(5) In view of the above discussion we are clearly of the opinion that the answer to the above referred to question stated in the opening part of the judgment has to be in the affirmative and we accordingly hold that in no case a decision under Order 22, Rule 5, Civil Procedure Code, would operate as *res judicata* between the same parties or their successors in interest or their privies in a subsequent proceeding even when the said parties had been provided an opportunity to contest the issue and lead the evidence thereon. With this answer to the question posed, we send back the case to the learned Single Judge for decision on merits.

S. S. Sandhawalia, C.J.—I agree.

G. C. Mittal, J.—I too agree.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and D. S. Tewatia, JJ.

BALDEV SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 2850 *of* 1978

September 11, 1980.

Constitution of India 1950—*Article* 16—*Presidential order providing for regularisation of the services of* ad hoc *employees—Conditions necessary for such regularisation laid down—One year's minimum service up to* 31*st March,* 1977 *a pre-requisite—Work and conduct of an* ad hoc *employee subsequent to* 31*st March,* 1977—*Whether could be taken into consideration to judge suitability for regularisation.*

Held, that it appears to be well settled on principle that as regards suitability for regularisation or confirmation the satisfaction of the employer with regard to the work and conduct of the employee is a paramount consideration. The employer cannot be robbed of this

right to be so satisfied before he attaches the attribute of permanence to a wholly temporary or an *ad hoc* employee. This is so in the case of a probationer and obviously any *ad hoc* employee cannot be raised to a pedestal higher than that of a probationer expressly appointed against a regular vacancy. Unless the statutory rules themselves prescribe a fixed period for the probation, it is the satisfaction of the employer with regard to the work and conduct of such a probationer which governs his confirmation. No probationer or *ad hoc* employee seeking regularisation can claim any automatic confirmation (of course always subject to any specific or peculiar provisions of the statutory rules) and the right of the employer to adjudge his work and conduct till the passing of an actual order of confirmation or regularization appears to be elementary. Therefore, unless there is a specific legal bar or the clearest mandate of the law to the same effect, the employer cannot be robbed of his right to consider his work and conduct till the last day when the status of *quasi* permanency or regularisation is to be conferred upon him. Para 3(4) does not even remotely specify the point of time up to which work and conduct of the *ad hoc* employee is to be considered and adjudged as satisfactory. Therefore, what calls for pointed attention is the fact that whilst para 3(1) prescribing one of the conditions of eligibility gives the fixed date of 31st March, 1977, on the other hand in sharp contrast thereto in para 3(4) any date is conspicuous by its absence. In such a situation the normal rule which inevitably is attracted is that there should be the satisfaction of the employer with regard to the whole of the work and conduct of the employee when he decides the issue of his regularisation. Thus, under paragraph 3(4) of the Presidential Order the satisfaction of the employer with regard to the work and conduct of an *ad hoc* employee for his regularisation is inevitably co-extensive from the time be joins as such till the time of the actual passing of the order to the same effect. On general principles, it necessarily has to be so. There is no bar or stipulation in the Presidential Order which in the least warrants or requires a deviation from this rule. (Paras 12, 13 and 15).

Prem Lata versus *State of Punjab and others*, 1978(2) S.L.R. 122 OVERRULED.

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

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

(ii) *command the respondents to implement the policy decision of the Government as circulated on 3rd May, 1977, (Annexure 'P-2") ;*

(iii) *quash the impugned order dated 20th June, 1978, passed by Respondent No. 2 in pursuance of which it has been decided to terminate the services of the petitioner in an illegal and arbitrary manner ;*

(*iv*) *regularise the services of the petitioner as a steno-typist keeping in view the past services rendered by him so that he may not suffer in the matter of pay, seniority etc.;*

(*v*) *by issuing a writ of prohibition respondents be restrained from terminating the services of the petitioner till his case for regularisation of his services is not finalised;*

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

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

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

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

D. S. Boparai, A. A. G. Punjab, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the misconduct committed by an *ad hoc* Government employee after March 31, 1977, would enter into consideration of the appointing authority whilst taking a decision in terms of the Presidential Order dated the 3rd of May, 1977, for regularisation of such an employee is the question of law of some importance that falls for consideration in this case.

2. Though the question posed is of general application, yet inevitably the relevant facts of the present case before us have to be kept in sharp focus and, therefore, before embarking upon the consideration of the legal question, these require to be noticed in some detail at the very threshold.

3. The petitioner was appointed as a steno-typist on an entirely *ad hoc* basis on the 1st of September, 1975 in Guru Teg Bahadur Government College, Sathiala, district Amritsar. He continued to hold the said post till the 28th of June, 1978, when his

services were terminated. However, in pursuance of the stay order granted in this writ petition he was allowed to rejoin his duty on 20th of July, 1978. It is the common case that having completed more than one year service by 31st March, 1977, the petitioner became eligible for being considered for the regularisation of his services. Indeed his case was forwarded to the appropriate authority for this purpose. However, respondent No. 3, not finding the work and conduct of the petitioner as satisfactory, terminated his services which order is now sought to be impugned.

4. Now the firm and virtually the unrebutted stand of the respondent-State in this context is that the petitioner had brought two hoodlums with him to the College premises and launched a murderous assault against Shri Jarnail Singh, Head Clerk of the institution. The latter escaped injury by hastily retreating from the spot and later lodged a report at the Police Station, Beas. Apparently during the investigation of the criminal case departmental proceedings were also initiated against the petitioner and the Assistant Director Cadet Corps was appointed an Enquiry Officer. He conducted a detailed enquiry after affording the fullest opportunity to the petitioner and then rendered his report, annexure R. 3 to the return. Therein he concluded on facts as follows:—

> "I reached the conclusion that Shri Baldev Singh *ad hoc* Steno-typist brought two boys on 28th February, 1978, at evening and tried to attack the Head Clerk and at the time Shri Baldev Singh himself was present there. The preliminary investigation was conducted by the Thana Beas, but it seems like this that as this incident happened inside the premises of the college and according to him police could not enter in the college unless permission was given by the Principal to enter into the college. That is why police has not taken up this case seriously and the second reason may be that because there was no loss of life and also there was no injury. Due to these reasons police did not feel to interfere in such routine cases."

In the light of the aforesaid finding it was recommended that instead of the services of the petitioner being regularised these should be terminated with immediate effect. Apparently in compliance

therewith the petitioner's services were dispensed with by an innocuous order.

5. It deserves recalling at the very threshold that this reference to the larger Bench was necessitated by a challenge raised against the correctness of the Division Bench judgment in *Smt. Prem Lata* v. *The State of Punjab and others* (1). A reference to that judgment would make it plain that the learned Judges relied primarily and perhaps entirely on the ratio of *Parvez Qadir* v. *Union of India* (2), for arriving at the conclusion which they did. After profusely quoting from the aforesaid judgment it was expressely observed therein that the ratio of the aforesaid case completely covers the facts of *Prem Lata's* case. With respect I would say that the aforesaid case is completely distinguishable and is not at all attracted to the situation.

6. In view of the basic reliance on *Parvez Qadir's case* it becomes necessary to advert to it in some details. The controversy therein arose as an aftermath of the celebrated decision in *A. K. Kraipak* v. *Union of India* (3). As is well known in the said judgment their Lordships struck down the selection to the Indian Forest Service from the State Forest Service of Jammu and Kashmir primarily on the ground that the membership and participation of the Chief Conservator of Forests in the Selection Committee when he was himself a candidate, blatantly violated the principles of natural justice. That judgment had reveberations all over the country and resulted in the actual setting aside of selections from all the other State Services to the Indian Forest Service for an identical vice. Necessarily, therefore, fresh selections had to be made for the initial recruitment to the Indian Forest Service thereafter. It was such a selection which was the subject-matter of challenge in *Parvez Qudir's case.*

7. The peculiar facts of the aforesaid case which deserve highlighting are that therein an altogether new service, namely, the Indian Forest Service had been constituted. For recruitment thereto the Indian Forest Service (initial Recruitment) Regulations 1966,

(1) 1978 (2) S.L.R. 122.
(2) A.I.R. 1975 S.C. 446.
(3) A.I.R. 1970 S.C. 150.

were promulgated which came into force with effect from the 1st of July, 1966. The constitution of an altogether new Indian Forest Service was by statutory provisions given a specified date, namely, that of 1st of October, 1966. Two distinct modes of recruitment to the service were provided, namely, for the first or the initial recruitment for which the aforementioned regulations expressly provided, whilst the subsequent recruitments to the service were to be made in a specified but different manner. As already noticed, the first such selection for the initial recruitment all over the country was struck down in the wake of *A. K. Kraipak's case*. Inevitably the selections afresh were separated by a considerable period of time from the 1st of October, 1966, which was the date of the constitution of the new service. In this peculiar situation the stand of the State was that for the purposes of the initial recruitment under the specified Regulations and in view of the applications having been so called the records of the eligible persons from the State Service could only be perused on or before the date of the constitution of the service, namely, the 1st of October, 1966. This stand of the respondent-State was sought to be assailed on behalf of the writ petitioners directly before their Lordships of the Supreme Court.

8. In repelling the aforesaid challenge, their Lordships adverted to the peculiar provisions of Regulations 3, 4, 5 and 6 of the Indian Forest Service (Initial Recruitment) Regulation, 1966 (after quoting them verbatim) as also the insertion of sub-rule 3-A in rule 4 of the Recruitment Rules. It was on the basis of the specific language of the aforesaid statutory provisions that their Lordships repelled the challenge on behalf of the petitioner in the following terms:—

> *"If the contention of the petitioner that the confidential reports and other records pertaining the officers eligible for selection for initial recruitment have to be considered as on the date of actual selection or that persons who are in service only on that date have to be considered for selection, were right then the rules and regulations become meaningless.* On the petitioner's contention instead of considering the persons eligible as on the date of the constitution of the Service on October 1, 1966, in respect of whom the initial recruitment has to be made, persons who on the date of their selection were in the State Forest Service alone have to be considered. If this method is followed, then there may be many people who

though not in service on the date of the constitution of the Service will become eligible for being considered. These may be persons who are subsequently appointed, but if according to the cadre strength which is to be fixed every three years under the Cadre Rules and Cadre Strength Fixation Regulations, the recruitment will be made not in respect of the cadre strength fixed as on the date of the constitution of the Service but in respect of the cadre strength fixed at the time when due to unforeseen circumstances (such as injunctions and court proceedings, etc.) selections taken place several years later.

And again:

The interpretation which the petitioner invites us to place on the scheme of the rules and regulations constituting the Service and the recruitments to be made thereto will cause not only injustice and hardship, but will have the effect of making the whole purpose of initial recruitment otiose. In our view, Rule 4(1) of the Recruitment Rules cannot be read with together and the persons who are eligible for recruitment are those who, on the date of the constitution of the Service, are members of the State Forest Service and who conform to the conditions of eligibility set out in regulations. Sub-rule (2) of Rule 4 of the Recruitment Rules further makes it clear that after the recruitment under sub-rule (1), *subsequent recruitment to the service, has to follow a different method which is prescribed in clause (a) and (b) of that sub-rule. If the interpretation urged by the petitioner's learned Advocate is to be accepted, then the initial recruitment not having taken place till after the Kraipak's case was decided any subsequent recruitment to the Service under sub-rule (2) of Rule 4 cannot take place. Such cannot, in our view, be the purpose of the rules and regulations nor was it so intended."*

It would be manifest from the above that their Lordships were primarily and entirely influenced by the fact that the stand of the petitioner would violate and render meaningless and futile the detailed and specific provisions of Regulations 3, 4, 5 and 6 of the Indian Forest Service (Initial Recruitment) Regulations, 1966 and also rule

4 and the other provisions of the Recruitment Rules. It was on this ground that the contentions raised on behalf of the petitioner were repelled.

9. It appears to me as plain that the position in the present case is entirely and radically different. Indeed, one may for clarity's sake notice seven factors which prominently stand out in *Parvez Qadir's case* :

(i) there was the creation of an altogether new Indian Forest Service with October 1, 1966, as the fixed date for the constitution of such a service;

(ii) there were precise and detailed statutory regulations Nos. 3, 4, 5 and 6 of the Indian Forest Service (Initial Recruitment) Regulations 1966 as also rule-4 and other provisions of the Recruitment Rules governing the case;

(iii) the mode and manner of the initial or first recruitment to the Indian Forest Service was specifically and radically different from the manner in which subsequent recruitment to the service was to be made, namely; by competitive examination;

(iv) the initial recruitment was expressly confined only to the exisiting members of the State Services on or before the date of the constitution of the All-India Service on October 1, 1966 and inevitably the consideration of their service records was limited to the point of time on that date;

(v) it was the State's stand that because of the peculiarity of the situation, the initial recruitment, both as regards persons as also the service record was to be considered on or before the date of the constitution of the Indian Forest Service, namely; 1st of October, 1966;

(vi) the first selection made all over the country for the initial recruitment to the service under the Regulations had aborted owing to the judgment in *A. K. Kraipak's case* and its after-math in the other States. with the result that

inordinate delay took place between the date of the constitution of the service on October 1, 1966, and the actual selection therefor; and

(vii) the writ petition in *Parvez Qadir's case* had been preferred on October 16, 1974, i.e. nearly 8 years after the date of the constitution of the Indian Forest Service.

10. It is evident and the point need not be laboured that not even one of the aforesaid conditions or factors arises for consideration in the present case. Indeed in *Parvez Qadir's case,* the core of the matter was that the regulations and statutory rules would become meaningless and otiose if the stand of the petitioner were to be accepted. Where in this case is any regulation or statutory rule which would either be violated or rendered meaningless or otiose if the respondent-State's stand is upheld? I am firmly of the view that *Parvez Qadir's case* is not at all attracted to the present situation and reliance on it is unwarranted.

11. Once the Supreme Court judgment is out of the way, the matter necessarily has to be first examined on the basis of the provisions of Presidential Order. The relevant parts thereof may hence be put down for facility of reference.

"Whereas the Punjab Subordinate Services Selection Board was constituted,—*vide* Notification No. 8018-SII (ASO)-74/33252, dated 15th October, 1974, and the Education Department Recruitment Committee was constituted,—*vide* No. 15273-ED II(3)-73/26858, dated the 24th October, 1973, *inter alia* for making all appointments to posts of the Punjab Government carrying an initial pay of not less than Rs 91 P.M. and not more than Rs 299 P.M. other than the appointments to the posts in the Punjab and Haryana High Court and the Punjab Vidhan Sabha Secretariat (in case of S. S. Board and for appointments to the posts of teachers to the Education Department in the case of Education Department Recruitment Committee).

(2) Whereas in anticipation of regular appointments and on account of the delay that has taken place in making regular appointments through the aforesaid agencies, ad hoc

appointments had to be resorted to in administrative interest, *inter alia,* after notifying the vacancies to the Employment Exchanges or by issuing advertisement as the case may be, by the various appointment authorities.

(3) Whereas by continuance of the *ad hoc* appointments as above as an administrative necessity, the *ad hoc* employees have acquired necessary experience, and their ouster after considerable period of service would entail hardship to *ad hoc* employees as a whole and accentuate the problem of unemployment, the President of India is pleased to decide in terms of proviso to item 7(a) under the Heading 'Functions' of notification No. 8018-SII(A-50) 74/33252, dated 15th October, 1974, that the vacancies/posts occupied by such *ad hoc* employees who fulfil the conditions enumerated hereunder on 31st March, 1976 shall stand excluded from the purview of the Subordinate Services Selection Board or the Education Department Recruitment Committee as the case may be :—

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

* * * * * *

* * * * * *

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

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

(4) Their work and conduct has been satisfactory;

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

(6) Notional break up to a period of one month may be condoned.

4. The services of *ad hoc* employees will be regularised after screening each case by the appointing authority. An officer of the concerned Administrative Department (to be nominated by the Administrative Secretary concerned) may also be associated for the purposes of screening such cases. The process of finalisation of these cases shall be completed by the departments within a maximum period of three months.

5. The seniority of the ad hoc employees whose appointments are regularised in terms of the above policy shall be determined in the following manner :—

(a) After approval by the Appointing Authority the regularisation of their appointments shall date back to 1st April, 1977 from which date their seniority shall be determined *vis-a-vis* candidates appointed on regular basis after selection through the prescribed agencies;

(b) The service rendered on *ad hoc* basis shall be taken into account for purpose of determining *inter-se* seniority among the ad hoc employees themselves and a person having a longer service shall be senior and if the date of appointment on ad hoc basis is the same, then the older member shall be senior to a younger member.

Now it is the common stand that the petitioner and the others like him were appointed on a purely ad hoc basis, under the conditions delineated in paragraphs 1 to 3 of the Presidential Order. Their appointments were purely temporary and terminable without assigning any reason. They had no legal right whatsoever to hold the post. The true character of such an employment has been recently summed up in the following observations of the Full Bench in *S. K. Verma and others* v. *State of Punjab and others* (4) :—

"9. **, To our mind, the term 'ad hoc employee' is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of

(4) A.I.R. 1979 Pb. & Hary. 149.

case. The dictionary meaning of ad hoc in Webster's New International Dictionary has been given as 'pertaining to or for the sake of this case alone'. In the Random House Dictionary its meaning has been given as for this special purpose, with regard to this subject or thing."

10. Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as ad hoc and employed on similar terms. Indeed, it appears to us that in the *gamut* of service law an *ad hoc* employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the ad hoc one appears at the lowest level implying that he had been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes."

Again the bare language of paragraphs 2 and 3 of the Presidential Order would leave no manner of doubt that to such like *ad hoc* employees the benefit of regularisation was accorded merely on a concessional and, if one may say so, on compassionate basis. Admittedly they had no inherent right to claim regularisation of their services. Thereby the ad hoc employees were merely granted the benefit of being considerd for regularisations if they became eligible on satisfying the conditions spelled out in the Presidential Order. It was not that they acquired a vested right to be regularised but indeed they became only eligible to be considered for such regularisation.

11-A. Herein a sharp line must be drawn between mere eligibility as against the essential attribute of suitability for regularisation in the service. Sub-paras (1), (2), (3), (5) and (6) of para 3 spell out the conditions for an ad hoc employee to become eligible for being regularised in the post. These envisaged a minimum of one year service on the 31st of March, 1977, with condonable notional breaks therein as also the fulfilment of the necessary qualifications for the post and their initial recommendation by an Employment Exchange or in response to an advertisement. Added to this was the actual existence of a regular post or vacancy. However, the satisfaction of these conditions by themselves would not

entail regularisation. This was expressly made subject, by virtue of sub-para (4), to the fact that their work and conduct had been satisfactory. Therefore the condition of suitability and the satisfaction of the employer with regard thereto was a paramount consideration (as it inevitably is in the case of a probationer or other temporary employee before the attribute of permanency is to attach to him) before his services could be regularised. That the other conditions were merely grounds of eligibility is well-settled by the Division Bench judgment *in Malkiat Singh* v. *State of Punjab and others* (5), which had construed sub-para (1) of paragraph 3 of the Presidential Order with regard to the minimum period of one year service on the 31st of March, 1977. To my mind it is this effecting of the line between eligibility and suitability which has led to some confusion on the point. Paragraph 3 of the Presidential Order prescribed both eligibility and suitability before an ad hoc employee could be regularised. Whilst as regards eligibility a fixed date 31st March, 1977, and one year's service preceding thereto (subject to condonable breaks) were expressly spelled out, no such pre-condition attached to the other necessary attribute of suitability laid out by the satisfactory work and conduct of the employee till the date of his regularisation.

12. Now it appears to me well-settled on principle that as regards suitability for regularisation or confirmation the satisfaction of the employer with regard to the work and conduct of the employee is a paramount consideration. The employer cannot be robbed of this right to be so satisfied before he attaches the attribute of permanence o a wholly temporary or an ad hoc employee. This is so in the case of a probationer and obviously the petitioner or any ad hoc employee cannot be raised to a pedestal higher than that of a probationer expressly appointed against a regular vacancy. Unless the statutory rules themselves prescribed a fixed period for the probation, it is the satisfaction of the employer with regard to the work and conduct of such a probationer which governs his confirmation. No probationer or ad hoc employee seeking regularization can claim any automatic confirmation (of course always subject to any specific or peculiar provisions of the statutory rules) and the right of the employer to adjudge his work and conduct till the passing of an actual order of confirmation or regularization appears

(5) (1980)1 I.L.R. Pb. & Hary. 185.

to me as elementary. Therefore, unless there is a specific legal bar or the clearest mandate of the law to the same effect, the employer cannot be robbed of his right to consider his work and conduct till the last day when the status of quasi-permanency or regularization is to be conferred upon him. An analogous, if not identical, issue arose before the Full Bench in *Guru Nanak University* v. *Dr. (Mrs.) Iqbal Kaur Sandhu and others* (6), in the context of statute 31 of the Guru Nanak University providing for the procedure for the assessment of the work and conduct of probationer employees before their confirmation. It was held as follows:—

> ". . . In the recent judgment of their Lordships of the Supreme Court in *Hari Singh Mann* v. *State of Punjab* (7), it has been reiterated that the power and the right of the employer to judge about the fitness for work or suitability for the post is inherent and cannot be robbed thereof. Therefore, a construction which tends to rob the employer of his basic right to assess the work and conduct of the probationer by all means and it not satisfied therewith then to refuse to confirm him in the post has to be avoided because it would manifestly defeat the very purpose and object of the whole of Statute 31".

13. In the light of the above what first meets the eye herein is the fact that path 3(4) does not even remotely specify the point of time upto which the work and conduct of the *ad hoc* employee is to be considered and adjudged as satisfactory. In fact the learned counsel for the petitioner, when confronted with this situation, had to concede that the order is completely silent on the issue. Therefore, what calls for pointed attention is the fact that whilst para 3(1) prescribing one of the conditions of eligibility gives the fixed date of 31st March, 1977, on the other hand in sharp-contrast thereto in para 3(4) any date is conspicuous by its absence. In such a situation, the normal rule which inevitably is attracted is that there should be the satisfaction of the employer with regard to the whole of the work and conduct of the employee when he decides the issue of his regularisation. It may be noticed that the strict period of eligibility for regularisation is betwixt March 31, 1976, to March 31,

(6) A.I.R. 1976 Pb. & Hary. 69.

(7) (1974) 2 S.L.R. 696=A.I.R. 1974 S.C. 2263.

1977. However, it is nobody's case that the work and conduct of an *ad hoc* employee prior to March 31, 1976 (e.g. as in the case of the petitioner with effect from September 1, 1975) is not to be taken into consideration for his regularisation. If the work and conduct anterior to the strict period of eligibility may well be taken into consideration, one fails to see why the period posterior thereto is to be scrupulously excluded. It appears axiomatic to me that the consideration of the work and conduct of an *ad hoc* employee for purposes of regularisation must be co- extensive with the dates when he joined as such till the time of the passing of an order to the same effect.

14. To view the matter from another angle, it bears repetition that the strict letter of the Presidential Order lays no limitation of the period for which the work and conduct is to be found satisfactory. Therefore, it appears to me that it would be unwarranted to place such a fixed and immutable limit thereon by a process of interpretation. This can only be done if there is specific statutory rule to this effect or at best an inescapable necessary implication therefor. To my mind, none exists in the provisions of the Presidential Order. The construction canvassed for by Mr R. K. Chopra, the learned counsel for the petitioner would pointedly add specific words to the relevant part of the Presidential Order which are not even remotely there. Para 3(4) now reads as under :—

> "Their work and conduct had been satisfactory."

On the contention raised by the learned counsel for the petitioner, in effect, the aforesaid para would read as follows:—

> "Their work and conduct had been satisfactory only upto March 31, 1977."

It is a settled canon on construction that words are not to be imported and interjected into statutory provisions when the framers themselves did not choose to place them there and an interpretation which tends to do that has to be avoided.

15. To conclude on his aspect, it appears to me that under paragraph 3(4) of the Presidential Order, the satisfaction of the employer with regard to the work and conduct of an *ad hoc* employee for his regularisation is inevitably co-extensive from the time he joins as such till the time of the actual passing of the order to the same effect.

On general principles, it necessarily has to be so. I find no bar of stipulation in the Presidential Order which in the least warrants or requires a deviation from this rule.

16. Now in canvassing for an inflexible and artificial date of 31st March, 1977, up to which alone conduct of an *ad hoc* employee is to be considered. Mr R. K. Chopra, the learned counsel for the petitioner had raised a variety of contentions to which it becomes both necessary and fair to avert. It was submitted with some vehemence that the order of regularisation of an *ad hoc* employee is to become effective from April 1, 1977, and therefore, the work and conduct up to that date only shall be held as relevant. This argument appears to me as proceeding from a misconception of para 5(a) of the Presidential Order. This provision does not even remotely say that the order of regularisation is not to be effective from the date on which it is passed. Inevitably, an order takes effect from its date unless a deemed date therefor is expressly given therein, and further if it is so permissible under the law. The opening part of para 5 and the rest of its contents make it manifest that it is specially devoted to the rules for determination of the seniority of an *ad hoc* employee. Far from laying down that the order of regularisation is not effective from its date, these provisions indeed provide a benefit to an *ad hoc* employee, namely, that for the purposes of the determination of his seniority he is given back date when he would be deemed to have been regularised vis-a-vis a person appointed on a regular basis for the purposes of the determination of seniority *inter se*. It is an advantage or a benefit given deliberately. It deserves highlighting that if the order of regularisation were to carry its normal and real date it would be slightly disadvantageous to the *ad hoc* employee *qua* the other competing classes in the matter of seniority. To give deemed dates of promotion or regularisation is now a well understood concept of service law. Therefore, no inference can be raised from para 5 that the entire work and conduct is not to be taken into consideration because of the mere incident of giving a deemed data to the order of regularisation for purposes of seniority.

17. It has then been contended by Mr. R. K. Chopra that the position in this case would be similar to the cases pertaining to the promotion and crossing of efficiency bar. With respect I am unable to see the analogy. We are here called upon to consider the Presidential Order and no matching or statutory provision in *pari materia*

with regard to the crossing of efficiency bar has been even referred to. These matters are obviously and entirely dependent on the specific provisions of the rules which may vary from case to case. Therefore, little or no aid can be drawn from the innumerable statutory rules or service manuals or instructions which may lay down a wide variety of modes for the crossing of the efficiency bar and the considerations underlying the same.

18. Support has then been sought from para-4 of the Presidential Order specifying that the process of finalization of the cases of *ad hoc* employees should be completed by the departments within a maximum period of three months. That provision obviously exhibited the desire of the framers that the long drawn out and delayed matter of regularization of thousands of *ad hoc* employees should be dealt with reasonable despatch. I am, however, unable to read that direction as wholly mandatory. If for reasons beyond control for the absence of default by authorities the process of regularization could not be finalised within that period, no fatal consequences would necessarily follow nor have been spelled out. But keeping this aspect apart, it deserves pointing out that the Presidential Order was issued on May 3, 1977 and taking the prescription of three months therefrom the orders of regularization could be passed upto August 3, 1977. Once it is so, it would always give rise to the question as to why and how this period of four months atleast, which the Presidential Order itself provides should not be taken into consideration. Taking into consideration the date of the regularization order, if the same is passed within such limit, it can hardly be said that even where this is so, conduct beyond March 31, 1977 would be barred for consideration. Once it becomes evident that this artificial line of March 31, 1977 could even on the basis of para-4 be crossed or extended four months beyond it, then one fails to see why it cannot be extended further for a reasonable period in passing the regularization order. Either the date of March 31, 1977 can be crossed or it is sacrosanct. If it was possible to travel beyond it for four months then on the same analogy it may equally be permissible to go beyond that time as well.

19. Lastly the learned counsel for the petitioner had attempted to equate the provisions of para-4 of the Presidential Order with certain unspecified rules governing the conditions of service providing for the period of probation or confirmation of an employee.

Herein again, learned counsel could bring no specific rule or condition of service to our notice. A halting submission was then made that automatic confirmation would follow if within the prescribed period no order is passed terminating the services of an employee. It is axiomatic that every statutory provision has to be construed on the basis of its specific terms and no general inferences can be drawn. However, on larger considerations even their Lordships of the Supreme Court have now set their face against any theory of automatic confirmation. Unless the statutory provisions lay down an express stipulation to the same effect, it is not to be easily assumed that an employer should be robbed of his elementary right to assess the work and conduct of his employees before putting him on a pedestal from which both the service regulations and Article 311 of the Constitution of India make it difficult, if not impossible, to remove him. The true test for construing the provisions of the service law on probation has been enunciated by their Lordships of the Supreme Court in *Shri Kedar Nath Bahl* v. *The State of Punjab and others* (8), in the following terms :—

> " . . . The appellant contends that these orders extending the period of probation were irregular and illegal. Either he should have been discharged within the first six months of probation, or, *if he was not so discharged he was entitled to automatic confirmation. We do not think that this contention is correct. The law on the point is now well settled.* Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer."

(8) 1972 S.L.R. 320.

Again the theory of automatic confirmation was floated before the Division Bench in *Hari Singh Mann* v. *The State of Punjab and others* (9). D. K. Mahajan, J. speaking for the Bench examined the matter in the light of the observations of their Lordships of the Supreme Court in *The State of Punjab* v. *Dharam Singh* (10) and observed as follows :—

> " . . . On principle also, we are inclined to the view that some reasonable time must be permitted to the Dismissing Authority to pass the necessary order either terminating the services of the probationer or confirming him. It will depend on the facts and circumstances of each case as to what is the reasonable time ? In *Dharam Singh's case,* the time elapsed, in no circumstances, could be held to be a reasonable time. But that is an extreme case. So far as the present case is concerned, it cannot be said that the period, that elapsed, that is a period of about two months and ten days, is an unreasonable period."

It appears to me that both on principle and precedent any theory of automatic confirmation cannot now be easily supported.

20. In the ultimate analysis even if two constructions were possible it appears to me that one must opt for the one which advances the basic principle that before the act of regularization is finalised, the employer (be it the State or a statutory body) must have the entire work and conduct of the employee before him and be fully satisfied therewith. It appears anomalous to me that even though the employer-State may be patently convinced of the gravest misconduct of an employee which renders him unfit for continuance in service, yet it must turn a blind eye to this fact and first regularise his services and then at the self-same point of time initiate action for dispensing with the same. An extreme example may be taken because an argument carried to its logical length may provide a true test for its correctness. Take the case of an *ad hoc* employee who after the 31st of March, 1977 is tried on a criminal charge of embezzlement or forgery and is convicted and sentenced, therefor, which

(9) A.I.R. 1974 S.C. 2263.
(10) 1968 S.L.R. 247.

would render his continuance in service even for a day as undesirable. He may be actually serving his sentence. To hold that even in such a situation, the State must regularise his service only on the basis of his record up to March 31, 1977, and then initiate a step to take into consideration the conviction and sentence on a criminal charge of the most blatant nature would be something which cannot be easily acceptable.

21. Even remaining on the *terra-firma* and confining oneself to the facts of the present case it deserves repetition that the petitioner here has been squarely held guilty of gross misconduct in a regular departmental enquiry. The findings of that enquiry have not been either challenged or set aside in a Court of law or in a higher appellate forum. To contend that despite all this the petitioner must first be regularised and then notice be taken of his misconduct subsequent to March 31, 1977, and initiate disciplinary action, with respect, appears to me as a contradiction in terms.

22. To conclude I would hold that under the Presidential Order the entire work and conduct of an *ad hoc* employee must enter into consideration right upto the date of his regularization.

23. For the detailed reasons, recorded above, I must also hold with respect that the Division Bench judgment in *Smt. Prem Lata* v. *The State of Punjab and others* (11), does not lay down the law correctly and must, therefore, be over-ruled.

24. In view of the above findings, the respondent-State's refusal to regularize the petitioner's service is more than amply justified. The writ petition is without merit and is hereby dismissed The parties are, however, left to bear their own costs.

Prem Chand Jain, J.—I agree.

D. S. Tewatia, J.—I agree.

N.K.S.

(11) 1978 (2) S.L.R. 122.