failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. In the present case the appointment of the appellant as a Manager by the Custodian by virtue of his power under Section 10(2) (b) of the 1950 Act is contractual in its nature and there is statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution."

The contract between the petitioner and the University in the instant case was of a private nature between a master and a servant and there was no statute which provided any safeguards to the petitioner which could not be violated and if violated it could give any cause of grievance to the petitioner. The rules of natural justice are not embodied in any statute. As the phrase itself shows, they are meant for doing justice and are to be observed by the authorities on whom a public statutory duty is imposed but it cannot be said that private parties should also observe the same. In case the removal from service was considered to be illegal by the petitioner, he could and should have filed a civil suit for getting his removal declared illegal and for damages as a result thereof.

(10) For the reasons given above, the petition is not competent and is, therefore, dismissed but without any order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE HINDUSTAN MACHINE TOOLS LIMITED, PINJORE,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 670 of 1969

April 22, 1969

Punjab Passengers and Goods Taxation Act (XVI of 1952)—Ss. 2(i), 2(f) and 3—Motor Vehicles Act (IV of 1939)—Ss. 2(25), 112 and 123—Motor Vehicles of a Company registered as public service vehicles—Such vehicles—whether deemed to be of that type for the purpose of Punjab Passengers and

Goods Taxation Act or Ss. 112 *and* 123 *of Motor Vehicles Act—Actual user of the vehicles—Whether has to be seen—Corporation owning buses for carrying its employees and charging some amount as administrative charges—Such employees—Whether are 'passengers' and liable to pay passenger tax—Such employees even if not paying any charges or not deemed to be passengers within the definition under section* 2(*f*)*—Passenger tax—Whether payable still.*

Held, that the vehicles of a Company do not become public service vehicles by the mere fact that those vehicles are registered as public service vehicles under the Motor Vehicles Act and are not registered as private vehicles. It is not the label put on a vehicle on account of its registration in one class or the other that makes it a public service vehicle or otherwise for purposes of the Act, but it is its actual user or the user for which it is actually adapted which decides the matter. It is not the class of vehicles under which a motor vehicle is registered which determines whether it is at a particular time being used as a vehicle of that type for purposes of the Punjab Passengers and Goods Taxation Act or even for the purposes of determining liability under sections 112 and 123 of the Motor Vehicles Act, but it is the actual user of the vehicle at the relevant time which determines those matters. **(Paras 7 and 10)**

Held, that when a Corporation carries its employees in its own buses by recovering from them some amount which may be called an administrative charge or anything else, it carries its employees as passengers (for reward) within the meaning of section 2(f) of the Punjab Passengers and Goods Taxation Act, 1952, and operates its buses as public service vehicles within the meaning of section 2(i) of the said Act read with section 2(25) of the Motor Vehicles Act. The so-called administrative charges fall within the scope of the word "reward" as used in section 2(25) of the Motor Vehicles Act and hence the passenger tax is payable.

(Para 10)

Held, that even if nothing is recovered from the employees of the corporation either as an administrative charge or otherwise, the passenger tax is still payable because the scheme of the charging section 3 of the Punjab Passengers and Goods Taxation Act, which is the pivot of the whole Act seems to be that even if no fare or freight is actually paid in respect of the carriage of passengers or goods, the tax would be attracted. The carrying of the employees of the corporation in its buses may not strictly fall within "carrying of passengers" in public service vehicles as referred to in section 2(f) read with section 2(i) of the Act, passenger tax is still leviable in respect of the carriage of those employees by virtue of the express provision of section 3 of the Act, and the definition section will not operate to the extent to which it is repugnant to the expressed intention of the Legislature in section 3.

(Paras 9 and 10)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order dated 13th December, 1968 passed by the respondent No. 2 and the notice dated 26th March, 1968 issued by the respondent No. 3.

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Petitioner.

B. S. GUPTA, ADVOCATE, FOR ADVOCATE-GENERAL, HARYANA, for the Respondents.

JUDGMENT

NARULA, J.—The solitary question which calls for decision in this writ petition is whether a corporation is or is not liable to pay tax under section 3 of the Punjab Passengers and Goods Taxation Act (16 of 1952), as subsequently amended (hereinafter called the Act) in respect of its employees carried by motor vehicles belonging to the corporation from and to their places of residence, where the corporation recovers a nominal amount from the employees on slab basis in proportion to the salary of the respective employee irrespective of the distance to be covered by the motor vehicle concerned.

(2) Messrs Hindustan Machine Tools Limited, Pinjore (hereinafter referred to as the petitioner) is corporation manufacturing machine tools in the public sector at Pinjore within the district of Ambala in the State of Haryana. Out of the 2238 employees of the petitioner residential accommodation is provided by the corporation at Pinjore to only about 1106. The rest of the employees reside either at Kalka or at Chandigarh or on the outskirts of Pinjore. The petitioner maintains a fleet of vehicles which carry employees at the time of the shifts in its factory from and to their places of residence, since the inception of the factory of the petitioner in 1962. Though the Act was in force since 1952, the petitioner was never required to pay any passenger tax under the Act, till notice, dated March 26, 1968, was received by the petitioner from respondent No. 3, who is the Excise and Taxation Officer (Enforcement)-cum-Assessing Authority, Ambala Division. In the said notice (Annexure 'A'), the petitioner was required to attend before the Assessing Authority on April 18, 1968, and to produce the relevant documents and also to show cause why penalty at the rate of 1½ times be not imposed upon the petitioner under section 9(4) of the Act besides the amount of the tax. On the receipt of the notice, the petitioner submitted a written representation (Annexure 'B') to the Financial Commissioner (Revenue), State of Haryana, wherein it was stated that no hire or reward was

being realised from any one of the employees of the company, that the vehicles run by the company were not public service vehicles, and that, therefore, the employees of the petitioner travelling in its buses were not passengers within the meaning of section 2(f) of the Act. By letter, dated April 16, 1968 (Annexure 'C'), the Haryana Government informed the petitioner in reply to the latter's representation, dated April 1, 1968, that before sending a final reply, it was necessary to ascertain whether the petitioner was charging any hire or reward in any form from the persons that were allowed to travel by the buses of the petitioner. Another point on which clarification was sought by the Government was whether the use of the buses of the petitioner was restricted only to its employees or whether members of the public could also avail of the facility, and if so, whether any fare was collected from them for the same or not. In reply to the Government's letter, the petitioner sent communication, dated April 29, 1968 (Annexure 'D'), wherein it was stated that the company was not charging any hire or reward from its employees, but was only providing the transport facility to them though certain administrative charges were being realised from the employees, and that the use of the petitioner's buses was restricted only to the employees of the petitioner and no member of the public was allowed to avail of the facility. In a further communication, dated May 21, 1968 (Annexure 'E') the petitioner wrote to the Excise and Taxation Officer, Ambala, that the administrative charges recovered by the petitioner were not related to the distance travelled by the employees, and that the charges were the same irrespective of whether an employee travelled from Kalka, Chandimandir, Panchkula, Manimajra or Chandigarh to the petitioner's factory at Pinjore. It was added in the letter that the administrative charges in respect of the conveyance were charged on the basis of the pay drawn by the employees on the following slab basis to partially meet the maintenance cost of the transport fleet maintained by the company to provide the facility:—

"Basic Pay	*Administrative charges*
Up to Rs. 60	.. Rs. 3.75 per month.
From Rs. 61 to Rs. 100	.. Rs. 4.00 „
From Rs. 101 to Rs. 150	.... Rs. 5.00 „
From Rs. 151 to Rs. 259	.. Rs. 10.00 „
From Rs. 260 to Rs 500	.. Rs. 15.00 „
From Rs. 501 to and above	.. Rs. 20.00 „

(3) After the exchange of some further correspondence, the Government gave its final decision on the administrative side in its letter, dated August 14/16, 1968 (Annexure 'G') addressed to the General Manager of the petitioner wherein it was stated "that after due consideration of the matter Government are of the view that passenger tax is leviable" in respect of the buses of the petitioner which were being utilised for the transportation of its employees between Chandigarh/Kalka and Pinjore. Assessment proceedings were thereafter taken in hand,—*vide* memorandum, dated October 7, 1968 (Annexure 'H'). Thereupon the petitioner submitted an application under section 16 of the Act to the Excise and Taxation Commissioner, State of Haryana (who is respondent No. 2 in this case) wherein the petitioner denied its liability to the levy of any passenger tax on the ground that no hire or reward was being realised from any of its employees. The said application of the petitioner was ultimately dismissed by the order of the Excise and Taxation Commissioner, dated December 13, 1968 (Annexure 'J'). After referring to the definition of "passenger" contained in section 2(f) of the Act, and to the definition "public service vehicle" contained in section 2(25) of the Motor Vehicles Act (4 of 1939) (hereinafter referred to as the Motor Vehicles Act) read with section 2(j) of the Act and after noticing the submission of the learned counsel for the petitioner, the Commissioner stated that the decision of the case rested on two considerations, viz:—

(i) whether the motor vehicles run by the petitioner were public service vehicles; and

(ii) whether the employees travelling in the vehicles of the petitioner were passengers;

and observed that if answer to both the abovesaid considerations was in the affirmative, the company was liable to pay the tax otherwise not. Immediately after framing the two issues referred to above, the Excise and Taxation Commissioner jumped to the following conclusion on the first point:—

> "The issue whether the company's vehicles are public service vehicles is clinched by the fact that all these vehicles are registered as public service vehicles under the Motor Vehicles Act; these are not registered as private vehicles. It is, therefore, useless to dilate on this point any further."

Regarding the second question about the employees being or not being passengers, respondent No. 2 took notice of the scale at

which the alleged administrative charges are recovered by the petitioner, and also of the allegation of the petitioner that by the recovery of the said charges, petitioner collected during 1967-68, a sum of Rs. 59,847 only as against the expenditure of Rs. 2,66,708 incurred by the petitioner on the operational costs of the fleet of vehicles maintained for transporting its employees. He then referred to the provisions of section 3(2) of the Act and held that so long as the vehicles owned by the petitioners are public vehicles, all persons travelling in them are passengers, and though the lump sum paid by the employees may be considered as a reduced charge, the tax under the Act is to be levied on such amount as appears to the Assessing Authority to be fair and equitable having regard to the fares fixed by the competent authority under the Motor Vehicles Act.

(4) Thereupon the present writ petition was filed on March 15, 1969. At the time of the admission of the petition on March 18, 1969, respondents entered appearance before the Motion Bench and accepted notice of this case, which was thereupon directed to be listed for hearing on April 14, 1969.

(5) This appears to be the appropriate stage for noticing the relevant statutory provisions. Section 2(f) states that "passenger" means any person travelling in a public service vehicle, but shall not include the driver or the conductor or an employee of the owner of the vehicle travelling in the *bona fide* discharge of his duties in connection with the vehicle. "Motor vehicle" is defined in section 2(i) to mean "a public service vehicle or public carrier, or a trailer when attached to any such vehicle." Section 2(j) states that "all words and expressions used in this Act but not defined shall have the meanings assigned to them in the Motor Vehicles Act 1939." "Public service vehicle" is not defined in the Act, but is defined in section 2(25) of the Motor Vehicles Act as below:—

> " 'public service vehicle' means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage."

"Stage carriage" has been defined in clause (29) of section 2 of the Motor Vehicles Act as below:—

> "' 'Public carriage' means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which

carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey."

Section 3 is the charging section. Sub-section (1) and (2) of that provision alone need be noticed for deciding this case:—

"(1) There shall be levied, charged and paid to the State Government a Tax on all fare and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of one-fourth of the value of the fare or freights, as the case may be, the amount of tax being calculated to the nearest multiple of five naye paise by ignoring two naye paise or less and counting more than two naye paise as five naye paise :

Provided that—

(a) no such tax shall be levied, charged and paid on goods, including minerals and mineral ores, proved to be exported out of the territory of India, whether by one transaction or by a series of transactions;

(b) in respect of minerals and mineral ores transported to any place within the territory of India, such tax shall be levied, charged and paid at the rate of one-twentieth of the value of the freight; and

(c) the rate of tax on fares and freights in respect of all passengers carried and goods transported by motor vehicles in hilly areas or sub-montane areas specified in this behalf by the State Government by notification shall be one-sixth of the value of the fare or freights.

Explanation.—When passengers are carried and goods are transported by a motor vehicle, and no fare or freight has been charged, the tax shall be levied and paid as if such passengers were carried or goods transported at the normal rate prevalent on the route."

"(2) Where any fare or freight charged is a lump sum paid by a person on account of a season ticket as subscription or contribution for any privilege, right or facility which is combined with the right of such person being carried or his goods transported by a motor vehicle, without any further payment at a reduced charge, the tax shall be

levied on the amount of such lump-sum or on such amount as appears to the prescribed authority to be fair and equitable having regard to the fare or freight fixed by a competent authority under the Motor Vehicles Act, 1939."

(6) The argument advanced on behalf of the petitioner is that tax under section 3 can be levied only in respect of "passengers" carried by "motor vehicles", and no one can be a passenger within the meaning of section 2(f) of the Act unless he is travelling in a "public service vehicle" and further that the motor vehicles of the petitioner are not public service vehicles as they are neither used nor adapted to be used for the carriage of passengers "for hire or reward". According to the petitioner no tax liability is incurred by it under the Act as it does not carry its employees in its buses "for hire or reward." Mr. Bhagirath Dass submitted that the correct connotation of the concept of carrying passengers for hire or reward is to invite passengers either by waiting for them at a stand or other given place or by soliciting for passengers on the road side and does not include the carrying of one's own employees in one's own vehicles. He referred in this connection to a Division Bench judgment of the Lahore High Court in *Sardul Singh* v. *Emperor* (1). Sardul Singh was prosecuted in that case as one of his taxi cars which had been licensed to ply for hire within the limits of the Municipality of Lahore was found outside the said municipal limits on the Grand Trunk Road between Lahore and Amritsar, and the same was carrying a passenger. Sardul Singh having been convicted by the trial Court, and his conviction having been maintained by the appellate Court, went up in revision to the High Court. While allowing his petition for revision and setting aside his conviction, the Division Bench of the Lahore High Court held:—

> "The term 'ply for hire' is not defined either in the rules or in the Indian Motor Vehicles Act. 'To ply' when applied to hackney carriages or vehicles literally means 'to wait at a stand or at a given place for customers.' As for instance if the owner of a vehicle keeps it at a stand or moves it about on the road with a view to its being engaged by any member of the public he is said to ply it for hire at the stand or on the road."

Their Lordships of the Lahore High Court held that "ply for hire" is synonymous for "holding out to be hired" or "soliciting custom" in the

(1) A.I.R. 1929 Lah. 422.

manner described above. It was, therefore, held that merely hiring a vehicle to another did not amount to plying it for hire as "to ply for hire" as used in the relevant rules and as generally understood ordinarily means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares and also to offer its use in payment to any member of the public thereby soliciting custom. Inasmuch as none of the above ingredients had been proved against Sardul Singh, he was acquitted. I think the judgment of the Lahore High Court is not relevant for deciding the present controversy as the decision in *Sardul Singh's case* (1), rested almost solely on the consideration of the true scope and correct interpretation of the expression "to ply for hire" as distinguished from the phrase with which we are concerned, viz., "carrying passengers for hire or reward." There is two-fold distinction between the two expressions. The first is between plying a vehicle on the one hand and carrying passengers in a vehicle on the other. The second material distinction lies in the fact that whereas in the *Lahore case* (1), it was necessary to carry a passenger for hire, it is enough if a passenger is carried for the purposes of the Act merely for reward. Though there is still another distinguishing feature and that is of still greater importance, it is not apparent from the interpretation clauses, and would, therefore, be dealt with separately, that distinction lies in the fact of the impact of section 3, the charging section, on the question of liability thereunder. Counsel also referred to a Single Bench judgment of the Madras High Court in *Kadir Mohidden Sahib* v. *Emperor* (2), wherein it was held that if there is no payment of compensation for the use of a lorry, the transaction does not amount to one of hiring the same on the ground that "hire" is defined as "a bailment in which compensation is to be given for the use of a thing." The case before the Madras High Court arose out of the question of liability of the owner of a motor vehicle under section 6 of the Indian Motor Vehicles Act (8 of 1914) for allowing the vehicle being plied on hire without the requisite permit. It was found that the accused had merely taken the cost of the petrol consumed in the vehicle when it was being used and had not taken any other payment for the use of the lorry at the relevant time. The Madras High Court set aside the conviction of Kadir Mohideen Sahib on the ground that the transaction referred to above did not amount to one of hiring. I am unable to derive any benefit from the judgment of Burn, J., in the case of *Kadir Mohideen Sahib* (supra), (2), for the reasons which I have already assigned in connection with the judgment of the Lahore High Court in *Sardul Singh's case*.

(2) A.I.R. 1935 Mad. 577.

(7) Counsel then referred to the judgment of Kunhamed Kutti, J., in *re. Rupchand Fomra and others* (3), on which reliance had also been placed by the petitioner before the Excise and Taxation Commissioner in support of the proposition that mere registration of a motor vehicle as a public service vehicle was not conclusive of its being so. The petitioners before the Madras High Court had purchased motor cars in their individual names and then gave them on hire to the Burmah Shell Oil Storage and Distributing Co., for stipulated periods on a fixed monthly rent. Though neither permits nor fitness certificates had been obtained for any of the cars, they were put to use by the Burmah Shell Company in public places. The petitioners were prosecuted and ultimately convicted under section 112 of the Motor Vehicles Act for not carrying the prescribed certificate of fitness required under section 38(1), and for allowing the use of their vehicles in a public place without obtaining the permit required under section 42(1) of that Act. Besides holding that for purposes of the Motor Vehicles Act, the convicts were not "owners" as defined in clause (19) of section 2 of the Motor Vehicles Act, the Madras High Court went into the question whether the vehicles involved in that case could be deemed to be "transport vehicles" within the meaning of sections 38(1) and 42(1) of the Motor Vehicles Act. Since no vehicle can be a transport vehicle as defined in clause (33) of section 2 unless it is a public service vehicle or a goods vehicle and the only allegation was that the cars were being used as public service vehicles as the officers of the Burmah Shell Company were going about in them, the question whether they were such public service vehicles or not came up for consideration. It was held in that connection as below:—

> "The dictionary meaning of a 'passenger' is 'traveller in public conveyance by land or water' and 'public' implies people as a whole or pertaining to the whole people. P. W. 1 had apparently used the word 'passenger' in a general sense; but to construe the cars in these cases as transport vehicles, they should be used for the carriage of passengers or in other words, travellers in public without any distinction. The question then is whether the staff of the Burmah Shell Company could be construed as travelling public in this sense. I am unable to accept such an interpretation."

Counsel emphasised the reference by the Madras High Court to "travellers in public without any distinction" in the abovequoted

(3) A.I.R. 1964 Mad. 449.

passage, and argued that inasmuch as the use of the vehicles of the petitioner in the instant case is restricted and confined to its own employees, and is not available to the travelling public, it should be held that none of the buses of the petitioner is a public service vehicle. The argument is no doubt attractive, but does not turn the scales of the case in favour of the petitioner because the requirements of section 38(1) or section 42(1) of the Motor Vehicles Act are not the same as the requirements of section 3 of the Act and the question of the liability of the petitioner depends solely on the question whether this case does or does not fall within the field covered to section 3 which is the charging section. With the concept of ownership of which emphasis was laid by the Madras High Court in *Rupchand Fomra's case* (*supra*) (3), we are not concerned. We are no doubt concerned directly with the meaning of a public service vehicle, but the definition of that expression as contained in the Motor Vehicles Act has to be read for the purposes of Passengers and Goods Taxation Act as required by section 2(j) of the latter Act, only if and to such an extent as it may not be repugnant in the subject or to the context of the relevant provisions contained in the Act. A motor vehicle can ordinarily be either a public carrier or a private carrier or a stage carriage or a contract carriage of a private motor car. Admittedly the employees of the petitioner do not fall in any of the exceptions to the definition of "passenger" contained in section 2(f) of the Act. It cannot be denied that the buses maintained by the petitioner are motor vehicles nor can it be doubted that the employees of the petitioner are carried by those motor vehicles. The only question is whether, when so carried, they are "passengers" or not. That in turn depends on whether they are carried "for hire or reward" or not. Though the scope of the word "hire" is rather restricted, as already referred to above, the range covered by the word "reward" is much wider. In *Cocks* v. *Mayner* (4), it was held that when an Omnibus was run with notices hung upon it that the bus had been placed at the disposal of the public free of charge, and also stating that the voluntary contributions to support the omnibus would be welcome, and there was a conductor on each of the omnibuses to supply change, and many persons using the bus placed money in the box, but some did not, it was held that this was an attempt to evade the statute, and that in fact there was a "plying for hire" within the meaning of section 45 of the Towns Police Clauses Act, 1847, incorporated in the Public Health Act of 1875. In *Bonham* v. *Zurich General Accident & Liability Insurance Company, Limited* (5), it was held that though

(4) (1894) 70 Law Times Reports N.S. 403.

(5) L.R. (1945) 1 K.B. 292.

the car in question was not let on hire and passengers were not being carried for hire, yet passengers were being carried for reward on the day of the accident which had given rise to the action against the insurer when the insurance was confined to the use of the car for social, domestic and pleasure purposes (and its use by the insured in connection with his business) and when user for passengers being carried for hire or reward was excluded from the scope of the policy of insurance and when the owner had in fact carried a few persons in the car while going on his own business and accepted some voluntary amount from one of them, this was said to fall within the expression "reward" though it could not be called hire and it was held that the liability of the insurance company was excluded on that ground. In view of the judgment of the King's Bench of England in *Bonham's case* (supra) (5), learned counsel for both sides were agreed that the approach of the Excise and Taxation Commissioner to the question of the vehicles being a public service vehicle merely because it was registered as such, was clearly erroneous in law. Counsel agreed that it is not the label put on a vehicle on account of its registration in one class or the other that makes it a public service vehicle or otherwise for purposes of the Act, but it is its actual user or the user for which it is actually adapted which decides the matter. They are no doubt supported in this contention by the judgment of Happell, J., in *re. Manager Indian Express* (6). In that case the owner of a private motor car was held to have been guilty under section 123 of the Motor Vehicles Act on account of his having used his car for carriage of newspaper without obtaining a permit under section 42(1) of the Said Act on the ground that when the car was used for taking bundles of newspapers, it came within the definition of "goods vehicle" under section 2(8) of the Motor Vehicles Act. In any event this point has since been authoritatively settled by their Lordships of the Supreme Court in the *State of Mysore* v. *Syed Ibrahim* (7). The ratio of that judgment is that it is the actual user of the vehicle which would always determine whether it is a public service vehicle or not. In that case the Mysore High Court had held that the vehicle in question not having been registered as a motor car as defined by section 2(16) of the Motor Vehicles Act was not a "transport vehicle" and no prosecution could lie under section 42(1). On appeal by the State of Mysore, the Supreme Court reversed the decision of the High Court, and held that it is the use of the motor vehicle for carrying passengers for hire

(6) A.I.R. 1945 Mad. 440.

(7) A.I.R. 1967 S.C. 1424.

or reward which determined the application of section 42(1) and not the mere class under which it is registered.

(8) Mr Bhagirath Dass contended that as soon as the impugned order of the Excise and Taxation Commissioner is found to be vitiated by an error apparent on the face of the record, he is entitled to the issuance of a writ in the nature of *certiorari ex debito justitiae*. Though it is correct that normally in certiorari proceedings this Court is not concerned with upholding an impugned order on some new or additional ground if the order suffers from an error apparent on its face, it would in my opinion, be futile to merely quash the order on that ground in the instant case and then leave the main question at large so as to be determined by the assessing authorities and possibly by this Court ultimately on a reference or otherwise.

(9) As already indicated, the definitions contained in the various clauses of section 2 of the Act as well as those imported from section 2 of the Motor Vehicles Act by operation of section 2(j) of the Act, will operate only if there is nothing repugnant thereto in the subject or context, or in any case only to the extent to which they do not become repugnant to any provision in the Act. The scheme of the charging section which is the pivot of the whole Act seems to be that even if no fare or freight is actually paid in respect of the carriage of passengers or goods, the tax would be attracted. This is clear from the explanation to sub-section (1) of section 3. The explanation makes it clear that if nothing is charged, the tax will be levied as if the passengers were carried or the goods transported at the normal rate prevalent on the route. Normal rates of fares for carriage of passengers are prescribed by the authorities under the Motor Vehicles Act in exercise of powers conferred on them under section 43(1) (i) and section 48(3) (xii). In any event, sub-section (2) of section 3 appeals to me to clinch the matter. The provision has already been quoted. The effect of this sub-section is that even if some right or facility is provided to a person combined with the right of such person being carried without any further payment, the tax has to be levied on such amount as may appear to the prescribed authority to be fair and equitable having regard to the fare fixed by the competent authority under the Motor Vehicle Act. On the admitted facts of this case, the facility of using a transport of the company on a nominal payment on having fixed payment having no relation to the distance covered, has been provided by the petitioner to all its employees who are living in Kalka or Chandigarh. The right of the employees of the petitioner to get

their salary while employed under the petitioner is combined with the right of such of the employees as are living in Kalka or Chandigarh to be carried by the fleet of buses of the petitioner without payment of any fare (even if the case of the petitioner is admitted as stated) and on mere payment of an administrative charge. So far as the requirements of the statute are, therefore, concerned, even if nothing as recovered from the employees of the petitioner either as an administrative charge or otherwise, and even if they were merely provided with free transport by the company as a facility combined with the remuneration to which they are entitled for serving the petitioner, they would have been liable to pay tax under section 3. It may be remembered that passenger tax levied under section 3 of the Act is not a tax on the owner of the vehicle, but is a tax on the fare paid in respect of the passengers irrespective of the fact whether the fare is actually paid or in view of the provisions of the explanation to sub-section (1) or of sub-section (2), of section 3 is notionally deemed to have been paid. If any part of the definitions of "public service vehicle" or "passenger" are in any manner found to come into conflict with the express provisions of section 3 of the Act, the definition in question would by operation of the opening words of section 2 not operate to that extent on account of its repugnancy to section 3.

(10) I am further inclined to think that though there is great force in the submission of Mr. Bhagirath Dass to the effect that the employees of the petitioner are not paying any hire to the petitioner for availing of its buses, the amount of administrative charges recovered from them does fall within the scope of the word "reward" used in section 2(25) of the Motor Vehicles Act.

It is, therefore, held:—

(i) that there is an error apparent on the face of the order of the Excise and Taxation Commissioner (Annexure 'J'), in so far as it has been held thereunder that the issue whether the company's vehicles are public service vehicles or not, is clinched by the mere fact that those vehicles are registered as public service vehicles under the Motor Vehicles Act, and are not registered as private vehicles;

(ii) that it is not the class of vehicles under which a motor vehicle is registered which determines whether it is at a

particular time being used as a vehicle of that type for purposes of the Punjab Passengers and Goods Taxation Act or even for the purposes of determining liability under sections 112 and 123 of the Motor Vehicles Act, but it is the actual user of the vehicle at the relevant time which determines those matters;

(iii) that the amount of the fixed share in the so-called administrative charges, which is recovered from the employees of the petitioner falls within the meaning and scope of the word "reward' as used in section 2(25) of the Motor Vehicles Act, and, therefore, the petitioner is carrying its employees in its buses for reward;

(iv) that when a corporation carries its employees in its own buses by recovering from them some amount which may be called an administrative charge or anything else, it carries its employees as passengers (for reward) within the meaning of section 2(f) of the Act, and operates its buses as public service vehicles within the meaning of section 2(i) of the Act read with section 2(25) of the Motor Vehicles Act; and

(v) that even if it could be held that the carrying of the employees of the petitioner in its buses does not strictly fall within "carrying of passengers" in public service vehicles as referred to in section 2(f) read with section 2(i) of the Act, passenger tax is still leviable in respect of the carriage of those employees by virtue of the express provision of section 3 of the Act, and the definition section will not operate to the extent to which it is repugnant to the expressed intention of the Legislature in section 3.

Counsel did not submit any other point in this case. None of the submissions made by the learned counsel for the petitioner having succeeded, this writ petition must fail and is accordingly dismissed with costs.

R.N.M.