orbit of which the petitioner's case fell to mean that it related to only paid teacher/lecturer. Furthermore, the respondents conceded that the petitioner was not afforded any opportunity to state her case before quashing the result of the B.T. Examination taken up by her in September, 1964. This was also against the rules of natural justice. For this and the above the impugned notification can be said to be bad in law.

(6) The writ is allowed with costs and the impugned notification, annexure 'C' by which the petitioner's result which had been declared early was quashed, is set aside.

K. S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Narula, J.

SAT PAL SHARMA AND ANOTHER,—*Appellants*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 472 of 1966

March 22, 1968.

States Reorganisation Act (XXXVII of 1956)—S. 115(7) Proviso—Punjab Financial Commissioner's Office (State Service, Class III) Rules (1957)—Rules 6(f) and 7(1)(e)(i)—Whether ultra vires *the Proviso—Expression "Conditions of service"—Meaning of—Such conditions—Whether changed by prescribing a qualifying test for promotion—Approval of the Central Government to the Rules—Whether could be accorded, retrospectively.*

Held, that rules 6(f) and 7(1)(e) of the Punjab Financial Commissioner's Office (State Service, Class III) Rules, 1957, are void and ineffective, as these have been framed and made effective in contravention of the statutory protection afforded by the body of the proviso to sub-section (7) of section 115 of States Reorganisation Act, 1956.

[Para 15]

Held, that expression "conditions of service" used in the proviso to section 115 (7) of the 1956 Act has obviously been transplanted into that provision from the proviso to Article 309 of the Constitution. Same meaning must, therefore, be assigned to the words in both the provisions of law. The expression is of substantially wide amplitude and would, in the absence of any definite indication to the contrary, include rules relating to salary or time-scales of pay or grades, to contributory or other compulsory provident fund, to dearness allowance, to suspension and suspension allowance, to termination of service, to eligibility and qualifications for promotion, and the like.

[Para 8]

Held, that the conditions of service are affected by the provisions contained in rules 6(f) and 7(1)(e)(i) of the Rules regarding the clerks being ineligible for consideration for promotion to the posts of the Assistants without passing a qualifying test. An absolute bar to promotion except on fulfilling an entirely new condition which did not pre-exist November 1, 1956, has been created by the impugned rules.

[Para 8]

Held, that a condition of service which a State Government was precluded from prescribing because of the bar created by the proviso to section 115 (7) of the Act could be valid only if it was put into effect after the Central Government had approved of it either specifically or in a general manner. If the word "previous" in the relevant proviso has any meaning, it is this that the approval of the Central Government must precede the putting of the relevant rules into effect. Hence the approval of the Central Government could not be accorded retrospectively to the impugned rules.

[Para 13]

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 10th October, 1966, delivered by the Hon'ble Mr. Justice A. N. Grover, in Civil Writ No. 1505 of 1966.

H. L. SIBAL, SENIOR ADVOCATE, WITH R. L. BATTA, ADVOCATE, for the Appellants.

BHAGIRATH DASS, ADVOCATE, WITH B. K. JHINGAN AND P. C. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL, HARYANA, for the Respondents.

JUDGMENT

NARULA, J.—This is an appeal under clause 10 of the Letters Patent against the judgment and order of a learned Single Judge of this Court, dated October 10, 1966, whereby Civil Writ Petition

No. 1505 of 1968, filed by the appellants for getting declared as invalid and ineffective rules 6(f) and 7(1)(e)(i) of the Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957 (hereinafter called the impugned rules), on the ground that those were *ultra- vires* the proviso to sub-section (7) of section 115 of the States Reorganisation Act (37 of 1956) (hereinafter referred to as the 1956 Act) was dismissed.

(2) Shorn of all unnecessary details, the relevant facts leading to the filing of this appeal are that both the appellants were in PEPSU service and were absorbed therefrom in the service of the united Punjab as Clerks consequent on the integration of the two States by the 1956 Act. A conference of the Secretaries or Chief Secretaries of certain States was held in December, 1956. No part of the proceedings of the conference has been placed before us, but it is not disputed that certain conclusions were reached in the said conference. Before any letter or order of the Government of India approving of those conclusions could be issued, the Governor of Punjab issued notification No. 9775-GII-57/24991, dated February 9, 1957 (Annexure 'J' to the replication) in exercise of his powers under Article 309 of the Constitution to the effect "that the Service Rules, Punishment and Appeal Rules, and the Government Servants Conduct Rules applicable to various services, post and personnel in the erstwhile States of Punjab and PEPSU will continue to apply as from 1st November, 1956, to the corresponding services, posts and personnel of the new State of Punjab till further orders." On February 28, 1957, the Punjab Government (Revenue Department) notification No. 1476-BC-57/625 of that date containing the impugned rules was published. Rules Nos. 1, 6(f) and 7(1)(e) are quoted below:—

"1. (i) Short title.—These rules may be called the Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957.

(ii) They shall come into force at once and shall supersede the rules published with Punjab Government notification No. 1082BC, dated the 27th August, 1943.

6(f) Qualifications.—No person shall be appointed to any post unless he possesses the following qualifications:—

Assistant.—He has an adequate knowledge of relevant rules and regulations and has qualified in the departmental test prescribed for promotion to this post.

7(1) (e) Method of filling posts.—Posts in the service shall be filled—

Assistants.—(i) By promotion of Clerks or selection of Stenographers including Personal Assistants, working in the Financial Commissioner's Office, provided that a Clerk who has not qualified in the departmental test prescribed for the purpose shall not be eligible for the promotion; or

(ii) By selection from among officials employed in departments of Government other than the Financial Commissioner's Office".

The impugned rules were framed by the Governor of Punjab in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution. Prior to the framing of the impugned rules, the appellants were governed by the relevant PEPSU rules published in the Government of Patiala and East Punjab States Union Gazette on December 13, 1952 (Annexure 'B' to the writ petition) which were continued in force for the appellants and other erstwhile PEPSU employees by the rules framed by the Governor of Punjab under Article 309 of the Constitution on February 9, 1957 (Annexure 'J' to the replication, already referred to). On March 27, 1957, the Government of India in the Ministry of Home Affairs sent a circular letter to the Chief Secretaries to the various State Governments including the Chief Secretary to Government of Punjab (Annexure 'I' to the return of the State), wherein it was stated *inter alia* as follows:—

"I am directed to refer to the proviso to sub-section (7) of section 115 of the States Reorganisation Act which lays down that the conditions of service applicable immediately before the appointed day to any person referred to in sub-section (1) or sub-section (2) of the section shall not be varied to his disadvantage except with the previous approval of the Central Government.

2. It will be recalled that the question of protection to be afforded in the matter of various service conditions to personnel affected by reorganisation, was discussed with State representatives at conference held in summer last and again in December, 1956. After a careful consideration

of the views expressed at these conferences, the Government of India have *now* decided that the conditions of service applicable to personnel affected by reorganisation immediately before the date of reorganisation, should be protected as indicated below:—

x x x x x

x x x x r x

x x x x x

3. The decisions contained in paragraph 2 above follow the agreed conclusions reached at the December Conference of Chief Secretaries and other State representatives. It will be recalled that at the December Conference of State representatives, in addition to the items dealt with in paragraph 2, the question whether any protection should be given in respect of rules and conditions applicable to Government servants affected by reorganisation immediately before the date of reorganisation in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and *departmental promotion* was also considered. The Government of India agree with the view expressed on behalf of the State representatives that it would not be appropriate to provide for any protection in the matter of these conditions. As regards rules relating to Medical Attendance, they agree that no protection as such need be provided. They, however, consider it unlikely that in an age of growing emphasis on the provision of such welfare items as medical attendance by the State, any State Government would wish to cut down medical attendance facilities which might have been available to a set of employees in their parent State immediately before reorganisation."

In the penultimate paragraph of the communication, it was added:—

"6. In respect of such conditions of service as have been specifically dealt with in the preceding paragraphs, it will be open to the State Governments to take action in accordance with the decisions conveyed therein, and so long as State Governments act in conformity with those decisions, they may assume the Central Government's approval in

terms of the proviso to sub-section (7) of section 115 in the States Reorganisation Act. In all other cases involving conditions of service not specifically covered in the preceding paragraphs, it will be necessary for the State Governments concerned to obtain the prior approval of the Central Government in terms of the above provision before any action is taken to vary the previous conditions of service of an employee to his disadvantage. In the event of any doubt arising as to the intention of the Central Government about any of the points dealt with in this letter, State Governments would no doubt refer the matter to the Government of India for clarification."

The main complaint in the writ petition was that Clerks who were much junior to the petitioners had been promoted to the posts of Assistants merely because they had passed the qualifying test and that the petitioners were not at all being considered for promotion on the solitary ground that they had failed to qualify in the said test prescribed by the impugned rules. This fact has not been denied at any stage. The *vires* of the impugned rules were challenged on the short ground that they varied the conditions of service applicable to the petitioners immediately before November 1, 1956, to their detriment and disadvantage, and were violative of the mandatory requirements of the proviso to sub-section (7) of section 115 of the 1956 Act, inasmuch as the prior approval of the Central Government required by the abovesaid provision had not been obtained before framing the said rules, and that the subsequent issue of the blanket approval in the Central Government's letter, dated March 27, 1957, could not and did not satisfy the requirements of that provision. Sub-section (7) of section 115 and the proviso attached thereto are reproduced below for ready reference:—

"Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

(3) While contesting the petition, it was stated in the return of respondent No. 2 (Financial Commissioner Revenue, and Secretary to the Government Punjab, Revenue Department) that the petitioners were integrated as Clerks in the Office of the Financial Commissioner on November 1, 1956, and that on their joining the said Office, they came to be governed by the Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957. How the petitioners came to be governed by the 1957 rules on their joining the Financial Commissioner's Office in November, 1956, is somewhat difficult to understand. It has been admitted that the petitioners were not considered for promotion to the posts of Assistants because they had not fulfilled the condition precedent laid down in the impugned rules about their passing the qualifying test. Regarding the legal objection to the validity of the impugned rules, a dual stand was taken, viz. (i) that the "methods of recruitment and promotions as contained in the various service rules do not constitute the conditions of service, hence with the imposition of the condition regarding the test on these petitioners, their service conditions have not been altered," and (ii) that "no protection was allowed by the Government of India to the Government servants affected by reorganisation in respect of the rules and conditions governing the departmental promotions. Hence there was hardly any need of obtaining the approval of the Government of India with regard to the imposition of the condition of test on them. According to the Government of India's letter referred to above (letter, dated March 27, 1957), the State Governments were competent to take necessary action in such cases as they deemed fit".

(4) The learned Single Judge held, following the law laid down by the Supreme Court in *N. Raghavendra Rao* v. *Deputy Commissioner, South Kanara, Mangalore and others* (1), that the Government of India's circular memorandum, dated March 27, 1957 "would include a general approval to the variation in the conditions of service within the limits indicated in the letter" and that "promotion would be one of those matters which would be covered by the passage which has been set out above" (paragraph 3 of the said circular letter, which has also been quoted in an earlier part of this judgment). On the above basis the learned Judge held that if the rules contained in Annexure 'C' (the impugned rules) had been promulgated after March 27, 1957, the petitioners could not possibly make out any case of contravention of section 115 of the 1956 Act. After observing that

(1) A.I.R. 1965 S.C. 136.

once it is held that rule 6 of the impugned rules would not be covered by the word "conditions" in section 115(7) of the 1956 Act, there would be no contravention of that provision, the learned Judge proceeded to decide the case on the assumption that the passing of a departmental test for the purposes of promotion was a condition of service. The argument advanced on behalf of the writ petitioners regarding the invalidity of the impugned rules on account of the alleged approval being subsequent to the making of the rules and not being "previous approval", was disposed of by the learned Judge in the following words:—

> "Generally it seems to me that the aforesaid letter contained the declared policy of the Government of India not to afford protection in the matter of the conditions already set out before which include departmental promotion. It is not possible to accede to the submission of Mr. Sibal that since the aforesaid memorandum was issued in March, 1957, it could not be given retrospective effect so as to become applicable to the new rules which were promulgated in February, 1957. Although the date of decision is not mentioned in the memorandum it would appear that the general policy of the Government was decided upon much earlier and it was that with regard to the conditions applicable to Government servants affected by the reorganisation immediately before the date of reorganisation the new States were given full freedom to make such changes or amendments as were considered necessary."

(5) After noticing the objection raised by the counsel for respondents Nos. 5 to 13 (the Clerks junior to the petitioners who had been promoted as Assistants on their qualifying the departmental test) about the petitioners having been guilty of laches in approaching this Court the learned Judge observed that no reason or explanation had been given in the petition as to why the petitioners did not agitate the matter earlier, and that there was a good deal of substance in the said objection. The second objection of a somewhat preliminary nature raised by Mr. Bhagirath Dass before the learned Single Judge about some persons, who had taken advantage of the new rules not having been impleaded as parties to the writ petition was not held to be fatal, but it was observed that even if it could be assumed that all the necessary parties had been impleaded,

the learned Judge was still not satisfied that the writ petitioners deserved any indulgence in the matter of overlooking the infirmity of laches and delay. For the two reasons given above (the decisions of the Government contained in letter, dated March 27, 1957, being treated as the requisite previous approval of the Central Government and the petitioners being guilty of laches), the writ petition was dismissed leaving the parties to bear their own costs.

(6) At the hearing of the appeal of the writ petitioners before us, Mr. Sibal submitted:—

(i) the service rules providing an absolute bar to consideration for promotion on any ground like that of passing a departmental examination fall within the expression "conditions of service" used in the proviso to sub-section (7) of section 115 of the 1956 Act;

(ii) on the admitted facts of this case, the blanket approval contained in the Central Government's letter, dated March 27, 1957, could not possibly be held to be an approval of rules 6(f) and 7(1)(e)(i) relating to the laying down of the passing of the qualifying test as a condition precedent for promotion to the post of an Assistant;

(iii) even if the circular letter, dated March 27, 1957 is deemed to contain the approval of the Central Government in respect of the particular impugned rules, the said rules are *ultra vires* the proviso to section 115(7) of the 1956 Act as having been framed prior to the issue of the said approval and, therefore, without "previous approval."

(iv) the appellants were not guilty of any such laches as would disentitle them to claim relief under Article 226 of the Constitution, and that in the circumstances of this case manifest injustice having been done to the appellants by their having been denied the statutory protection of the proviso to section 115(7) of the 1956 Act even if some little delay had resulted from their pursuing departmental representations, the same should not be held to bar the grant of the appropriate relief to which the appellants may otherwise be found to be entitled; and

(v) that the non-impleading of some possible persons who might also be remotely affected by the striking down of the impugned rules is not fatal to the grant of the relief claimed by the appellants.

(7) In addition to the abovesaid submission, Mr. Sibal wanted to raise a new point which had not been argued before the learned Single Judge. This was to the effect that the impugned rules had been framed only in place of and in supersession of the rules published with the Punjab Government notification No. 1082-BC., dated the 27th August, 1943, referred to in rule 1(ii) of the impugned rules, and that the rules framed by the Governor of Punjab on February 9, 1957 (Annexure 'J') relating to the erstwhile PEPSU employees (the class to which the appellants belong) were not superseded by the the impugned rules and that nothing contained therein should, therefore, be deemed to apply to the appellants. We are unable to find any justification for departing from the normal practice of not permitting a new point being raised in a Letters Patent Appeal which was not raised before the Single Judge. I will, therefore, proceed to deal with the above-quoted five points which were admittedly argued before the learned Single Judge.

(8) Regarding his first contention Mr. Sibal submitted that a rule which absolutely bars the eligibility of a Government servant to promotion to a higher post except on crossing a newly created hurdle falls within the category of rules governing "conditions of service." It was submitted by him that the rules which are impugned in this appeal were themselves framed under the proviso to Article 309 which authorises the Governor of a State to frame only such rules which are meant for regulating the recruitment and the "conditions of service" of persons appointed to the relevant services. The rules in question do not relate to recruitment. If they can be framed under Article 309, they must of necessity be governing conditions of service. The expression "conditions of service" used in the proviso to section 115(7) of the 1956 Act has obviously been transplanted into that provision from the proviso to Article 309 of the Constitution. Same meaning must, therefore, be assigned to the words in dispute in both the provisions of law. The expression is of substantially wide amplitude and would, in my opinion, in the absence of any definite indication to the contrary, include rules relating to salary or time-scales of pay or grades, to contributory or

other compulsory provident fund, to dearness allowance, to suspension and suspension allowance, to termination of service, to eligibility and qualifications for promotion and the like. Counsel has referred to the judgment of a Division Bench of this Court in *State of Haryana* v. *Shamsher Jang Shukla* (2), wherein the introduction of such a departmental test by an executive order was held by the Division Bench to be "a condition of service" which was to the manifest detriment of the PEPSU employees. Mr. Bhagirath Dass has, on the other hand, invited our attention to the judgment of the Supreme Court in *The State of Mysore and another* v. *G. N. Purohit and others* (3). What happened in that case was this. After the reorganisation of the States of Bombay and Mysore by the 1956 Act, a provisional list of Sanitary Sub-Inspectors and Inspectors was published in 1958 district-wise and not state-wise. On the decision of the Mysore State in October, 1961, to substitue a state-wise system for the service concerned, change to that effect was made by an order of January, 1962, which was followed by a Government direction to prepare seniority list of Senior and Junior Health Inspectors on state-wise basis instead of the district-wise basis. The new seniority list prepared in accordance with the said direction brought down the seniority of G. N. Purohit and others, who approached the High Court for quashing the new provisional seniority list prepared on state-wise system. The High Court allowed the writ petition mainly on the ground that there was nothing to show why the State Government had changed the district-wise system to a state-wise system, and quashed the list published along with a notification of 1963. On an appeal by the State of Mysore, the Supreme Court, held on material placed before it that the two orders of the Government of the State of Mysore made in 1961 and 1962 read together clearly showed that the intention of the Government was to create a state-wise cadre which was to consist of all such officials up to date who were recruited before or after November 1, 1956. K. N. Wanchoo, J. (with whom V. Rama Swami, J. concurred), then proceeded to hold as below:—

> "We would have agreed with the High Court if we had come to the conclusion that Government orders showed that only future recruitment was to be done in a particular manner, but we are satisfied that Government orders from January

(2) 1968 Cur. L.J. (Punjab & Haryana) 72.
(3) 1967 S.L.R. 753.

29, 1962, onwards show that a state-wise cadre of Junior and Senior Health Inspectors was being created and it was in that context that the old list of 1958 had to be scrapped as it was based on a district-wise system."

Having thus dealt with the merits of the controversy in the Mysore case, their Lordships of the Supreme Court repelled the objection of G. N. Purohit and others to the impugned direction for forming a state-wise cadre of the service in dispute being violative of sub-section (7) of section 115 of the 1956 Act on the ground that the orders of the Mysore State did not amount to effect any change in the conditions of service of the personnel concerned in the following words:—

"It is then urged on behalf of the respondents that by changing the system from district-wise to state-wise the respondents have been very hard hit and have become very junior. It appears from the figures supplied by the respondents that there were 665 Junior Health Inspectors in the old State of Mysore on November 1, 1956, while only 48 Junior Health Inspectors were allotted to the new State of Mysore after the Act. So long as the district-wise system continued these 48 persons would naturally have better chances of promotion in their districts, but when the cadre was made state-wise, these 48 were likely to go down in the seniority as the list of 1963, actually shows. It is urged that this has affected their chances of promotion which were protected under the proviso to section 115(7) of the Act, which lays down that the conditions of service applicable immediately before the appointed day to the case of any person allotted to the new State shall not be varied to his disadvantage except with the previous approval of the Central Government. It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service. It is enough in this connection to refer to the *State of Orissa* v. *Durga Charan Dass* (4)".

(4) A.I.R. 1966 S.C. 1547.

Mr. Bhagirath Dass has strongly relied on the above-quoted passage from the judgment of the Supreme Court in *G. N. Purohit's case* (supra). I regret I am unable to agree with the submission of the learned counsel in this behalf. The ratio of the judgment of the Supreme Court in *G. N. Purohit's case* is that "chances of promotion" are not conditions of service. If the only argument of the petitioners had been that the impugned rules have reduced their chances of promotion or postponed the same, the petitioners might have come within the ambit of the judgment of the Supreme Court in *G. N. Purohit's case*. That, however, is not the situation here. An absolute bar to promotion except on fulfilling an entirely new condition which did not pre-exist November 1, 1956, has been created by the impugned rules. This kind of a rule cannot be equated to the reorganisation of a service from district level to state-wise basis. The Supreme Court itself relied for its judgment on the disputed question in *Purohit's case* on its earlier decision in *State of Orissa* v. *Durga Charan Das* (4). The opening part of rule 6 of the rules issued by the Governor-General in Council on the 15th of September, 1936, for the protection of members of a Provincial or Subordinate Service required to serve in, or in connection with the affairs of Orissa (called "the protection rules" in the Supreme Court judgment) which came up for consideration in *Durga Charan Das's case* (supra) was in the following terms:—

> "The conditions of service as respects pay, allowances, leave and pension of any member of provincial or subordinate service serving immediately before the 1st day of April, 1936, in or in connection with the affairs of the province of Bihar and Orissa, who is required to serve in or in connection with the affairs of Orissa shall not in the case of any such person while he is serving in or in connection with the affairs of Orissa be less favourable than they were immediately before the 1st day of April, 1936.....".

The relevant question which arose for decision before the Supreme Court was whether any of the conditions specified in the above-quoted portion of rule 6 of the Protection Rules included a claim for promotion to a higher selection post and confirmation in it. A mere glance at the above-quoted rule would show that the protection afforded by it was not in respect of all conditions of service, but only those

conditions of service which existed in respect of "pay, allowances, leave and pension" and that the rule did not protect conditions of service relating to promotion. It was in this context that Gajendragadkar, C.J., speaking for the Court, held as follows:—

> "The rule in question protects the conditions of service as respects pay, allowances, leave and pension, of the members falling under its purview, and it guarantees that in no case shall the terms in relation to said conditions of service be less favourable than they were immediately before the 1st of April, 1936. The question is : do any of the conditions specified in rule 6 include a claim for promotion to a higher selection post and confirmation in it? It is well-known that promotion to a selection post is not a matter of right which can be claimed merely by seniority. Normally in considering the question of a public servant's claim for promotion to a selection post, his seniority and his merits have to be considered; and so it seems to us very difficult to accept the view taken by the High Court that in rule 6 of the Protection Rules, a guarantee can be inferred in regard to promotion to a selection post. What the rule guarantees is that the public servants who were transferred to Orissa will not suffer in regard to their pay, allowances, leave and pension; and these respective conditions do not seem to include a claim for promotion to a higher selection post; and indeed, it seems very unlikely that any protection could ever have been reasonably intended to be given in regard to promotion to a selection post."

It is significant that the learned Judges of the Supreme Court did not hold that eligibility for promotion to a higher post was by itself not a condition of service. All that was held was that such a condition of service did not fall within the category of conditions expressly referred to in rule 6 and that protection may not normally be expected to be afforded for promotion to a "selection post". The post of an assistant in the various departments of the Punjab Government with which we are concerned in this and the connected cases is admittedly not a "selection post".

(9) Again, while upholding the validity of Mysore General Services (Revenue Subordinate Branch) Recruitment Rules (1959), the

Supreme Court did not hold in *N. Raghavendra Rao* v. *Deputy Commissioner, South Kanara, Mangalore and others* (1), (a case to which reference will be made a little later in connection with another submission of the counsel for the petitioners) that rules relating to departmental promotion do not fall under the genus "conditions of service". Specific reference was made, *inter alia,* to rules for departmental promotion and it was held that a change in service conditions brought about by the 1959 Mysore Rules was valid. Laying down of efficiency or other qualifications for securing the best services like the prescribing of a qualifying test for being eligible for promotion would certainly not be violative of the guarantee of equal opportunity conferred by Article 16 of the Constitution, but it cannot, in my opinion, be said that rules laying down such conditions are anything, but "conditions of service." For the foregoing reasons, I would hold that the conditions of service of the petitioners have been affected by the provisions contained in rule 6(f) and 7(1)(e)(i) regarding their being ineligible for consideration for promotion to the posts of Assistants without passing the qualifying test.

(10) In order to appreciate the second argument of Mr. Sibal, it is necessary to peruse the contents of letter No. 17/32/65-SR(S), dated November 12, 1965, from the Government of India in the Ministry of Home Affairs to the address of the Chief Secretary to Government, Punjab (Annexure 'H' to the replication) on the subject "Promotion of Clerks to the posts of Assistants through the test," as the said letter is the only foundation of this contention:—

> "With reference to your letter No. 9861-1GSI/65/35331, dated the 25th October, 1965, on the subject noted above, I am directed to say that the Government of India have approved of proposals of State Governments to impose new departmental tests or tests of a higher standard, on the employees allotted under the States Reorganisation Act, only on the following conditions being fulfilled:—
>
> (i) Additional time, which may be double that of the ordinarily permissible time of passing the tests, may be allowed to the allotted employees in cases where tests

of a higher standard are prescribed or tests were not prescribed under the Government of the present (parent) States.

(ii) The allotted employees should be promoted subject to the passing the tests within the additional time referred to at (i) above; in other words, promotion should not be withheld merely because an allotted employee had not passed a departmental test.

(iii) Government servants of the age of 45 years or more should be exempted from passing departmental tests, and when so exempted, they should be eligible for promotion equally with one who has passed the tests.

It is requested that the Government of Punjab may consider recasting the rules in the light of the above before approval of the Government of India is accorded. It may also be mentioned here that it appears on legal advice that the Government of India cannot accord approval to rules under the States Reorganisation Act with retrospective effect."

(11) The argument is that the above-quoted letter conclusively proves three things, i.e.:—

(i) that some rules framed by the Punjab Government relating to promotion of Clerks to the posts of Assistants through departmental qualifying test were forwarded to the Central Government for approval under the proviso to sub-section (7) of section 115 of the 1956 Act;

(ii) that the Central Government declined to approve of such a rule which applied universally to the employees "allotted to Punjab" under the States Reorganisation Act (i.e., the PEPSU employees), unless the State Government recast the relevant rules by laying down therein the four conditions favourable to such employees of PEPSU origin; and the Central Government offered to accord its approval to such rules only on fulfilment of the said conditions; and

(iii) that the Central Government also made it expressly clear that such a rule would be permitted to come into force only if and when approval to the same is accorded, and that it would not be possible to accord approval to such a rule with retrospective effect.

(12) Mr. Sibal added that that the judgment of the Supreme Court in *N. Raghavendra Rao's case* (supra) on which strong reliance has been placed by Mr. Bhagirath Dass and in which it was laid down that it was not necessary for the Mysore Government to obtain specific prior approval of the Central Government to the Mysore General Services (Revenue Subordinate Branch) Recruitment Rules (1959), in view of the general approval accorded in the Central Government's circular letter, dated May 11, 1957 (the relevant contents of which appear to be in *pari materia* with paragraph 6 of the Central Government's letter, dated March 27, 1957, produced by the State with its return in the case from which the appeal before us has arisen) is, therefore, irrelevant for our purposes. Counsel for the appellants emphasised that the judgment of the Supreme Court in *N. Raghavendra Rao's case* was based on the material available in that particular case and what is held therein cannot be extended to the present case where it is conclusively proved from documentary evidence that the Central Government had specifically declined to accord its approval to the impugned promotion rules. In view of the fact that all relevant material in this respect has not been placed before us, and particularly the fact that even the Punjab Government's letter, dated October 25, 1965 (to which communication Annexure 'H' is a reply) has been kept back from the Court, and in view of the further fact that this point has not been dealt with by the learned Single Judge in his judgment under appeal (from which we safely presume that it was not specifically urged before him), we find ourselves unable to hold that the law laid down by the Supreme Court in *N. Raghavendra Rao's case* does not apply to the relevant impugned Punjab rules. Following the the law laid down in N. *Raghavendra Rao's case,* we would, therefore; hold that the approval accorded by the Central Government in paragraph 6 of its letter, dated March 27, 1957, amounted to approval within the meaning of proviso to section 115(7) of the 1956 Act in respect of the matters enumerated in the earlier portion of that letter including conditions of service relating to departmental promotions specifically referred to in paragraph 3 of the letter in qusetion

which approval would have been deemed to be "previous approval" in respect of any rules relating to recruitment or conditions of service falling within the categories mentioned in the letter in question which might have been framed by the Governor of Punjab subsequent to the issue of the Central Government's letter, dated March 27, 1957.

(13) This brings us to the main point in the case, i.e., the third contention of Mr. Sibal. With the greatest respect to the learned Single Judge, we find ourselves unable to agree with the contention of Mr. Bhagirath Dass, which prevailed with the Single Judge, to the effect that the memorandum of the Central Government, dated March 27, 1957, could be given retrospective effect so as to become applicable to the impugned rules which had been promulgated in February, 1957, prior to the issue of the said letter of approval. If we were to agree with Mr. Bhagirath Dass in giving such a liberal interpretation to the proviso to section 115(7) of the 1956 Act, we would in effect be holding that the word "previous" qualifying the approval of the Central Government required by the proviso is a mere surplusage and need not necessarily be given any effect. We think that there is no warrant for such a proposition. It is a settled rule of interpretation of statutes that every word occurring in a statutory provision must be given a meaning and the Court should not unless compelled to adopt that course, hold that any word has been used by a competent Legislature as a mere surplusage without intending to convey anything thereby. If the word "previous" in the relevant proviso has any meaning, it is this that the approval of the Central Government must precede the putting of the relevant rules into effect. It appears to be wholly illogical for the respondents to argue that in view of the policy of the Central Government (which is apparent from the memorandum, dated March 27, 1957) to the effect that the protection of the proviso was withdrawn in respect of the conditions of service enumerated in the relevant part of the memorandum, the statutory proviso itself should be read in such a manner as to exclude from its operation the rules relating to conditions of service under those particular heads. The Central Government could not possibly have amended the statutory provision. It could only act under the provision and in pursuance thereof. A condition of service which a State Government was precluded from prescribing because of the bar created by the proviso to section 115(7) could be valid only if it was put into effect after the Central Government had approved of it either

specifically or in a general manner. In so far as the impugned provisions in the 1957 rules framed by the Punjab Government were admittedly framed and made effective before the memorandum containing the approval of the Central Government was issued, it must be held that those rules are violative of the statutory bar created by the proviso in question.

(14) Nor do we find any force in the argument of the respondents to the effect that although the date of the Central Government's letter is March 27, 1957, we should presume that the decision of the Central Government which should be somewhere in the files of the Home Ministry, must have been arrived at long before it was communicated to the States and that we should presume that such decision must have been arrived at in the conference of Chief Secretaries held in December, 1956. The Central Government's memorandum has referred to the December, 1956, conference and the conclusions arrived at therein; and has then specifically stated in paragraph 2 of the memorandum that after a careful consideration of the views expressed at the said conference (held in summer 1956 and in December, 1956) the Government of India have "now" decided upon the matters contained in the memorandum. Use of the word "now" in paragraph 2 of the letter is very significant. To argue in the face of the said expression and in the face of unequivocal indication of the time at which the Central Government accorded its approval that though the Central Government said that it had decided on March 27, 1957, (and "now" could not be equated to December, 1956), in fact the Central Government had decided to accord its approval to the matters in December, 1956, appears to us to stretch the language of the memorandum beyond even its breaking point. There is nothing at all in the memorandum which would suggest that the Central Government had accorded its approval any earlier than the date on which the memorandum was issued. Moreover the State cannot ask us to presume in its favour on a question of fact relating to the date on which the approval was recorded in the Government of India's files after withholding the said material from the Court. We may not be understood to have held that if such material had been produced, we would necessarily have decided in favour of the Punjab Government on this point. The reason is that though it is not necessary to decide in this case and we, therefore, expressly refrain from finally deciding this point we are at least tentatively of the opinion that the mere recording of a decision in the relevant files of the Central Government

would not amount to according of approval required by the proviso to section 115(7), and that the approval would normally be deemed to have been accorded when the same is communicated to the State Government concerned. On the facts of this case it is abundantly clear that rules 6(f) and 7(1)(e) (i) of the impugned rules were framed on February 28, 1957, a long before the approval of the Central Government contained in its communication, dated March 27, 1957, was accorded. We, therefore, hold that the said rules are invalid as these have been framed and made effective in contraventior of the statutory protection afforded by the body of the proviso to sub-section (7) of section 115 of the 1956 Act.

(15) All that now remains to be considered is whether this appeal; and consequently the writ petition from which it arises; must of necessity be dismissed in spite of the findings recorded by us either because there was some delay on the part of the appellants to approach this Court or because some persons; who might possibly be affected by our order have not been impleaded in the case. The discussion of this subject would also dispose of the remaining two submission of Mr. Sibal, i.e., contentions Nos. (iv) and (v). So far as laches are concerned; it is well-known and has indeed been settled by a Full Bench of this Court in *Rajinder Parshad and another* v. *The Punjab State and others* (7), that delay which is accompanied by negligence is merely one of the factors that come in for consideration in the exercise of judicial discretion of a High Court, and that there being no rules providing any defined period of limitation within which a petition under Article 226 is to be made the Court is not compelled to dismiss a writ petition, howsoever meritorious may it otherwise be; merely on the ground that the petitioner is guilty of laches. The majority of the Full Bench of five Judges (per Mehar Singh, J., as my Lord the Chief Justice then was and with whom other Judges sitting in the Bench except Pandit, J. concurred) held in *Rajinder Parshad's case* (supra) that the power and jurisdiction conferred on a High Court under Article 226 is wide enough with no limitation provided on it in the Article, and that it is a discretionary jurisdiction conferred for ends of justice, and the attribute that the discretion is a judicial one inheres in it. The learned Judges further held that where a Single Judge dismisses a petition under Article 226 of the Constitution on the ground of delay and the aggrieved party goes in

(5) I.L.R. (1966) 2 Punj. 38=A.I.R. 1966 Punj. 185.

Letters Patent Appeal though the appellate Bench would normally be reluctant to interfere with the order there is nothing to preclude the appellate Court from interfering with the same if it is satisfied that there are strong reasons for interfering with the exercise of the said discretion. Though the learned Single Judge has in his judgment under appeal relied on laches as a ground for dismissing the writ petition, it appears to us that this is only an additional ground on which the dismissal of the writ petition has been supported as the decision of the learned Single Judge would even otherwise have been the same if the writ petition had been filed with the utmost despatch. Having found no merit in the petition; the learned Judge also held that the writ petitioners were guilty of unexplained laches. This, therefore, is not a case where a learned Single Judge of this Court has declined to go into the merits of the writ petition on the ground that it suffers from the infirmity of delay. Indeed if the learned Single Judge had adopted that course, we would have declined to go into the merits of the controversy. As it is, however, the findings on the merits have been reversed by us. The peculiar situation which has arisen before us for taking into consideration the question of the effect of delay; admittedly did not arise before the learned Single Judge. In the case of *Mrs. H. M. Dhillon* v. *The State of Punjab and another* (6), the judgment of the Division Bench was written by the same learned Judge and the Court repelled the objection on the ground of delay and held that the order impugned in that case being without jurisdiction had to be ignored and that, therefore, the question of laches, delay or bar of limitation would not arise. The delay in that case was of about nine years. (In Mrs. Dhillon's petition filed in 1965, the order of July, 1956, had been impugned). In the case before us also the impugned rules having been framed in utter disregard of and in direct violation of a statutory provision, have to be held to be absolutely void and of no effect, and, therefore, the question of laches delay or bar of limitation would not in our opinion; as much arise in this case it did not arise in the case of *Mrs. H. M. Dhillon* (supra). Of course the question of delay would have assumed importance as it did before the learned Single Judge, if we had held the rules to be *intra vires* the proviso to section 115(7) of the 1956 Act. In this state of law; and particularly in view of the findings recorded by us on the merits of the case; and also the fact that the

(6) 1966 Cur. L.J. (Pb.) 678.

appellants were pursuing their departmental representatives right upto April; 1966 (the last representation having been rejected on April 5, 1966), and the further fact that on the date on which the writ petition was filed a suit for claiming the appropriate relief would have been within time, we would hold that the delay in the appellants approaching this Court (delay in the sense that there was nothing to prevent them from coming to this Court earlier) is not fatal to their writ petition.

(16) No seriousness was attached to the objection of non-impleading of some possible persons by the learned Single Judge even while dismissing the writ petition. There is no reason which might impel us to adopt a different course. This aspect of the matter has however; to be kept in view while formulating the relief which has to be granted to the appellants.

(17) For the foregoing reasons we allow this appeal, set aside the judgment and order of the learned Single Judge and grant the writ petition of the appellants, and hold that rules 6(f) and 7(1)(e)(i) of the Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957; are void and ineffective, and that the same should not be treated as standing in the way of the appellants regarding their conditions of service. In view of the fact that everyone who is likely to be affected by this order has not been impleaded by the appellants in their writ petition, we further hold that effect would be given to this direction only to such an extent by which any person, who has not been impleaded as a respondent in the writ petition would not be affected. In the circumstances of the case we leave the parties to bear their own costs of this appeal.

MEHAR SINGH; C. J.—I agree.

K.S.K.

INCOME TAX REFERENCE

Before Mehar Singh, C.J., and Shamsher Bahadur, J.

R. N. OSWAL HOSIERY AND MAHABIR WOOLLEN MILLS,—*Appellant..*

versus

THE COMMISSIONER OF INCOME TAX, PUNJAB,—*Respondent.*

Income Tax Reference No. 3 of 1964

March 28, 1968

Income Tax Act (XI of 1922)—Ss. 2(2), 3 and 23(5)—Two partnership firms having common partners and identical shares—Such firms—Whether one as a matter of law.