suit was decreed by the Civil Court on October 29, 1983,—*vide* its judgment Annexure P-3.

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(2) It is further mentioned that services of a number of persons working in Consolidation Department became surplus in that department and they were retrenched therefrom but, taking sympathetic view the State authorities absorbed those retrenched employees in the Revenue Department. These innumerable retrenched employees are said to have been working in Consolidation Department otherwise than as Patwari. The impugned order Annexure P-2 is challenged as violative of the Punjab Revenue Patwaris Class III Service Rules, 1966 and Articles 14 and 16 of the Constitution of India and causing manifest injustice to the petitioners on the grounds mentioned in the petition.

(3) In the written reply by way of affidavit of Shri J. S. Qaumi, I.A.S., Collector District Bhatinda, a preliminary objection was made that the seniority list was yet to be finalised in accordance with the decision of this Court in Civil Writ No. 3585 of 1980 and decision of the Civil Court and, therefore, the present writ petition was said to be pre-mature. Two other preliminary objections i.e. (i) writ petition is not maintainable as there is no cause of action and (ii) that the petitioners have not exhausted all other remedies, have been raised. Paras No. 1 to 5 have been admitted. In reply to para No. 6 it has been stated that some patwaris who had come from Consolidation Department on retrenchment on their having been shown in joint seniority list, represented against the seniority list to the Revenue Commissioner. Earlier some persons from Consolidation Department had filed a civil suit challenging the seniority list on the grounds *inter alia* that the seniority list finalised by the Collector making some persons junior to them as senior. *Vide* judgment dated 29th October, 1983 the said suit was decreed directing that the seniority list of patwaris be prepared in accordance with the judgment of Hon'ble High Court in case of Gulzar Singh Gill (C.W.P. 1985 of 1980) wherein it was held by this Court that once the patwaris of Consolidation Department are absorbed in the Revenue Department the distinction between the two is automatically removed. In reply to para 7 it is stated that persons who became senior to the plaintiff on the basis of seniority were impleaded as defendants and the persons who were not necessary parties were not impleaded as the defendants in the said suit. In reply to para 8 it has been stated that the absorption of retrenched employees was made in the Revenue Department,—*vide* Government Instructions, dated 21st July, 1978 and amendment in the Revenue Patwaris Class III,

Rules 1966 was consequently made. The other grounds of attack have been denied in respective paras of the replies. Ultimately, it was prayed that the writ petition be dismissed with costs.

(4) After hearing arguments of both the sides a Division Bench of this Court passed the following order on August 19, 1988 :—

“This petition relates to the determination of seniority between the patwaris, who were originally recruited in the Revenue Department and those who were working in the Consolidation Department and were later on appointed in the former department. Relying on the judgment of this Court in *Gulzar Singh Gill v. The State of Punjab and others* (1), the State has given the benefit of the service in the Consolidation Department to the Patwaris appointed in the Revenue Department later on after retrenchment from the earlier department. The Division Bench in *Gulzar Singh Gill's case* (supra) relied on the following provision of Rule 10 of the Punjab Revenue Patwaris Class III, Service Rules, 1966 for its view that the persons later on appointed are entitled to the service rendered by them in the Consolidation Department :—

“10.

(iv) by absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department (No. G.S.R. S.P.A. 17/87/S. 20/Amd. (i) (71), dated 7th January, 1971)”.

(5) From a bare perusal of the rule, it is evident that it does not, in any way, override the provisions of Rule 15 which provide how the seniority is to be determined. This provision only enables the State to absorb the Patwaris retrenched from the Consolidation Department in the Revenue Department, which could not have been done otherwise. However, in the absence of any provision in this clause that the service rendered in the Consolidation Department would be counted towards seniority in the Revenue Department, the benefit of that service, in our view, would not be available for the determination of seniority in the Revenue

(1) C.W.P. No. 3385 of 1980 decided on January 8, 1981.

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Department. The above decision, therefore, needs reconsideration by a larger Bench. Accordingly, this petition is admitted to hearing and ordered to be placed before the learned Chief Justice for referring it to a larger Bench.”

(6) The prayer of the petitioners to stay further promotions on the basis of the impugned seniority list was, however, declined with the observation that any such promotion shall be subject to the final decision in this writ petition.

(7) This is how the case has been placed before this Full Bench for determination.

(8) Before we deal with the merits of the case, it will be beneficial to reproduce relevant provisions of the Punjab Revenue Patwaris, Class III, Service Rules, 1966 framed by Notification No. G.S.R. 3/C.A. 17/87/S. 28/66, dated 4th of January, 1966, published in the *Punjab Government Gazette, Part III*, dated January 7, 1966 in exercise of powers conferred by sub-section (1) of section 28 of the Punjab Land Revenue Act, 1887.

Rule 2. *Definitions.*—In these rules, unless the context otherwise requires.—

(a)

(b)

(c)

(d) ‘direct appointment’ means an appointment made otherwise than by promotion or by transfer of an official already in the service of the State Government ;

(e)

(f)

(g)

(h) ‘Patwari’ means a Revenue Patwari including an Assistant Patwari ;

(i)

(j) 'Service' means the Punjab Revenue Patwaris Class III Service.

(10) *Method of appointment.*—(1) Appointment to the service shall be made—

(a) in the case of Patwaris—

(i) by promotion from amongst the Assistant Patwaris ;
or

(ii) by direct appointment from amongst the accepted Patwari candidates ; or

(iii) by transfer of an official already in the service of the State Government ; and

(iv) By absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department No. G.S.R. 5 P.A. 17/87/S. 28/Amd. (i) (71), dated 7th January, 1971.

(b)

Rule 15, Seniority.—The Seniority *inter-se* of members of the service in each cadre shall be maintained districtwise and shall be determined by the length of continuous service on a post in that cadre :

Provided that in the case of two or more members appointed on the same date, their seniority shall be determined as follows :—

(a) a member recruited by direct appointment shall be senior to a member recruited otherwise:

(b) a member appointed by promotion shall be senior to a member appointed by transfer ;

(c) in the case of members appointed by promotion or transfer, seniority shall be determined according to

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the seniority of such members in the appointments from which they were promoted or transferred; and

- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same then by their length of service in those appointments; and if the length of such service is also the same, an older member shall be senior to a younger member.

Note 1.—This rule shall not apply to persons appointed on purely provisional basis pending their passing of qualifying tests.

Note 2.—In the case of members whose period of probation is extended under rule 14, the date of appointment for the purpose of this rule shall be deemed to have been deferred to the extent the period of probation is extended.

Rule 21. Power of Relaxation.—Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

(9) The main argument of the learned counsel for the petitioners is that the employees of the Consolidation Department who were retrenched or likely to be retrenched will be deemed to have been appointed under Rule 10 quoted above and their seniority can be determined only under Rule 15 wherein the words length of continuous service on a post in that cadre will mean that their length of service will be deemed to be only from the date of absorption and not from any earlier period and as such employees absorbed in the Revenue Department will be deemed to have been appointed below the revenue Patwaris already working in the cadre. From this argument he concludes that all such persons coming from the Consolidation Department cannot claim seniority

over any of the Revenue Patwaris already working. On this argument, the learned counsel for the petitioners challenges the correctness of seniority list Annexure P-2 decided by the Commissioner, Ferozepur Division which has set aside the seniority list Annexure A-1 prepared by the Collector District Bhatinda.

(10) In support of his argument, he has relied upon *Sri H. N. Shantharajiah and others v. Karnataka Electricity Board and others* (2), *D. Haridas v. The State of Kerala and others* (3), *Dr. Jiwan Lal Deputy Director of Health Services, Simla and another v. The State of Himachal Pradesh and others* (4), *Subhash Chander Awasthy and others v. The State of Punjab and others* (5), *S. Arunachalam and others v. The State of Tamil Nadu and others* (6), *Mrs. Harbhajan Kaur v. The State of Punjab and others* (7), *Smt. S. K. Mann v. The State of Punjab and others* (7-A) and *Madhya Pradesh Shasnadhin v. State of Madhya Pradesh* (8).

(11) In *Sri H. N. Shantharajiah's* case (supra) the dispute was that by an official memorandum, dated 29th of July, 1970 employees of the Electricity Board were certified as having completed their period of probation and were confirmed in the post of a Junior Engineer with effect from certain dates in November, 1969 and a few of them in December, 1969. The Electricity Board was taking Junior Engineers only on tentative basis and not in the permanent cadre and on daily rating. There were also other persons who were being employed on daily wages though continuously. There was a dispute in this behalf and the Government made a reference to the Additional Industrial Tribunal. One of the disputes referred to was "whether the temporary employees who have put in a service of 240 days and more should be made permanent?" The Industrial Tribunal made an award dated 12th of October, 1967 and the same was published in the Gazette dated 26th November, 1967 from which date it became enforceable. In the implementation of this Award, the petitioner and others some of whom were impleaded as respondents were absorbed into the service by an

- (2) 1978 (2) S.L.R. 74.
- (3) 1980 (1) S.L.R. 334.
- (4) 1980(2) S.L.R. 799.
- (5) 1980 (3) S.L.R. 562.
- (6) 1981 (2) S.L.R. 644.
- (7) 1983 (2) S.L.R. 651.
- (7-A) 1982(2) S.L.R. 223.
- (8) 1988 (1) S.L.R. 308.

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official memorandum dated 14th November, 1968. Under that memorandum, the date of absorption was mentioned as 1st October, 1968 but later on the date was corrected by an other official memorandum dated 13th January, 1969 and the corrected date was indicated as 26th May, 1968. Even respondents who had been selected before the Award came to be made, were Junior Engineers in the Board taken tentatively just as the petitioners and other respondents. The principle to be adopted in fixing up the seniority was indicated in a letter of the Chief Engineer, dated 22nd January, 1969 and the same was to lie effect that "the tentative candidates being regularized as a result of the Award would be fixed below the last "Board Recruited" or promoted regular candidate as on the date of absorption, and the ranking among the candidates who were being regularised in terms of the award would strictly be according to their dates of entry into the service in the various offices of the Board". The claim of the petitioners was that they had become permanent employees with effect from 25th May, 1968 and the respondent had been appointed on probation and they had completed their probation only in or after November, 1969 and they should be considered as permanent employees only from those dates and accordingly, they were entitled to seniority over those respondents. The Award of the Tribunal specifically stated that the absorption was to be of persons found suitable by the management. The award did not declare or hold that every daily rated employee, if he had put in 240 days service in a calendar year was to be confirmed from the date of expiry of those 240 days or that the absorption had to be made ignoring the relevant rules or that the persons so absorbed would not be governed by the rules. Reference was made to regulation 10 of the Mysore State Electricity Board, Recruitment and Promotion of Employees of the Board Service Regulation 1960. That regulation is as under :—

"METHOD OF RECRUITMENT : Recruitment to the Board Services shall be made by conducting written and or oral tests or by selection or by promotion.

Method of recruitment, promotion, minimum qualifications, period of probation etc., for each Board Services are set forth in the Rules of Recruitment,—vide Annexure 2."

Reference to Annexure 2 mentioned in regulation 10 above, will show that there was only one method of recruitment, i.e., by direct

recruitment of candidates selected by a selection committee as constituted by the Board from time to time after interview and oral tests. Considering these facts, it was held that the post of Junior Engineer could be filled up only by direct recruitment by selection and not otherwise and subject to a period of probation.

(12) In *D. Haridas's case* (supra) the request for seniority over the 2nd respondent was denied. The writ petitioners 1 and 4 were first advised for appointment by the Kerala Public Service Commission on 23rd January, 1958 and the 5th petitioner on 24th January, 1958. Their services in the office of the Public Service Commission were terminated and they were latter advised to the Secretariat on 28th April, 1958. Admittedly, there was an interregnum or break of service between the termination of service in the office of the Public Service Commission and the fresh appointment in the Secretariat. The 2nd respondent was one who was appointed as Stenographer in the Secretariat during this interregnum. The petitioners were promoted as Assistants Grade I. When the question of further promotion as Section Officer arose, it was recognised that Stenographer could also be in the field of choice subject to the conditions laid down in the said Government Order. Accordingly, the 2nd respondent was appointed as Section Officer. He had service from 11th February, 1958. In view of this greater length of service the 2nd respondent was given a higher rank over the petitioners who were also selected as Section Officers. The grievance agitated was one of the seniority over the 2nd respondent on the ground that if the same were to count from the date of first effective advice by the Public Service Commission, the petitioners were senior to the 2nd respondent. But order Exhibit P. 8 found against this contention on the ground that length of service outside the Secretariat cannot avail for purpose of counting seniority in the Secretariat service. After considering the rules and other facts it was held that the term "member of a service" and the provision in the rules for deciding seniority are against the contention of the appellants that the date of first effective advice for appointment in the office of a Public Service Commission should count for purpose of seniority in a different service altogether *viz.* Secretariat service.

(13) In *Dr. Jiwan Lal's case* (supra) the petitioner was appointed to the post of Deputy Director on *ad hoc* basis and the appointment to the said post, on regular basis could be made on the basis of selection and could not be claimed as a right and, therefore, this

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appointment could not be claimed on regular basis. Ultimately it was held as under :—

“It may be noticed that the unamended sub-rule had the words “whichever is earlier”. These were deleted retrospectively by amendment. Why were these deleted ? What object was thus sought to be achieved ? Evidently, according to the unamended sub-rule, a person belonging to either of the classes could claim his seniority on the basis of the category to which he was appointed earlier. For instance, if a person is included in the C.H.S. later but was in the P.C.M.S. I (with post-graduate qualifications) earlier, he could base his claim for seniority on his earlier appointment. On the contrary, if a person happened to belong to one specific class only, he had to rest content with his appointment in that class. It has to be remembered that seniority was to be fixed in H.P.H.S. Doctors joining this Service were mostly coming from C.H.S. In order to do justice to those doctors who were not members of the C.H.S. but were coming from a local authority or from medical service of Punjab, some provision had to be made. Otherwise, Doctors with long service to their credit would be put *en bloc* junior to C.H.S. doctors. In those circumstances, the words “whichever is earlier” were deleted retrospectively to enable each doctor to have benefit of appointment of that service only from which he was coming to join the H.P.H.S. In other words, if one was coming from C.H.S. he could claim seniority on the basis of that service only and not on the basis of earlier service of P.C.M.S. even if he happened to be in that service earlier.”

(14) In *Subhash Chander Awasthy's* case (supra) the dispute was about the seniority between persons holding the cadre post and persons holding the ex-cadre post. It was held as under :—

“There is therefore, no manner of doubt that respondents Nos. 3 and 4 were not members of the service and held ex-cadre posts till October 15, 1974 when the posts held by them were included in the cadre of the said service. Once it is so held then there is no escape from the conclusion that respondents Nos. 3 and 4 have to be treated as junior

to the petitioner in view of the circular letters of the Government, Annexure P. 11, dated September 2, 1969 which provides that in the absence of any provision to the contrary, in the case of an official appointed to an isolated post by direct recruitment, his seniority in the cadre should be fixed from the date the post is included in the cadre. Here it may be made clear that in the opening of the letter it has been stated that this decision has been taken with respect to ex-cadre/isolated posts which means that it applies to both isolated and ex-cadre posts. The seniority of the petitioners *vis-a-vis* respondents Nos. 3 and 4 was thus rightly determined by the Government,—*vide* Annexure P-1 placing the latter at the bottom and the Government is not justified in treating them (respondents Nos. 3 and 4) as senior to the petitioners. However, I cannot restrain myself from observing that by treating the two posts held by respondents Nos. 3 and 4 as ex-cadre posts, a great hardship and injustice has been caused to them. As it is not possible in these proceedings to give any relief, they may approach the Government to relieve them of this hardship by confirming them from an appropriate date.”

(15) In S. Arunachalam's case (*supra*) the facts were that the petitioners therein joined the Tamil Nadu Water Supply and Drainage Board (hereinafter referred to as the Board) as Junior Engineers. At that time, the respondents were employees of the Board which was constituted in the year 1971. Section 30 of the Tamil Nadu Water Supply and Drainage Board Act, 1970 provided that every person who immediately before the notified date is serving in connection with the affairs of the Department of Public Health Engineering and Municipal Works including the office of the Chief Engineer (Public Health Engineering and Municipal Works) under the Government shall as from that date be deemed to have been allotted to serve in connection with the affairs of the Board and shall cease to be an employee of the Government, subject to two provisos which were not concerned in that case. Section 31 of the Act provides that as soon as may be after the notified date, the Government might after consulting the Board direct by general or special order that such of the employees other than those employees referred to in Section 30 serving (immediately before the said date in connection with the affairs of the State as are specified in such orders shall stand allotted to serve in connection with

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the affairs of the Board with effect on and from such date as may be specified in such order. Section 31(b) of the Act provided that with effect on and from the date specified in the order under clause (a) the persons specified in such order shall become employees of the Board and shall cease to be employees of the Government. After reference to the provision of Section 31 of the Act, it was held that transfer and allotment of respondents Nos. 3 to 8 to the service of the Board had been specifically made under Section 31 of the Act. The specified date was 19th March, 1973, and therefore, it was held that in the circumstances, petitioners were entitled to claim seniority over respondents Nos. 3 to 8.

(16) In *Mrs. Harbhajan Kaur's case* (supra) the petitioner impugned the order of reversion from the post of Accountant to that of Junior Scale Stenographers as persons junior to her were still continuing on the higher post of Assistant in the Department. Her stand was that services of these two latter mentioned employees were regularised as clerks on January 1, 1973 whereas her services as Junior Scale Stenographer were regularised on March 30, 1972. It was held that the petitioner was appointed as Junior Scale Stenographer on transfer in the Civil Welfare Department on 11th July, 1973 for the first time and prior to that she was an employee of the Department of Welfare of Scheduled Castes and Backward Classes. Thus, it was held that she could not possibly claim herself to be senior to the respondents who were appointed as clerks in the latter Department with effect from 1st January, 1973.

(17) In *Smt. S. K. Mann's case* (supra) the petitioner was senior to respondents Nos. 3 to 8 in Class III of Punjab Education Service Class III. In the year 1965, the petitioner and respondents Nos. 3 to 8 were appointed in Punjab Education Service Class II and in the seniority list of class II the petitioner was shown junior to the said respondents. The method of recruitment of the members of the service was governed by Punjab Education Service (Class II) Rules 1934, Rule 6 thereof gives three methods, i.e. (a) by selection from Subordinate Education Service; or (b) by selection from among those holding special or miscellaneous posts in the department or (c) by direct appointment on the recommendation of the Commission or the Punjab Education Board of Selection if the former does not exist. The plea of the Department was that recruitment of the petitioner was under rule 6(c). It was admitted that the petitioner and the said respondents were selected by the Public Service Commission against posts reserved for departmental

candidates and they could be appointed is under said rule 6(a). With reference of Civil Writ Petition No. 891 of 1969 decided on February 9, 1970, the appointees like the petitioner and the respondents were treated as departmental appointees, and not as direct recruits. In this matter it was held that the appointments of the petitioner and respondents Nos. 3 to 8 to P.E.S. Class II in 1965 was under rule 6(a) and not under rule 6(c). Holding this the petitioner was held to be senior to respondents Nos. 3 to 8.

(18) In Madhya Pradesh Shasnadhin's case (supra) the teachers working in non-Government institutions formed an association and filed this petition for claiming fixation of seniority. In that case non-Government institutions were taken over by the State of Madhya Pradesh and petitioners No. 2 to 11 were initially appointed as lecturers in the Lahiri College of Arts. This college was run and managed by a society known as 'Lahiri College Society'. The said society came under some financial stringency and the college was ultimately taken over by the State of Madhya Pradesh on 27th March, 1981. In accordance with the norms for absorption of such lecturers into Government service as contained in the rules the said petitioners were absorbed in Government Service with effect from the date of taking over of the said college. The rules were amended from time to time and one such amendment was made by a Notification published in 1976 and by this amendment sub-rule 4 of rule 13 was substituted. The substituted sub-rule 4 provided that the teaching staff of the non-Government college taken over by the Government shall be absorbed in the manner specified in schedule III-A. By the same amendment after Schedule III, Schedule III-A was inserted. Clause 1 (iv) of Schedule III-A defines screening committee to mean a committee comprised of the officers mentioned. Clause 3 of Schedule III-A lays down considerations for absorption under Government Service which were to be kept in mind by this screening committee and it was in pursuance of the procedure laid down in Schedule III-A that petitioners Nos. 2 to 11 were absorbed in Government service on being found fit for absorption. Clause (6) thereof deals with the determination of the seniority and it provides that the person absorbed to a particular post shall get his seniority from the date the college was taken over, provided that he would be placed below the last existing Government servant promoted or recruited by the Public Service Commission to that post and above the Government servant promoted or appointed after that date. Said clause 6 was held to be relevant for the purposes of said case. For this proposition support was sought from

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another decision of that Court in case *R. N. Tiwari v. State of M.P. and others* M.P. No. 588 of 1984, where it was held that the date of taking over of the said private college was relevant for purpose of determination of seniority and it was finally held that the true position which clearly emerges was that in law, the petitioners Nos. 2 to 11 could not assert that their past services in Lahiri college had to be taken into consideration for determining their seniority or while fixing their pay. Validity of clause 6 had been challenged before Division Bench of that Court in case *Dr. K. M. Sharma and others v. State of M.P. and others* 1980 M.P.L.J. 555 and clause 6 was held valid and reasonable and teachers already in Government service and those sought to be absorbed on taking over the private college did not belong to the same category.

(19) After discussing the above authorities, it is obvious that the cases cited above were decided on the particular instructions given by the Government or authority concerned from time to time. In the last case of *Madhya Pradesh Shasnadhin's case* (supra) it was specifically directed that the staff of the Non-Government College was to be absorbed in the manner specified in Schedule III-A in which schedule a screening committee was provided and Clause III of this schedule laid down consideration for absorptions to be kept in mind by the screening committee. Clause VI thereof dealt with the determination of the seniority and provided that the persons absorbed to a particular post would get his seniority from the date the college was taken over. To this a proviso was added but the same is not relevant for the purposes of the present case. We are of the view that the above noted cases thus, are not of help to the petitioners.

(20) In all fairness to the counsel for the petitioner case of *Raghubir Chand v. State of Punjab* (9), by Division Bench of this Court may be referred. In that case three petitions were filed, the other two being Civil Writ Petitions Nos. 1777 of 1966 and C.W.P. No. 1963 of 1966. In all these three petitions a common question

(9) C.W.P. No. 1778 of 1966 decided on 30th July, 1968.

of law involving the application and interpretation of Punjab Revenue Patwaris Clause III Rules 1966 was referred to for consideration by a larger Bench,—*vide* reference, dated 3rd November, 1967. Out of these three petitions C.W.P. No. 1777 of 1966 was dismissed,—*vide* order dated 16th May, 1968 as having become infructuous because the petitioner in that petition was said to have been granted the same relief by a decree of the civil Court. The facts in C.W.P. No. 1778 (Supra) were that the petitioner was enlisted as a Patwari candidate in the District of Sangrur on 19th April, 1954 and having qualified in the Patwar Examination was appointed as a Patwari on 9th June, 1955,—*vide* order dated 8th June, 1966 the Punjab Government decided that Sub-Inspectors who had been rendered surplus from the Consolidation Department should be absorbed in the Revenue Department and it was laid down therein that the absorption of the retrenched Sub-Inspectors-Patwaris who had been in service before 3rd April, 1961 in the Punjab and before 21st July, 1955 in the erstwhile State of Pepsu could not be effected at all. The petitioner challenged the absorption that earlier the only provisions applicable to the service were those contained in the corresponding provisions of the Punjab Land Record Manual and with the help of those provisions it was argued that the power of appointment of the Patwaris rested solely with the Collector and the sole source of recruitment in the post of patwaris was the Tehsil Register in the statutory form P-1 which was appended to manual as Appendix (g). The argument was further developed that consolidation patwaris were not recruited out of the said statutory register and their names were never on the rolls therein and therefore, the consolidation personnel could not be eligible for appointment to the post of revenue patwaris and any executive instruction to the contrary and in direct conflict with the said provision, would not be valid. It was further contended that at the time of original appointment of the petitioner neither any instruction was in existence nor any such condition that he was being appointed subject to the rule of absorption of surplus consolidation staff was ever conveyed to him. Another contention was that the cadre of revenue patwari was separate from the cadre of consolidation staff. The Division Bench held that Government Instructions alone could not over-ride, vary or alter the statutory rules where they are expressly applicable. It was also held by the Division Bench that sub-clause III of clause 1 of Rule 10 provided only appointment by transfer of an official already in the service of the State Government but that case was not covered by this sub-clause. With this view the petition was allowed.

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(21) The learned counsel for the petitioner has in addition to the above authorities relied upon cases *K. Velayudhan v. Chief Conservator of Forests and others* (10), *Smt. A. M. Patel and others v. State of Gujarat and others* (11) and *Ashok Gulati v. B. S. Jain* (12).

(22) In *K. Velayudhan's* case (*supra*) (a judgment of the Kerala High Court) staff of the different services was absorbed after the formation of the Kerala State and the question was whether absorption could be said to be a direct recruitment. A reference was made to a judgment copy of which was Ex. P. 5, wherein the contention raised was that 3rd respondent could be said to be recruited direct only if the absorption into service came within the definition of rule 2 (12) of the Kerala State and Subordinate Services Rules. It was held that this matter was not considered in judgment Ex. P. 5 and 3rd respondent could not be said to be a person recruited direct. Therefore, this case is not relevant for the present controversy.

(23) In *Smt. A. M. Patel's* case (*supra*) in earlier litigation ultimately the direction given was that the question of the seniority of the writ petitioners should have been left on the State Government with a direction to re-examine the question. In that case the facts were that respondents Nos. 3 to 7 were initially recruited to some other Departments of the State Government as temporary Government servants in the cadre of Clerks. They were declared surplus and their services were, therefore, liable to be terminated. Instead of terminating their services they were allotted to the Directorate of Civil Supplies (Accounts) (to which the petitioners belonged) for appointing them in the said Directorate. The dispute arose as to whether seniority of respondents Nos. 3 to 7 in the cadre of Clerks in the Directorate of Civil Supplies (Accounts) as temporary Clerks should be fixed having regard to the respective dates of their appointment as temporary Clerks in the aforesaid Directorate in the year 1970-71, or whether their seniority should be determined having regard to their initial appointment in the other Departments of the State Government where they were employed as temporary Clerks and from where they were declared as surplus. Government Order dated February 14, 1964, annexure III,

(10) 1978 Vol. I, S.L.R. 710.

(11) 1980 L.I.C. 316.

(12) A.I.R. 1987 S.C. 424.

reads as under :—

“Order issued under Government Circular, General Administration Department No. EOT-1062-C, dated 16th July, 1962, regarding allowing to count the service rendered by a Government servant in one Department on transfer to another Department at his own request for the purpose of seniority, should be treated as cancelled. The cases of seniority which have been regularised in the light of the orders contained in the said Circular should be reviewed and seniority in those cases should be fixed in accordance with the normal rules. The seniority of the person coming to new cadre at his own request should be fixed below all the existing persons in the cadre, except when there are grounds of public interest or exigencies of service or there are exceptional reasons for warranting grant of higher seniority for which orders of Government should be obtained.”

Another Circular dated April 18, 1978 was issued to solve another problem in two types of cases (1) where at his own request an employee was transferred to some other Department and (2) when upon an employee being declared surplus, he was absorbed in a post in a corresponding pay scale or in a lower pay scale elsewhere. Para 3 of the said circular dealt with the second category of cases and it was provided there that when an employee is rendered surplus by reason of closure of a Department or for any other reason, on reduction of post, the employee concerned would be liable to have his services terminated on being declared as surplus. On compassionate ground the Government policy was to absorb him in a post in corresponding pay scale or in a lower pay scale as far as possible. In this case it was not shown that there was any rule or policy decision for fixing the seniority of the employee rendered surplus in one Department and absorbed in a different Department *vis-a-vis* existing employee of that department on the date of absorption and, therefore, the State Government was held to be bound to apply the principle formulated by itself in the said Government Circular dated April 18, 1978 which was a rational and reasonable principle. Respondents Nos. 3 to 7 did not contend that this principle was either unreasonable or rational or unfair. This case also was decided on different facts and is not helpful to the case of the petitioners.

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(24) In Ashok Gulati's case (*supra*) the facts were that in response to an advertisement published in the Daily Tribune of February 6, 1970 inviting applications for appointment as Temporary Engineers on an *ad hoc* basis, respondent No. 1, B. S. Jain was appointed as a Temporary Engineer (*ad hoc*) with effect from January 2, 1971 for a period of six months i.e., after the coming into force of the Haryana Service of Engineers, Class II, Public Works Department (Irrigation Branch) Rules, 1970 ("Class II Rules" for short). Prior to this respondent No. 2 S. L. Gupta, was also appointed as a temporary engineer on *ad hoc* basis with effect from May 19, 1969 by calling his name through the Employment Exchange i.e. subsequent to the coming into force of the Class II Rules. Their appointments were dehors the rules to meet the exigencies of service. In the letters of appointment issued to them it was specified that their appointment was purely on *ad hoc* basis for a period of six months from the date of their joining the post on a fixed salary of Rs. 400 plus allowances and their services were terminable without notice. They were specifically informed that the appointment would not entitle them to any seniority, or, other benefit under the service rules for the time being in force and would also not count towards increment in their salary. They were also intimated that the posts of Temporary Engineers in Class II service would be advertised in due course by the Haryana Public Service Commission and they should apply for such posts through the Commission, and that if they were not selected by the Commission, their services would be liable to be terminated without notice. Also that their *inter se* seniority among the Temporary Engineers would be in the order of merit in the list of candidates as settled by the Commission. The service of respondents Nos. 1 and 2 were however, continued by the State Government from time to time, six months at a time, till the Secretary, Haryana Public Service Commission, by his letter dated July 8, 1973 addressed to the Commissioner and Secretary to the State Government of Haryana, Public Works Department (Irrigation Branch) conveyed the approval of the Commission to the *ad hoc* appointment of 251 Temporary Engineers beyond the period of six months till regular appointments were made to the posts through the Commission. Accordingly, both these respondents continued to hold the posts of Temporary Engineers on *ad hoc* basis till the end of the year 1974 i.e. till they were recruited as Assistant Engineers through the Public Service Commission on April 21, 1975 on regular basis. With these facts in view it was laid down that respondents Nos. 1 and 2 were appointed as Temporary Engineers on *ad hoc* basis and in their case the

length of continuous officiation cannot be the basis for reckoning their seniority. They never became members of Class II Services prior to their absorption. It was further held that on the terms of appointments of respondents Nos. 1 and 2, it was specifically provided that their appointment was purely on *ad hoc* basis for a period of six months from the date of their joining the post on a fixed salary of Rs. 400 plus allowance and that their services were liable to be terminated without notice. It was also specifically mentioned that the appointment as such Temporary Engineers on *ad hoc* basis would not count towards seniority or increment in their salary. It was further stated that the posts of Temporary Engineers in Class II Service would be advertised in due course by the Public Service Commission and that if they were not selected by the Commission, their services would be terminated without notice. They were also intimated that their *inter se* seniority among the Temporary Engineers so recruited would be in the order of merit in the list of candidates as settled by the Commission. It is common ground that respondents Nos. 1 and 2 were not recruited through the Public Service Commission. It was not till July 8, 1973 that the Secretary to the Commission conveyed to the State Government the approval of the Commission to the *ad hoc* appointment of 251 Temporary Engineers beyond the period of six months till regular appointments were made in the posts of Assistant Engineers through the Commission. These are the facts on which there is no doubt or difficulty as to the principles applicable. Ultimately, the appeal against judgment, dated 6th November, 1980 delivered by this Court was allowed and the judgment of this High Court quashing the impugned notification was set aside. This case was decided on its own facts, and is also, therefore, of no help to the petitioners.

(25) In the present case, sub-rule (iv) added to Rule 10 of 1966 Rules,—*vide* Notification dated 7th January, 1971 specifically dealing with absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department most probably because of the observations of the Division Bench in *Raghubir Chand's case* (*supra*). That case was decided on 30th July, 1968. With this amendment, it has become clear that the employee of the Consolidation Department absorbed in the Revenue Department under the said 1966 Rules, cannot be considered to be direct appointees and therefore, these employees cannot be said to have been appointed on probation.

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(26) Learned counsel for the respondents has relied upon the following authorities in support of his argument that once employees of two departments are directed to be absorbed in one cadre the orders of the Government determining the method of absorption will be the governing fact for determining the seniority of the employees qua each other. It is further argued the once the employees of the Consolidation Department are absorbed in the Revenue Department former employees would be considered to belong to the cadre with their period of service and seniority *inter se*. It has been further pointed out that there is no order of the Government that the employees of the Consolidation Department will be placed junior to the junior most patwaris of the Revenue Department.

(i) *Roshan Lal Tandon and another v. Union of India* (13).

(ii) *The General Manager, South Central Railway v. A. V. R. Siddhanti* (14).

(27) In *Roshan Lal Tandon's case* (supra) the facts of the case were that there were originally, two scales for Train Examiners, i.e. Rs. 110—185 ('D' Grade) and Rs. 150—225 ('C' Grade). These scales were later on revised and the scale of 'D' Grade was increased to Rs. 180—240 and that of 'C' Grade to Rs. 205—280. On February 18, 1961 the Railway Board issued a letter Annexure 'A' to the writ petition to the General Managers of all Indian Railways conveying its decision that vacancies in the Entry Grade of Train Examiners (in the scale of Rs. 180—240) with effect from 28th February, 1961 should be filled as follows :—

(i) 50 per cent of the vacancies should be filled from Apprentice Train Examiners who successfully have completed the prescribed (4 years) apprenticeship, the remaining 50 per cent of the vacancies being filled by promotion of skilled artisans.

(ii) 20 per cent of the annual requirements of Apprentice Train Examiners should be drawn from skilled artisans who are not more than 35 years old on 1st July of the year in which the apprenticeship is likely to commence."

(13) A.I.R. 1967 S.C. 1889.

(14) A.I.R. 1974 S.C. 1755.

(28) Promotion in Grade 'C' of Train Examiners used to take place on the basis of seniority-cum-suitability without any distinction whether the employee entered Grade 'D' of the Train Examiners directly or was selected out of the category of skilled artisans. The petitioner therein entered railway service in March 6, 1954 as skilled fitter to the Northern Railway. He was selected for the training for the post of Train Examiner Grade (D) on June 5, 1958 and was confirmed in that grade on October 25, 1959. The case of the petitioner therein was that he alongwith direct recruits formed one class in Entry grade 'D' and their condition of service was that seniority was to be reckoned from the date of appointment as Train Examiner in Grade 'D' and promotion to Grade 'C' was on the basis of seniority-cum-suitability test irrespective of the source of recruitment. The main question to be considered in that case was whether the notification by the first respondent dated October 27, 1985 was violative of articles 14 and 16 of the Constitution in so far as it makes a discrimination against the petitioner for promotion to grade 'C'. It was held that the constitutional objection taken by the petitioner to this part of the notification is well founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed to direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source against the recruits from the other source in the matter of promotion to Grade 'C'.

(29) In *Siddhanti's case (supra)* the personnel of grain shop department of railway was drawn from three sources. Subsequently, when the department was wound up the staff was absorbed in other departments. In the matter of seniority the railway board directed that with regard to category (i) the members would not have their seniority effected by their transfer to the Grain Shop Department, seniority of category No. (ii) should be fixed with reference to the date of their joining the Grain Shop Department and with regard to category (iii) it should be fixed from the date of their absorption in permanent department irrespective of their length of service in the Grain Shop Department. It was held that differential treatment of the personnel belonging to category (i) for the purpose of fixing seniority envisaged in the directions of the Railway Board rested on a sound rational basis and did not offend Articles 14 and 16 of the Constitution. So far as categories (ii) and

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(iii) were concerned they were held to have become members of the same class or unit governed by the same conditions of service for the purpose of absorption, seniority, promotion etc., in regular departments, they were entitled to be treated alike. The directions relating to the personnel of categories (ii) and (iii) were held to be arbitrary and violative of the said Articles.

(30) We have considered the arguments and have gone through the documents produced. The Government,—*vide* its circular, dated 21st July, 1978 Annexure P-5 for fixation of seniority of the staff of Consolidation Department on absorption in the Revenue Department and other departments directed as follows :—

- (i) The officials who originally belonged to the Revenue Department and were taken by the Consolidation Department on their reversion/reabsorption in Revenue Department should be placed at their original seniority as if the service rendered by them in the Consolidation Department was their service in the Revenue Department.
- (ii) Such employees of the Consolidation Department who were not taken from the Revenue Department, on absorption in the Revenue Department should be assigned the seniority along with those who were originally taken from the Revenue Department and got their seniority on reversion in the district as per (1) above according to their *inter se* seniority in the Consolidation Department.
- (iii) The ministerial staff of the Consolidation Department absorbed in the Revenue/other Departments may be assigned seniority on the basis of the length of continuous service in the same or equivalent cadre.

This very matter arose in Civil Writ Petition No. 3585 of 1980 (Gulzar Singh Gill's case) decided on 8th January, 1981 and it was set up before a Division Bench of this court that Rule 15 of the Punjab Revenue Patwaris Class III Service Rules 1966 envisaged the determination of seniority in each cadre and that the cadre of the petitioner

was different from that of the respondents. It was noticed therein that an amendment to Rule 10 of the said Rules was made in the year 1971 as under :—

“10.

- (iv) by absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department No. (G.S.R. S.P.A. 17/87/S. 20/Amd. (i) (71), dated 7th January, 1971.”

Interpreting this rule the Division Bench held that once they are so absorbed the distinction between the revenue and consolidation patwaris would be totally affected and the seniority rule would, therefore, apply equal to all. Holding this the said writ petition was dismissed.

(31) It is the admitted case of both the sides that when recruitment to the Consolidation Department took place there were some employees of the Revenue Department who were recruited to the Consolidation Department and there were some direct employees. In the Consolidation Department all the employees had their seniority *inter se*. The Consolidation Department employees had to be absorbed on abolition of the Consolidation Department itself. The employees who had earlier been Revenue Department employees had to be taken in the Revenue Department on their original seniority and there was no way out for the Government. So far as the other employees, who were direct employees of the Consolidation Department, some of them may be senior to those who were taken from the Revenue Department and others may be juniors to them. Once the employee who had been recruited from the Revenue Department got their seniority in the original department on the basis of their earlier service there is no reason why an employee of the Consolidation Department who happens to be senior to the other employee should not be given seniority over them. Similarly is an employee who is junior to such Revenue Department employees and has rendered service of the Consolidation Department for a sufficiently long time. Both the departments being Government Departments the State Government could decide the method of absorption which means in this case the employee of Consolidation Department goes to the Revenue Department with all service and other benefits earned by him by the time he is absorbed and he will be entitled to be placed in such a place having regard to valuable period of his life.

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(32) The authorities quoted by the learned counsel for the petitioner are distinguishable and from reading of these authorities it becomes clear that each case has been decided on its own facts. In H. N. *Shantharajiah's case (supra)* absorption was by an official memorandum, dated 14th November, 1968. Later on the principle to be adopted in fixing up the seniority was indicated in a letter of the Chief Engineer dated 22nd January, 1969 and the same was to the effect that "the tentative candidates being regularised as a result of the Award would be fixed below the last "Board Recruited" or promoted regular candidate as on the date of absorption, and the ranking among the candidates who were being regularised in terms of the award would strictly be according to their dates of entry into the service in the various offices of the Board. The question in the present case was not involved at all. In other cases specific rules or the instructions were entirely different than those involved here. The case nearest to the case in hand in *Siddhanti's case (supra)* relied upon by the counsel for the respondents. Therein staff for temporary Grain Shop Complex was drawn from three different sources :—

- (i) Temporary employees who being selected through Joint Selection Commission or Staff Selection Board initially appointed in the permanent Departments and were thereafter transferred to the Grain Shop Department.
- (ii) Temporary employees selected by the Selection Board or the Selection Commission for permanent Departments but posted straightway in the Grain Shop Department without being first appointed in the Department for which they were originally selected, and
- (iii) Temporary employees, directly recruited by the Deputy General Managers to the Grain Shop Department from the Open Market.

(33) As already stated above, the Railway Board gave directions for fixing seniority of members of all the said three sources. Direction for category (i) above was that members thereof would not have their seniority affected by their transfer to the Grain Shop Department and seniority of category (ii) was to be fixed with reference to the date of their joining the Grain Shop Department and with regard to category (iii) seniority was to be counted from the

date of their absorption in permanent department irrespective of their length of service in the Grain Shop Department. Further categorisation was made as follows :—

- (a) Those who were recruited prior to and were in service on September 15, 1945, and
- (b) Those who were recruited on or after September 15, 1945.

Lastly the direction was that in all cases other things being equal due consideration was to be given to the length of service of staff concerned. This categorisation and method of fixation of seniority was upheld. It was held that there was no escape from the conclusion that after their direct recruitment to the Grain Shop Department the personnel coming from sources (ii) and (iii) had shed their genetic peculiarities and became members of the same class or unit governed by the same conditions of service and for purposes of absorption, seniority promotion etc. in Regular departments, therefore, they were entitled to be treated alike.

(34) To reinforce his argument, the learned counsel for the respondent has also cited a case *The State of Orissa and another v. N. N. Swamy and others* (15), an appeal, against the judgment reported in A.I.R. 1974 Orissa 186. Facts giving rise to that case were that the Government of Orissa took over the management of a private college namely Khalikote college on and from March 9, 1971 and a formal agreement was executed between the Managing Committee of the college and the Governor of the State. The College was taken over by the Government in pursuance of the unanimous resolution of the Managing Committee on February 18, 1970 and the transfer to the Government was of all the assets of the college but without any liability. The Managing Committee continued to be liable for the outstanding liabilities, if any, of the college for which Government was not liable. The College after the take over was administered as a Government College. The 8 writ petitioners before the High Court were working as Readers in different faculties on the date of the aforesaid transfer. On March 23, 1971, the Government issued a Circular containing conditions

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governing taking over the services of teaching staff of the college. Relevant portions of paras 4 and 5 have been reproduced in the judgment as under :—

“The State Government shall offer *ad hoc* appointment to all staff in position on the date of take over subject to para 5, and sub-para (d) of this paragraph for a period not exceeding six months in each case, treating all such staff as fresh entrants to Government service. The final absorption of such staff in Government service shall be subject to the following conditions :

- (b) That after termination of services of surplus personnel, the cases of staff retrained in Class I and Class II shall be referred to the Orissa Public Service Commission for determination of their suitability to hold posts in Class I or II as the case may be. The services of those who are not found suitable by the P.S.C. (Public Service Commission) shall also be terminated by giving one month's notice in each case. Those found suitable by the Commission, shall be finally absorbed in respective cadre of O.E.S. (Orissa Education Service) for which they are found suitable. It is hereby clarified that at the time of reference to the P.S.C. for determination of suitability for appointment as Readers, cases of Lecturers of Government College, eligible for appointment as Readers shall also be simultaneously referred to the P.S.C. for consideration against those posts.
- (c) While making reference to the P.S.C. cases of those *ad hoc* Readers who would have been normally entitled to pay of less than rupees 600 per month on 9th March, 1971 by application of the formula minimum of the scale of pay of Readers in force in the colleges on the date of their appointment as much by the Ex-Managing Committee plus one increment in that scale for every completed year of service up to 9th March, 1971, would be referred for determination of their suitability for absorption as lecturers only.

5. *Ad hoc* appointments shall be issued to all Professors and such of the Readers in position, who on the date of take over were in receipt of pay of Rs. 600 per month or more, in the scale of pay Rs. 600—1,000 against posts of Readers. Readers who on the date of take over were in receipt of pay of less than Rs. 600 per month and all Lecturers in position on that date shall be given *ad hoc* appointment against the post of Lecturers in the scales of Rs. 260—780 with effect from the date of take over.”

It was held therein “when a fairly well-recognised institution as in this case, run for more than a century, is completely taken over by the Government for Management, it is not merely taking over the land and buildings, tables and chairs. It has to tackle, at the same time, a human problem, that is to say, the fate of the teachers and the staff serving that institution. The institution, with which we are concerned, was taken over, by consent as a going educational concern and it goes without saying that it must be administered on sound lines having regard to quality, efficiency and progress in all respects. It is understandable that the employees had to join the new service under the Government, for the first time and so could be, in that sense, fresh entrants. But to say that the teaching experience of the Readers in the private institution is completely effaced to the extent that they will not be even eligible, on the plea of absence of teaching experience in Government Service, for consideration for appointment as Readers is a seriously grim issue.” Ultimately, the respondents, who were petitioners before the High Court, were held to be eligible to be referred to Public Service Commission for the post of Reader and a direction to this effect was issued. This case was relied upon in *Tamil Nadu Government Officials Union versus The Government of Tamil Nadu and others* (16) (a case from Madras High Court). In this case the question raised was whether officers from Non-Government Institution taken over by the Government absorbed in Government service could claim their previous service to be counted. In that case, an order dated 12th June, 1973 issued by the Health and Family Planning Department did not make any provision whatever with reference to the period of service already rendered by the Health Inspectors in the Rural Institute. In other words,

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those Health Inspectors who were absorbed and treated as Government Servants were regarded as new entrants into Government Service with effect from 1st April, 1973 and there was nothing to indicate in the State Government Order as to why or on what grounds the State Government was inclined to totally ignore the period of past services rendered by the Health Inspectors in the Rural Institute. It was ultimately held that there was absolutely no justification whatever to totally obliterate the past experience and the services rendered by the Health Inspectors in the rural Institute and to consider them as new entrants only with effect from 1st April, 1973 for purposes of extending to them other service benefits especially when they were faced with one of two alternatives, either to join the service as offered or to quit. Under the said circumstances, a communication dated 7th January, 1984 was quashed and the respondents were further directed to take into account the said past services while considering their entitlement to promotional and other service benefits.

(35) Rule of seniority has to be governed by the directions of the Government. In cases of taking over of private schools by the Government again the seniority is determined by the Government itself although in that case, private school employees came from the service of the different Master. The definition of direct appointment as given in rule 2 of the said rules is subject to the context which may otherwise require. Rule 10 of the said rules deals with method of appointment to the service and one of the methods i.e. (iv) is by absorption as indicated above. This amendment was made by a notification of the Government mentioned above. Rule 15 for determining seniority *inter se* of the members of the service in each cadre has to be maintained districtwise and has to be determined by the length of continuous service on a post in that cadre. As integrated by the Division Bench mentioned above, employees of the Consolidation Department after absorption will have the benefit of the length of their service in the Consolidation Department and that length of service will be considered as service on the post in the cadre under the rules. Thus, the view expressed in Gulzar Singh Gill's case (*supra*) is held to be sound, reasonable and rational.

(36) In the view expressed above, proviso to Rule 15 of the 1966 Rules will not come into operation because therein absorption has not been dealt with at all and this appointment by absorption cannot be said either (i) to be by promotion from amongst the Assistant Patwaris or (ii) by direct appointment from amongst the accepted Patwaris Candidates or (iii) by transfer of an official already

in the service of the State Government. Rules regarding probation etc., are also held to be inapplicable. It is also worth mentioning that appointment orders of employees of the Consolidation Department have not been produced for consideration in this writ petition.

(37) In view of the above observations, we are of the view that this writ has no merit, the same is dismissed and the Government Circular dated 21st July, 1978 Annexure P-5 for fixation of seniority of the staff of Consolidation Department on absorption in the Revenue Department and other Departments, as also Annexure P-2 is upheld. No order as to costs.

Sd/- A. P. Chowdhri,
Judge.

SEPARATE NOTE OF HON'BLE MR. JUSTICE M. M. PUNCHHI

(38) Having read the elaborate judgment prepared by my learned brother Ujagar Singh, J., I feel it would still be useful to explain herein the words 'absorb' and 'absorption'.

(39) According to the meaning found in Chamber's 20th Century Dictionary, the word 'absorption' means the act of absorbing and 'absorb' means, to suck in : to swallow up : to imbibe : to take in : to incorporate : to take up and transform (energy) instead of transmitting or reflecting : to engage wholly. According to Black's Law Dictionary, 5th Edition, the word 'absorption' is explained as a term used in collective bargaining agreements, to provide seniority for union members, if employer's business is merged with another. *Humphery vs. Moore*. Ky. 375 US 335, 845, etc. 363, 369. According to the Dictionary of English Law by Sweet Maxwell the word 'absorption' is equal to the word 'amalgamation'. 'Amalgamation' has been explained to say that this takes place where two incorporated companies or societies become united by one of them being merged in the other.

(40) Absorption thus has the effect of sucking and imbibing into what is originally existing. On absorption thus an employee becomes part and parcel of the department absorbing him and partakes the same colour and character of the existing employees of the department, classified as promotees, direct appointees or transferees

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on the loss of his identity. If this is understood in this perspective, there is no difficulty in assigning the absorbees seniority in accordance with seniority rule 15. Nothing more need be added.

M. M. Punchhi, J.

Before : M. M. Punchhi, J.

Income Tax Officer, A. Ward.—Petitioner.

versus

RADHA KISHAN,—Respondents.

Criminal Revision No. 1093 of 1985.

February 27, 1984.

Income Tax Act (XLIII of 1961)—Ss 276 CC, 292 A—Code of Criminal Procedure (II of 1974)—S. 360—Probation of Offenders Act (XX of 1958)—No challenge to conviction in appeal—Bargain for probation—Matter remitted back—Respondent can challenge his conviction.

Held, that if sentence is to be imposed in all events, then this Court by itself can impose it without sending the matter back to the lower appellate court. But it is a case of plea bargaining. The matter thus as a whole has to be remitted back leaving it open to the respondents to challenge his conviction. And if that is set aside, the question of imposing any sentence would not arise. It would be totally unfair to the respondent to keep his conviction affirmed in these proceedings.

(Para 5).

Petition under Section 401 Cr. P.C. for the revision of the order of the Court of Shri Hari Ram, Sessions Judge, Ambala, dated 6th March, 1985, reversing that of the order of the Court of Shri C. B. Jaglian, HCS, Judicial Magistrate Ist Class, Jagadhri, Distt Ambala, dated 20th December, 1983, setting aside the sentence of imprisonment and fine against the accused and giving benefit of probation.