new rules had come into force and in accordance therewith selections were made by the Public Service Commission as the post has now been, more or less, put at par with the post under the Punjab Civil Service (Class II). In this situation, I fail to see any vested right which the petitioners have in the maintenance of the old rules and to voice grievance on account of their non-existence or non-compliance. I also fail to see how the petitioners can claim any benefit when the rules have been repealed altogether and are no longer alive when the posts were advertised for being filled up. The contention thus raised is repelled.

(5) So far as *Santokh Singh's case* (supra) is concerned, I find no ratio which can come to the aid of the petitioners. There again was a case of promotees who made grievance that when the old rules were in force the direct appointees had not been brought in and while considering the case of direct recruits under the amended rules their claim under the old rules could not be considered and revived. The Bench repelled that contention on the basis of *Y. V. Rangaiah's case* (supra).

(6) No other point arises.

(7) For the foregoing reasons, there is no merit in this petition which fails and is accordingly dismissed. No costs.

N.K.S.

Before M. M. Punchhi, J.

PARVATI,—*Petitioner.*

versus

RAM CHAND,—*Respondent.*

Civil Revision No. 352 *of* 1985.

September 4, 1985.

Code of Civil Procedure (*V of* 1908)—*Section* 60, *Order* 33 *Rule* 1 *and Order* 44 *Rules* 1 *and* 3—*Suit by the wife for maintenance—Trial Court permitting her to sue as an indigent person—Meanwhile she received arrears of maintenance* pendente lite *from the husband—she received arrears of maintenance pendente lite from the husband—Husband objecting to her status as an indigent person in appeal—Amount of arrears received by the wife—Whether could be reckoned*

for determining her status—Maintenance allowance of a wife—Whether could be equated with salary from her husband and given the same protection under Section 60.

Held, that a person is an indigent person if he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit. In determining that status, property exempt from attachment in execution of a decree and subject-matter of the suit is not to be reckoned. Additionally, if that person is not entitled to property worth Rs. 1,000 he is treated as an indigent person. In reckoning that status, property exempt from attachment in execution of a decree has to be ignored. Any sum given to the wife for maintenance on monthly basis is meant to keep her body and soul together. The mere fact that it has been allowed to run into arrears and the wife had to fend for herself elsewhere raising loans or taking shelter in the houses of friends and relatives, is no reason to deprive the nature or character of the sum which comes in future in her hands as maintenance. It cannot be put at the level of a sum acquired other than maintenance. If it runs into arrears, it cannot be taken that she had demaintained herself. Maintenance allowance of a wife has rather to be equated to salary which she receives from her husband as a periodical payment for the continuance of her marital status. When Section 60 exempts from attachment salary which ordinarily means periodic payment to the extent of first Rs. 400 and 2/3rd of the remainder, the law recognizes that the first Rs. 400 are required for the recipient of the salary to keep body and soul together. There is no reason why the arrears of maintenance cannot be put at par with salary under sub-section (i) and be given the same protection as envisaged under section 60 of the Code of Civil Procedure. In the same strain, sub-clause (ia) which exempts from attachment 1/3rd of the salary in execution of any decree for maintenance pre-supposes that 1/3rd salary is necessary for the up-keep of the person who suffers the decree for maintenance. A combined effect of these provisions is that the arrears of maintenance in the hands of the wife, whether spent or unspent, being exempt from attachment, are not property which can be reckoned towards determining the question whether she was indigent person to pursue her cause in suit or appeal. (Para 3).

Petition under section 115 *C.P.C. for revision of the order of the Court of Shri J. C. Aggarwal, Additional District and Sessions Judge, Faridkot, dated* 23*rd January*, 1985 *dismissing the application filed by Smt. Parvati under Order* 44 *Rule* 1 *C.P.C.*

R. S. Bindra, Sr. Advocate with Ravi Kant Sharma, Advocate, *for the Petitioner.*

Vinod Kataria, Advocate, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) This is a revision petition against the order of Shri J. C. Aggarwal, Additional District Judge, Faridkot, whereby he declined permission to the petitioner to file an appeal before him as an indigent person.

(2) The broad facts of the case are that Smt. Parvati the petitioner, filed a suit for maintenance under the provisions of the Hindu Adoption and Maintenance Act, 1956, as an indigent person. Permission was granted to her by the trial Judge in accordance with the provisions of Order 33 Rule 1 of the Code of Civil Procedure. Smt. Parvati failed in the suit. She filed an appeal before the Additional District Judge, taking the aid of Order 44 Rules 1 and 3 of the Code of Civil Procedure, averring on affidavit that since she was allowed to file the suit as an indigent person and had not ceased to be an indigent person since the date of the decree appealed from, her appeal be entertained without payment of Court-fee. The husband-respondent took objection to the continuance of her status as an indigent person and avail concession. Thereupon, the appellate Court framed the only issue :

> "Whether the appellant-petitioner ceased to be an indigent person after the passing of the impugned decree ? OPR."

The husband-respondent deposed that he had paid Rs. 3,500 to the wife-petitioner in the High Court on August 5, 1983, which represented Rs. 500 as litigation expenses and the balance Rs. 3,000 towards arrears of maintenance at the rate of Rs. 150 per mensem. Though the details of this litigation have unfortunately not been brought on the present record, but learned counsel for the petitioner has stated at the Bar that the maintenance *pendente lite* and litigation expenses are allowed to the wife-petitioner in FAO No. 65-M of 1981 in which the husband was claiming in appeal dissolution of marriage by a decree of divorce. It has further been stated at the Bar that he was unsuccessful in his pursuit. Further the husband stated that he had paid further maintenance at the rate of Rs. 150 per mensem from October 1, 1983 to September 20, 1984. In this manner, he maintained that a sum of Rs. 3,500 had been placed in

the hands of the wife-petitioner and, therefore, she had acquired sufficient means to pay the court-fee and could not file the appeal as an indigent person. The wife, on the other hand, admitted having received the aforesaid sums of money but claimed that she had paid to her counsel at Chandigarh a sum of Rs. 700 and had spent about Rs. 400 on travelling to Chandigarh. She further stated that she had raised a loan three or four years earlier to January 17, 1985, to the tune of Rs. 2,500 to meet the litigation expenses and she had returned that loan of Rs. 2,500 about 1½ years before January 17, 1985 (the day she was deposing). She denied the suggestion that she was in possession of a sum of Rs. 3,500 in addition to the sum representing future maintenance. The learned Additional District Judge disbelieved the version of the wife on the ground that she had not examined her counsel from Chandigarh to support her plea that a sum of Rs. 700 had been paid by her to him, nor had she produced any receipt of the counsel though statedly one was lying with her at her house. Further, he took the view that for going to Chandigarh two times, as deposed to by the wife, not more than Rs. 100 could have been spent. Regarding the return of Rs. 2,500 he observed that there was no evidence except her own bald statement, and that though the loan was alleged to have been repaid by her to her maternal uncle, who had since expired, other relations had not been produced by her to support the repayment. On this analysis, it was held that she had failed to explain the sum of Rs. 3,500 or the subsequent amounts received by her. Besides, it went against her for not including the share she had in her father's house, as admittedly her father had died in the meantime, without recording any finding as to what was the value of her share and whether it was saleable or was it a house solely in her occupation so as to be exempt from attachment under section 60 of the Code of Civil Procedure. On these premises, the wife was held not to be in indigent person.

(3) I have heard the learned counsel for the parties. The view of the learned Additional District Judge seems to me utterly perverse which no reasonable man could have taken. He seems not to have applied his judicial mind to discern the beneficent provisions of Order 33 Rule 1 read with section 60 of the Code of Civil Procedure. Now a person is an indigent person if he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit. In determining that status, property exempt from attachment in execution of a decree and the subject

matter of the suit is not to be reckoned. Additionally, if that person is not entitled to property worth Rs. 1,000 he is treated as an indigent person. In reckoning that status, property exempt from attachment in execution of a decree has to be ignored. Now the learned Additional District Judge while adverting to the provisions of sub-section (1) of section 60 of the Code of Civil Procedure took only clause (n) into account which provides that a right to future maintenance is exempt from attachment. Any sum given to the wife for maintenance on monthly basis is meant to keep her body and soul together. The mere fact that it has been allowed to run into arrears and the wife had to fend for herself elsewhere raising loans or taking shelter in the houses of friends and relatives, is no reason to deprive the nature or character of the sum which comes in future in her hands as maintenance. It cannot be put at the level of a sum acquired other than maintenance. If it runs into arrears, it cannot be taken that she had demaintained herself. Maintenance allowance of a wife has rather to be equated to salary which she receives from her husband as a periodical payment for the continuance of her marital status. When section 60 exempts from attachment salary which ordinarily means periodic payment to the extent of first Rs. 400 and 2/3rds of the remainder, the law recognises that the first Rs. 400 are required for the recipient of the salary to keep body and soul together. I see no reason why the arrears of maintenance cannot be put at par with salary under sub-section (i) and be given the same protection as envisaged under section 60 of the Code of Civil Procedure. In the same strain, sub-clause (ia) which exempts from attachment 1/3rd of the salary in execution of any decree for maintenance presupposes that 1/3rd salary is necessary for the up-keep of the person who suffers the decree for maintenance. A combined effect of these provisions on the afore analysis is that the arrears of maintenance in the hand of the wife, whether spent or unspent, being exempt from attachment, are not property which can be reckoned towards determining the question whether she was an indigent person to pursue her cause in suit for appeal. On this short ground, the order of the learned Additional District Judge needs to be and is hereby upset.

(4) Otherwise also, I am of the view that even on merits the view expressed by the learned Judge is materially irregular. It was too much to expect that an indigent person would have called her lawyer from Chandigarh to depose that he had received Rs. 700 towards fees. It was utterly unreasonable to hold that on two

trips to Chandigarh the wife had only spent Rs. 100. The learned Judge ignored other expenses which one has to incur while being out of town and these have not to be confined to the rail fare alone as the learned Judge did. It was too much to expect that the wife should have produced a number of witnesses to depose that she had in fact incurred a loan of Rs. 2,500 and had paid it back. The learned Judge treated the matter as if the claim of the wife was that of a criminal complainant and she had to prove it beyond any reasonable doubt. The matter had to be viewed on broad probabilities. The explanation rendered by the wife was probable on the face of it. It may not have been absolutely true but was plausibly true when tested on probabilities, more so when she had been allowed to sue as an indigent person in the court of first instance. If at the initiation she had no property to pay the court-fee, it would be proper to accept that when she came by any money as maintenance that had gone to meet her recurring liabilities incurred while the litigation was pending. After all litigation is not a luxury which everyone can indulge in. It besides being time consuming is fairly expensive even if one has not to pay the court-fee. Thus, from all these angles I am of the view that the matter was not examined by the Additional District Judge Judiciously and in the right perspective.

(5) For the foregoing reasons, this petition is allowed, the impugned order of the learned Additional District Judge is set aside and the petitioner is allowed to appeal as an indigent person. No costs.

N.K.S.

Before D. S. Tewatia and S. S. Kang, JJ.

H. L. DHAWAN,—*Petitioner*

versus

THE PUNJAB STATE WAREHOUSING CORPORATION,—*Respondent.*

Civil Writ Petition No. 1930 *of* 1984.

September 11, 1985.

Punjab State Warehousing Corporation Staff Regulations 1960—*Regulation* 12 *proviso—Proviso enabling the appointing authority to extend the period of service of an employee beyond the age of superannuation—Authority higher than the appointing authority —Whether could decide the matter—General order of the Corporation extending the age of all the employees—Such an order— Whether envisaged by the proviso.*