

Before Hon'ble J. S. Sekhon, N. K. Kapoor & V. K. Bali, JJ.

SURINDER JIT SINGH AND OTHERS,—Petitioners,

versus

STATE OF PUNJAB AND OTHERS,— Respondents.

Civil Writ Petition No. 11023 of 1991.

January 5, 1994.

Punjab State Assistant Grade Examination Rules, 1984—Rules 10 and 12—Punjab Government notification dated January 21, 1991—Punjab Government Clarificatory Circular, dated June 28, 1991—Notification granting exemption from passing Assistant Grade examination for such employees who had put in 18 years of regular service as Clerks/Senior Clerks/Junior Assistants for promotion to the post of Assistant (Now designated senior Assistant)—Necessity for recording reasons in writing under rule 12 before grant of exemption—Working experience of 18 years is sufficient and valid reason for grant of exemption—Exempted employees form a separate identifiable class—Provisions of Rule 12 held satisfied—Notification granting exemption is legal and valid—However, Government instructions dated June 28, 1991 granting retrospective operation to the notification is liable to be quashed to that extent—Vacancies occurring prior to issuance of notification dated January 21, 1991 have to be filled in accordance with the old rules—Notification held prospective in operation—Inter se seniority for purposes of promotion cannot be disturbed and exempted employees are entitled to be treated at par with those persons who had already qualified Assistant grade examination test.

HON'BLE J. S. SEKHON & N. K. KAPOOR, JJ (MAJORITY VIEW)

Held, that V. K. Bali, J. has taken the view that the State Government is required to give reasons in writing either in the order itself or on the file as to why 18 years' period was treated as sufficient criterion of exempting such persons from passing the Assistant Grade Examination, but in the case in hand, no reasons in writing have been given in this regard in the order or on the file. I fail to subscribe to the above view because the period of 18 years in regular service as Clerk/Senior Clerk/Junior Assistant as imbibed in the order itself provides a reason in writing for granting such exemption.

(Para 12 & 13)

Held, that keeping in view the protracted agitation of the Secretariat Ministerial Staff union and Secretariat Employees Association and the dialogue between the authorities from time to time it transpires that the demand of the Union for exempting certain employees from qualifying Assistant Grade test for promotion to Assistant (now Senior Assistant) was conceded by

the concerned authorities as genuine and therefore, the Finance Secretary undertook to examine the same keeping in view the fixed length of service from ten years or so or on attaining certain age from 45 to 50 years. Thus, it cannot be said by any stretch of imagination that off hand decision was taken by the Governor in - Council in this regard on 17th April, 1990.

(Para 20)

Held, that experience of 18 years was considered as sufficient and valid reason to exempt such employees from qualifying the Assistant Grade Examination for promotion to the post of Assistant (now Senior Assistant). As already discussed, the very factum of considering 18 years of regular service as Clerks/Senior Clerks/Junior Assistants for exempting to pass the Assistant Grade Examination itself shows that the Government have considered such a long experience as sufficient/ground for exempting such persons from qualifying the test. It is not disputed that a person who had put in 18 years of service as Clerks/Senior Clerks/Junior Assistants had gained sufficient experience, so as to form a class or category by themselves. Consequently there is no escape put to conclude that the decision of the Governor-in-Council itself as well as the notification spells out the reasons justifying the expediency or necessity of exemption from passing the Assistant Grade Examination.

(Para 20)

Held, that the notification dated January 21, 1991 is perfectly valid and legal as the State Government had issued the same in pursuance of the powers vested it under rule 12 of the Rules. Consequently, the observations of the Division Bench at motion stage in C.W.P. No. 9828 of 1991 are correct while with utmost respect it cannot be said that the Division Bench in C.W.P. No. 13310 of 1991 have laid down the correct law.

(Para 21)

Held, that it can be well said that the persons who had put in 18 years of regular service as Clerks/Senior Clerks/Junior Assistants and had failed to qualify the requisite test would be treated at par with those members of the service who had qualified such test for promotion to the post of Assistant (now Senior Assistant) which fall vacant on January 21, 1991 or later on or which remained vacant on 21st January, 1991 after promoting all the eligible Clerks/Senior Clerks/Junior Assistant to such posts.

(Para 21)

Held, that so far as instructions dated June 28, 1991 violate the provisions of Rule 12 of the Rules by making the notification dated 21st January, 1991 operative retrospectively stands quashed by accepting this writ petition to that extent.

(Para 25)

Held, that the promotion to the posts of Assistant (now Senior Assistant) lying vacant prior to 21st January, 1991 shall be made

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from the eligible candidates on the basis of then existing rules by ignoring the exemption from qualifying the test granted with effect from 21st January, 1991 to those persons who had put in 18 years of service while for promotion to the posts remaining vacant due to non-availability of eligible persons or falling vacant on 21st January, 1991 and onwards, such persons who had been exempted from qualifying the test had to be treated at par with those persons who had already qualified such test and their promotion has to be made on the basis of their original seniority-cum-merit basis as Clerks/Senior Clerks/Junior Assistants.

(Para 25)

C.W.P. 13310 of 1991 decided on December 16, 1991.

(Over-ruled)

HON'BLE V. K. BALI, J. (MINORITY VIEW)

Held, that the language employed in Rule 12, in no uncertain terms mandates that the Government has first to form an opinion whether it is necessary or expedient to grant exemption by recording valid reasons in writing. Once the formation of opinion is there, the order exempting class or category of persons from the operation of these Rules can be passed by specifying reasons. The reasons spelt out in the additional affidavit do not find any mention in the records of the case and it is only an endeavour to defend impugned action that the said reasons have been put forth. In our view, as is also the conceded position between the parties, post decisional reasons cannot validate the order or the notification as the case may be as the mandate of Rule 12 requires formation of an opinion to be followed by reasons after which alone exemption can be granted.

(Para 39)

Held, that the records of the case, thus demonstrate that whereas there were reasons to bring about amendments in the Rules of 1984 so as to lower down the pass marks as also to make Clerks who had put in only five years of service in eligible for passing the qualifying test, there are absolutely no reasons for exempting altogether the persons who had put in 18 years of service from passing the Assistant Grade Examination.

(Para 39)

Held, that notification dated 21st January, 1991.—*vide* which all such persons who have put in 18 years of service as Clerks/Senior Clerks/Junior Assistants were exempted from qualifying the Assistant Grade Test is quashed.

(Para 47)

Held, per FULL BENCH, the notification dated January 21, 1991 would operate prospectively and not retrospectively.

Girish Agnihotri, Advocate, *For the Petitioner.*

G. K. Chatrath, AG (Punjab) S. S. Saron, DAG (Punjab) J. S. Kehar, Davinder Chopra, Rai Singh Chauhan, P. K. Goklaney, Advocates, *For the Respondents.*

(Judgment of Full Bench Consisting of Hon'ble Mr. Justice J. S. Sekhon, Hon'ble Mr. Justice N. K. Kapoor and Hon'ble Mr. Justice V. K. Bali, dated 5th January, 1994).

JUDGMENT

V. K. Bali, J.

(1) Conflict of judicial opinion expressed in Civil Writ Petition No. 13310 of 1991 finally disposing the writ aforesaid and Civil Writ Petition No. 9828 of 1991 while issuing notice of motion is what apparently resulted into referring the present case for decision by a Full Bench. Even though the factual matrix has little relevance to the issues raised and canvassed, a brief resume of facts still deserve to be noticed.

(2) Petitioner Surinderjit Singh and others are working as Clerks in different departments in the State of Punjab. For the next higher rank i.e. Assistant, a person becomes eligible if in addition to fulfilling the qualifications and experience prescribed for appointment by promotion, he qualifies the test known as Assistant Grade Examination. The Government of Punjab,—vide notification dated April 11, 1984 framed rules called Punjab State Assistant Grade Examination Rules, 1984 (hereinafter to be referred as the Examination Rules of 1984). The post of Assistant has been defined in sub-clause (e) of clause 2 which means a civil or post in civil service under the State of Punjab designated as Assistant and includes all such posts, higher in rank to that of the post of Clerk, as are in the same or in an identical pay scale and carry responsibilities similar to or identical with that of the post of Assistant, by whatever designation they be called. Rule 4 prescribed eligibility for promotion to the post of Assistant. The same in so far as it is relevant for deciding the controversy in hand runs thus :—

“4. *Eligibility for promotion to the post of Assistant.*—(1) No person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualifications and experience prescribed for appointment by promotion to the post of Assistant, he qualifies the test :

Provided that a person who has already qualified the Assistant Grade Examination *inter alia* in terms of Punjab Government Circular No. 4809-GII-57/21176, dated the 23rd

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October, 1957, or who was holding on regular basis the post of Assistant on the 23rd October, 1957, shall not be required to qualify the test :

Provided further that if a person holding the post of Assistant or a higher post, on provisional basis, on the commencement of these rules is of the age of fifty years or more; he shall also not be required to qualify the test :

Provided further that a person who has been appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of these rules, shall be required to qualify the test within a period of three years from such commencement and failure to qualify the test within the specified period shall result in reversion of such person to the post of Clerk or to the post, by whatever designation called, from which he was appointed by promotion to the post of Assistant on provisional basis.

(2) Notwithstanding anything contained in sub-rule (1), where no person, who has qualified the test, is available for promotion to the post of Assistant in a Service, the appointing authority may appoint a person by promotion to the post of Assistant on provisional basis till a person who has so qualified the test becomes available in that Service.

(3) Rule 10 saves the seniority of the persons who had been promoted as Assistant before the commencement of the Rules on provisional basis subject to their qualifying the test. However, if such persons fail to qualify the test within a period of three years, they are liable to be reverted but if within the stipulated period, they do qualify the test, the seniority has to be determined with reference to the date of their promotion to the post of Assistant on provisional basis.

(4) Rule 12 of the Examination Rules of 1984 vests power in the Government to exempt any class or category of persons from the operation of the Rules but such exemption shall operate prospectively. Rule 12 runs as follows :—

“12. *Power to grant exemption.*—Where the Government is of the opinion that it is necessary or expedient so to do, it

may, by order, for reasons to be recorded, in writing, exempt any class or category of persons from the operation of these rules and such exemption shall operate prospectively.”

(5) All the petitioners have admittedly cleared the Assistant Grade Examination and are eligible for promotion to the rank of Assistant. Rule 10 was amended,—*vide* notification dated December 5, 1984, and the following sub-clauses were inserted :—

“2. Notwithstanding anything contained in these rules, if a person holding the post of a clerk or any other post by whatever designation called from which he could be appointed by promotion to the post of an Assistant qualifies the test within the first two chances available to him after his appointment to such post, he shall, on his promotion to the post of an Assistant be assigned seniority in the cadre of Assistants in accordance with his seniority in the appointment from which he has been promoted to the post of Assistant :

Provided that if such a person fails to qualify the test within the aforesaid first two chances, he shall, on his promotion to the post of Assistant, be assigned seniority in the cadre of Assistants from the day he is promoted as such.”

(6) In exercise of the powers conferred under Rule 12 of the Examination Rules 1984, the Government exempted all such persons who had, prior to the coming into force of the Rules, been promoted on provisional basis to the post of Assistant or to any higher post from qualifying the Assistant Grade Test,—*vide* order dated May 3, 1985. Again,—*vide* notification dated September 16, 1985 sub rule (2) of Rule 10 was amended so as to substitute four chances instead of two chances for clearing the examination. *Vide* notification dated October 18, 1986 four chances were increased to five and,—*vide* notification dated January 21, 1991 all persons who had completed 18 years of regular service as Clerks/Senior Clerk/Junior Assistants were exempted from qualifying the Assistant Grade Examination. It is this notification which came into being by virtue of powers exercised by the Government under Rule 12 which has been challenged by the petitioners.

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(7) “Ravi Shanker *versus* The State of Punjab” the precise notification which is under challenge in the present case came up for decision by the Division Bench of which Bench I was also a member on

17th December, 1991 and the same was quashed. However, Civil Writ Petition No. 9828 of 1991 came up for motion hearing before another Division Bench on July 9, 1991 and it was observed that there was *prima facie* no ground to interfere in the matter as the power to exempt was a statutory power and it was always exercised by the competent authority by recording reasons on the departmental file which need not be disclosed. However, since notice of motion had been issued in another concerned matter, the writ petition was not dismissed and notice of motion was issued. The respondents were also directed to produce at the time of hearing, the file relating to the issuance of the impugned orders so as to ascertain as to whether any valid reasons were recorded before issuing the notification. However, in so far as Civil Writ Petition 13310 of 1991 was concerned, the same was disposed of after written statement was filed by the respondents as apparently no reasons were disclosed in exempting persons who had put in 18 years of regular service.

(8) In the records of the present case, three written statements have been filed, one on behalf of respondent No. 1 through Shri P. C. Sangar, Deputy Secretary to Government of Punjab, Department of Personnel and Administrative Reforms, second on behalf of respondent No. 4 through Shri K. S. Battu, Additional Director, Department of Finance and the third on behalf of respondent No. 2 through Chief Engineer/KAD Irrigation Works, Punjab, Chandigarh.

(9) It is only in the written statement filed on behalf of respondent No. 1 that some reasons have been given whereas in the other two written statements, nothing at all has been stated with regard to the background of the case and the reasons why the Government thought it necessary or expedient to exempt all persons who had put in 18 years of regular service from qualifying the Assistant Grade Examination. It is averred in the written statement filed on behalf of respondent No. 1 that Government, at the time of framing Examination Rules of 1984 under proviso to Rule 4, had laid down that if a person holding the post of Assistant or any higher post on provisional basis before the commencement of these Rules was of fifty years or more, he shall not be required to qualify the test and the Government has now fixed the upper age for entry into Government service as 32 years.—*vide* Punjab Government letter No. 1/7/88-5PP!/4408. dated March 21, 1991 and by the time a person puts in 18 years of service as Clerk/Senior Clerk/Junior Assistant he would be of fifty years or around that age. It was, thus, canvassed on the basis of averments made in the written statement that a person who had

put in 18 years of continuous service and might have been appointed at the age of 30 years would be 48 years in age and if exemption had since already been granted,—*vide* originally framing the Examination Rules of 1984 to those who had completed 50 years of age, there could be no illegality in reducing the age of two years. However, during the course of arguments. It was canvassed by Mr. S. S. Saron, Deputy Advocate General, Punjab, that an application for reviewing the order of Division Bench Civil Writ Petition No. 13310 of 1991 had been filed and in support of the application aforesaid, affidavit of Shri P. C. Sangar, Deputy Secretary to Government of Punjab, Department of Personnel and Administrative Reforms had also been filed wherein it was specifically stated that the Government had fully examined the matter before issuing the impugned instructions. It was also stated that reasons for exempting the passing of the departmental examination of those who had served for 18 years were also given in the affidavit. It was, thus, thought desirable that the State should file a detailed affidavit in the present case as well and the original files be also made available to the Court for examination in order to resolve the controversy and interim order to that effect was passed on November 16, 1992 in pursuance whereof a detailed affidavit has been filed by Shri Karam Chand, P.C.S., Under Secretary (Personnel) to Government of Punjab and the files of the case have also been made available. A perusal of the affidavit now filed reveals that the question of desirability of holding the Assistant Grade Examination or not came to be focussed for the first time when on March 3, 1989 the Punjab State Ministerial Services Union, Chandigarh submitted a charter of demands of common categories of ministerial services of the Punjab Government to remove anomalies in the pay scales and other general demands. In so far as the question of scrapping of examination altogether is concerned, the demand of employees union was projected as under :—

10. ASSISTANT GRADE EXAMINATION :

10.1 The Punjab Government.—*vide* its notification dated 12th April, 1984 has introduced the Assistant Grade Examination. With the introduction of this examination, many problems have been created and it has become a source of corrupting and malpractice. The Clerk, who joined service after passing a test of the Subordinate Services Selections Board and has acquired sufficient knowledge of Service Rules and Regulations by doing practical work in their respective offices does not require to pass any examination for promotion. On the other hand it was sufficient

that all the Clerks of all the Departments have been getting training of Accounts, rules and regulations in the Institutions opened by the Government for this purpose. Hence, there remains no necessity of passing this Assistant Grade Examination. There is no such test in the neighbouring States of Haryana and Himachal Pradesh. If the Government however, does not want to abolish this test, then the employee who passes this test of Assistants Grade, should be given two increments considering this test as his extra qualification. But there should be no disturbance in the seniority due to passing of this test. Promotion to the post of Assistant should be strictly in accordance with the seniority. Otherwise, the senior Clerk who has 15 to 20 years service in his credit will feel demoralised before the new comer who qualifies the test. Keeping in view all the above facts it will be great cause of public interest if the Assistant Grade Examination is totally abolished."

(10) A meeting was held by the Finance Secretary with the representatives of the Punjab State Ministerial Services Union on October 17, 1989. The extract of the proceedings of the meeting relating to the demands of the Union for the abolition of the Assistant Grade Examination is reproduced below :—

"The representatives of the Union demanded abolition of the Assistant Grade Examination. According to them this test was not the only method to judge one's knowledge of rules and regulations, particularly when the examination was with the help of books. They contended that Clerks with longer service failed because of their inability to devote their time to studies due to their advanced age and other social obligations while Clerks with 2/3 years of service qualify the examination and become eligible for promotion as Assistant. They also contended that in the neighbouring State of Haryana no such examination has been prescribed. F. S. expressed that much can be said both in favour and against the Assistant Grade Examination and it was not desirable to abolish the Assistant Grade Examination altogether. He, however, promised to examine whether exemption could be given to Clerks from this examination after a fixed length of service (say ten years or so) or on attaining certain age (say 45/50 years). He also promised to examine whether pass percentage for this examination could be lowered to make it

comparatively easy for the Clerks to qualify it. The representatives of the Union while reserving their right to demand for total abolition of the Assistant Grade Examination agreed for the examination of the matter by Government as promised by F.S.”

(11) Yet another meeting was held on November 6, 1989 with the representative of the Punjab State Ministerial Services Union. The extract of the proceedings of this meeting relating to the demand of the Union regarding the abolition of Assistant Grade Examination is as follows :—

“The representatives of the Union demanded abolition of the Assistant Grade Examination on the ground that this examination had resulted in increased number of disputes in seniority and litigation on that account. They also contended that this examination had failed to increase efficiency which depended mostly on length of experience. C. S. enquired from the representatives of the Union as to how they could prove that the Assistant Grade examination had failed to improve efficiency. It was finally agreed that the view of the Heads of Departments shall be obtained on the merits of this Examination particularly in the light of the financial experience and litigation aspects of the matter.”

(12) It is averred that in the light of the minutes of the meeting, a circular letter dated 14th December, 1989 was issued to some Administrative Secretaries to Government, Punjab and some Heads of Departments to solicit their views regarding the demand of the Union with regard to abolition of the Assistant Grade Examination. Whereas Administrative Departments i.e. Secretariat Administration, Financial Commissioner's Secretariat and the Public Works Department favoured the continuation of Assistant Grade Examination. Seven Heads of Departments as well favoured the continuation of the examination. However, seven Heads of Departments supported the demand of the Union to abolish the examination. It is only Director Public Instructions (Schools) Punjab which expressed the view that if the Assistant Grade Examination was to be continued then it should apply to the persons appointed in 1984 and thereafter to those who had put in sufficient service as Clerk keeping in view their experience. A meeting was thereafter held by the Chief Secretary on December 21, 1989 with the representatives of the Punjab State Ministerial Services Union and the extract of the

noting portion where proceedings of the meeting had been recorded runs as follows :—

2. *Abolition of Assistant Grade Examination.*—In respect of “Assistant Grade Examination A.R. Br. has sought view of 34 Departments. The representatives of the Union submitted that it will delay the decision. C.S. directed that views from three Departments namely Public Health, Education and Agriculture may be collected within one week and then case submitted to him.”

A note thereafter came to be recorded by the Chief Secretary on the same very day i.e. December 21, 1989. It would be clear from the note aforesaid that the main demands of the Union were with regard to removal of anomalies in their pay scales and insofar as the question of exempting a class of persons or altogether scrapping the examination is concerned, the same does not figure anywhere. The note runs as follows :—

“As detailed in the foregoing note of SSP, I have been having regular dialogue with the office bearers/representatives of the Punjab Ministerial Services Union, with a view to ensure that they do not adopt the path of agitation. The main demands of the employees Union relate to the removal of alleged anomalies in their pay scales and I have told them that after the report of Anomaly Committee is received (the Committee has heard them on 11th December, 1989), the matter will be processed expeditiously and taken to the Governor-in-Council, for decision. The other demands of the Ministerial Cadre Employees which are of a general nature, are also being processed in the Department of Finance for being taken to the Governor-in-Council for decision. In today’s meeting with the two representatives of this Union, I have explained the afore-mentioned position to them and also suitably advised them not to take to any agitation or do anything even by way of marching to Raj Bhawan tomorrow. They promised to get back to their followers in a meeting to be held later this afternoon and also promised to do their very best to see that no agitation takes place. We will watch the situation and deal with it, as it emerges.”

On January 9, 1990, the matter relating to the abolition of the Assistant Grade Examination was also discussed by the Chief Secretary and the note that came to be prepared would reveal that certain views were formulated with a view to improve efficiency in the Secretariat while, at the same time, taking care of any problem of a stagnation amongst the staff. The afoersaid note runs as follows :—

“With the constitution of the Cadre Review Committee (Issue No. 1) action on one of the major demands of the union has been set in motion. In fact, these Committees will take care of the issue No. 3 as well viz., upgradation of the post of Superintendent Grade III to Superintendent Grade II, as this is also covered in the terms of their reference. The issue No. 5 viz. discontinuance of the Assistant Grade Examination was, *inter alia*, discussed in the meeting of the Administrative Secretaries held yesterday and certain views were formulated with a view to improving efficiency in the Secretariat while, at the same time, taking care of any problems of stagnation amongst the staff. Minutes of that meeting are being issued separately and action to give concrete shape to this and similar other issues will also be set in motion soon.

The other two issues viz. those at Serial No. 2 and 4 are already under process. These should be got expedited from the quarters concerned.

A polite and brief letter, with respect to the action taken/ being taken on these issues, may be issued to the Union for their information.”

(13) Yet another meeting was held by the Secretary with the representatives of the Employees Union on February 12, 1990 when the Union was informed that the matter was pending before Anomalies Committee which had already heard them and the Committee was likely to give its report to the Government within a period of week or 10 days' time. The matter was again discussed by the Chief Secretary with the Association on March 5, 1990 and the matter pertaining to Assistant Grade Examination as reproduced in the written statement reveals that an amendment was thought to be brought about in the system of examination with a view to remove the defects or malpractices that were highlighted by the Employees

Union. Para 2 which deals with the matter in question runs thus:—

“Para 2.

(a) They requested that the system of Assistant Grade Examination be either scrapped or, least, improvements be brought about in that system to remove the following defects/malpractices therein :—

(i) There was lot of corruption in the matter of marking of papers of candidates and some fool proof method should be devised in this behalf. The introduction of a system of ‘table marking’ of papers would go a long way in this behalf.

(ii) There was need for changing the syllabus and contents of paper A as all the Clerks cannot be expected to have the experience of dealing with the subjects now included in the paper ‘A’ while working as Clerks. The Association promised to give their concrete suggestions, in this behalf, to JSSA within a few days.

Changing the form of paper ‘B’ to ‘objective’ type may also be considered for improving the present system.

(iii) Pending decision on the abolition of the system of Assistant Grade Examination altogether, a change could be made by reserving 50 per cent of posts of Assistant for promotion on seniority-cum-suitability basis and 50 per cent posts could be filled through departmental examination, restricted to the departmental candidates only.

JSSA was advised to examine all these matters immediately and put up for orders on the file.

Para 4.

In order to honour the commitments made, it should be ensured by JSSA that action on all these points is processed and pursued in a time bound manner and the progress of action taken is reported to the Chief Secretary one every fortnight.”

(14) When the various demands of the Employees Union were being looked into at various quarters, yet another charter of demands came to be submitted on March 14, 1990. While pleading for scrapping of examination, some more reasons in support thereof were given. It was mainly pleaded by the Union that those who have been working sincerely to the satisfaction of their superiors and had good experience of work due to length of service but were unable to clear the examination on account of family circumstances should not be compelled to clear the same. It was also sought to be made out that the introduction of the examination had not achieved the desired efficiency. The employees observed one day pen down strike on March 13, 1990 and then resorted to indefinite strike from March 26, 1990 which was called off on April 11, 1990 only on the assurance from the Chief Secretary to Government Punjab that their demand would be sympathetically considered. It is pleaded that in the above background the matter came up for decision before the meeting of the Governor-in-Council held on April 17, 1990. The Governor-in-Council considered the memorandum of the Finance Department regarding eighth report of the Committee for the removal of anomalies in the revised scales of pay regarding common categories etc. and the following decision was arrived at:—

“It should be ensured that direct recruitment against the posts of Senior Assistants (Previously Assistant) as per prescribed percentage is made by the departments. The eligibility for taking the Departmental Examination for promotion to the post of Senior Assistant (Previously Assistant) should be 5 years of service as Clerk. The employees who have put in a minimum of 18 years of service as Clerk/Senior Clerk/Junior Assistant should hence forth be exempted from passing the Assistant Grade Examination.”

It is pleaded that the aforesaid decision came about by considering various factors like :—

- (i) The Punjab State Ministerial Staff Union had been demanding abolition of Assistant Grade Examination and there was stagnation as Clerks over long years of service which had also separately been taken note of by the Punjab Pay Commission.
- (ii) Under the Punjab State Assistant Grade Examination Rules, 1984 Clerks with 50 years age had already been granted exemption from qualifying the Assistant Grade Examination.

(iii) The normal upper age limit for entry into Government service was 30 years and it was considered that employees with 18 years of service would be almost at par with those who were already exempted from passing the Assistant Grade Examination at the age of 50 years. A Clerk/Senior Clerk Junior Assistant with 18 years service was considered to have sufficient experience to perform the job of Senior Assistant."

(15) In ultimate analysis, it is pleaded that the decision to exempt from passing of Assistant Grade Examination which was with regard to employees who had completed 18 years of service as Clerk/Senior Clerk/Junior Assistant has been arrived at in furtherance of the demands of the employees Unions as is evident from the various notes including the one recorded by the then Special Secretary Personnel on May 2, 1990.

(16) Before the matter is proceeded any further, it requires to be mentioned that it is conceded between the parties that in view of the language employed in Rule 12 dealing with the exemptions, reasons have necessarily to be recorded before issuing the orders and the post decisional reasons cannot validate exemption under Rule 12. That being the position, on a specific question put by the Bench as to whether three reasons mentioned in paragraph 10 of the affidavit reproduced above were recorded by any of the officers dealing with the matter, Mr. Saron, learned Deputy Advocate General remained content by producing the files before the Court.

(17) Inasmuch as no specific order giving reasons for exempting persons who had put in 18 years of service from altogether passing the Assistant Grade Examination had either been pleaded in the written statement originally filed or in the affidavit brought on record on account of interim orders referred to above, this Court is left with no choice but for to minutely examine the relevant files that have been made available to find out if at any stage when the matter was before the Government, the reasons as detailed above came to be recorded or not.

(18) Whereas two files have been titled Part I, Volume I bearing No. 13 CM dated 1st July, 1989, the other two files have been titled Volume I and bear No. 6/45/89-IPPI. One of the files titled Part I Volume I, dated 1st July, 1989 consists of 214 pages.

—A perusal of the aforesaid file would reveal that on March 3, 1989, the President of the Punjab State Ministerial Services Union gave a demand notice of the common categories of ministerial services of the Punjab Government to remove anomalies in the pay scales and some other general demands. The decision of the Union was conveyed to the Chief Secretary to Government of Punjab which was taken by the Joint Action Committee on March 3, 1989. Whereas the earlier action of the Union of going on 24 hours mass hunger strike of 202 employees and holding Dharnas in all the districts as also holding black flag march at Chandigarh on February 9, 1989 was told, the future action which was to be taken on March 3, 1989 by drawing out a programme of mass demonstration and rally of thousands of ministerial staff of both the States was also disclosed. The Government was also informed that the resolution had already been passed to request the Punjab Government once again to remove the grievances and anomalies in the pay scales of the ministerial employees through negotiations within a period of fifteen days failing which the Joint Action Committee would be compelled under the circumstances to go on direct action in both the States and the responsibility will be of the Government if anything goes against the public interest in both the States. A charter of demands also appears to have been annexed with the aforesaid letter and in para 10 of the same, there is a mention with regard to Assistant Grade Examination and the demand of the employees to scrap the same altogether. The other demands were mainly with regard to anomaly in the pay scales for different posts. However, in so far as the demands for scrapping the Assistant Grade Examination,—*vide* charter of demands is concerned, the same has since been reproduced while referring to the contents of the additional affidavit. A supplementary charter of demands was submitted to the Chief Secretary through the General Secretary of the Union on April 3, 1989 which, too, is with regard to anomalies in the pay scales of the common categories of Ministerial services of the Punjab Government as also with regard to Assistant Grade Examination. The case of the Union projected in the supplementary charter of demands was that those who were able to pass the Assistant Grade Examination should be considered as having acquired an extra qualifications and two increments should be provided to them. The matter as projected by the Union in para 5 of the aforesaid supplementary charter runs as under :—

- “5. *Assistant Grade Examination.*—In response to para 10 of the original demand charter, the further detail is given as under.

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5.1. In response to the demand that the Assistant Grade Examination may be treated as extra qualification and to provide two increments to the employee who passes this test and no seniority should be disturbed, it is intimated that in the nationalised Banks, there is a test of CAIIB in two parts. The Clerk who passes the first part of CAIIB, is given one increment and who passes the second part of CAIIB gets two more increments. In addition to this, the benefit of one year seniority over the other Clerks is also being provided. However, the promotions are made in accordance with the seniority list. Even all categories including officers can pass this CAIIB test to get three increments and benefit of one year's seniority for promotion. As such this test is considered an extra qualification. Similarly, the Assistant Grade Examination can be considered as extra qualification and two increments may be provided to the employee who passes this test. Even all the ministerial categories may be allowed to pass this test to get the benefit of two increments."

(19) On receipt of two charters of demands, the Government addressed a letter dated 8th June, 1989 to the Secretary that the following demands be placed before the Anomalies Committee for its favourable consideration :—

(i) Grant of higher pay scales for the Common Category posts of Clerks/Steno-typist, Junior Scale Stenographer, Senior Scale Stenographer/Assistant, Superintendent Grade-III, Superintendent Grade-II and Superintendent Grade-I.

(ii) Regarding stagnation.

(iii) Regarding defects in Master Pay Scale.

(20) A letter was thereafter received by the Chief Secretary Punjab Government from Employees Union which was diarised on May 22, 1989. The contents of the same show that the Union demanded a meeting with the Government as there was resentment prevailing amongst the ministerial service which was required to be defused. The Secretary of the Union was informed,—*vide* letter dated June 9, 1989 that three demands as have been noticed above have since already been recommended to the Committee for removal of anomalies in the revised pay scale for consideration whereas the

remaining demands were being considered by the State Government. However, when the Union insisted for a meeting of the Union with the Government through its letter dated June 9, 1989 the Department of General Administration required Deputy Secretary Personnel to examine the demands of the Union with regard to abolition of Assistant Grade Examination. Meanwhile, the Secretary of the Union was informed,—*vide* letter dated June 28, 1989 that the demands of the Union will be discussed by the Chief Secretary to Government Punjab in the meeting to be held on July 11, 1989 at 3.45 P.M. in the Committee Room and the Union was requested to attend the meeting. It appears from the records that before the meeting was arranged, the Union had written another letter on June 2, 1989 informing the Government that the Union had resolved to intensify its agitation and it will hold a peaceful march to Governors House on June 22, 1989 if the Government was to fail to hold a meeting with a view to discuss the demands of the Union as given in their charter of demands. It appears that the intimation of the meeting which was to be held on July 11, 1989 was not received by the Union and, therefore, the Union addressed a letter to the Chief Secretary informing him that it was never informed regarding the meeting which was fixed for July 11, 1989. That being the position, the Government,—*vide* letter dated July 21, 1989 informed the Union that a meeting with a view to discuss the demands of the Union had been fixed on August 4, 1989 at 3.45 P.M. in the Committee Room and that it should attend the same. The Union,—*vide* letter which was diarised on September 20, 1989 furnished the information that might have been required but since it pertains to fixation of pay of various categories, no further mention is required to be made regarding the same. The Union,—*vide* its letter dated September 20, 1989 gave notice regarding 'Stay-in-Strike, on October 13, 1989 by the ministerial staff of the Punjab Government on the issue of non-removal of various anomalies in the pay scales and the failure of the Government for not accepting their main demands. The Union, in turn, was informed,—*vide* letter dated October 11, 1989 that various demands of the Union with regard to removal of anomalies in the pay scales of various categories of ministerial employees were under examination of the Anomalies Committee constituted by the State Government. For the purpose and the matter was being pursued by the said Committee for expediting its recommendations. It was further mentioned that the recommendations when received shall be processed expeditiously and sympathetically by the State Government. The Union was, thus, informed that the matter was before the Anomalies Committee and there was no occasion for the Union to give a call for "Stay-in-

Strike". On October 26, 1989, the Department of General Administration, "J.C.M. Branch" informed the Secretary of Committee for removal of anomalies in the Revised Pay Scales and to give a hearing to the Union with regard to its demands for higher pay scale to various categories of ministerial establishment. Meanwhile it appears that there was yet another meeting between the Chief Secretary and the representatives of the Union on October 17, 1989. The extract from the proceedings of the meeting, insofar as the same pertain to qualifying the Assistant Grade Examination reveal that Finance Secretary expressed that much could be said both in favour and against the Assistant Grade Examination and it was not desirable to abolish the Assistant Grade Examination altogether. He, however, promised to examine whether exemption could be given to Clerks from this examination after a fixed length of service, say, ten years or so or on attaining certain age, say 45/50 years. The extract has already been reproduced while referring to the additional affidavit brought on the record of the case.

Further, the record of the case reveals that there was yet another meeting between the Chief Secretary and the Union on November 6, 1989 wherein the representatives of the Union demanded abolition of Assistant Grade Examination on the ground that the same had resulted in increased number of disputes in seniority and litigation on that account. They also endeavoured to show that the examination had failed to increase efficiency which depended mostly on length of experience. The Chief Secretary enquired from the representatives of the Union as to how they could prove that the Assistant Grade Examination had failed to improve efficiency. It was finally agreed that the views of the Heads of Departments shall be obtained on the merits of the examination particularly in the light of the financial experience and litigation aspects of the matter. Reference to this meeting has also been given while dealing with the additional affidavit. The view of Administrative Secretaries and Heads of Departments were discussing the additional affidavit. On November 24, 1989 the Union addressed a letter to the Chief Secretary complaining about not meeting of the various demands of the Union inclusive of withdrawing the Assistant Grade Examination. A notice was, thus, served upon the Government that the Employees Union will go on two days 'Stay-in Strike' on 13th and 14th December, 1989 as resolved in the meeting of the State Executive of the Union on November 18, 1989. On receipt of the notice aforesaid, the Department of General for removal of anomalies in the revised pay scales, to allow a hearing to the Union at an early date. Further,—vide

letter dated December 11, 1989, the Secretary of the Union was requested to see the Chief Secretary in his office on December 12, 1989. On December 26, 1989 the Union addressed a detailed letter to the Chairman, Anomaly Committee wherein various methods for solving their demands on that behalf were highlighted. Obviously the demand of the Union with regard to doing away with the Assistant Grade Examination had nothing to do with the Anomaly Committee and as such nothing about the same was mentioned in the letter aforesaid. *Vide* letter dated January 1, 1990 the Union threatened to observe 'Stay-in-Strike' on 17th/18th January, 1990 as Cadre Review Committee which was to be constituted in consequence of the discussion between the Union and the Government held on December 21, 1989, was not constituted. One such demand to be considered by the Review Committee was stated to be with regard to withdrawal of Assistant Grade Examination. It appears that on December 12, 1989 the representatives of the Punjab State Ministerial Services had yet another meeting in which, too, the representations of the Union had complained that Government had not, so far, sought the view of some of the important Departments on the utility of the Assistant Grade Examination as agreed to in the last meeting. They were promised that a letter will be issued to the P.W.D. B. & R./Irrigation, Agriculture, Industries, Education and Health Departments etc. The Union was further promised that the Departments concerned shall be required to furnish their comments by December 30, 1989. *Vide* Letter dated January 11, 1990, the Secretary of the Union was informed that the Government had since issued instructions on January 9, 1990 for setting up of Cadre Review Committee in each Department and the said Committees have to complete their work at the earliest. Final reports of the Committees with the recommendations of the Administrative Departments concerned shall be laid before a Standing Committee on Re-organisational issues which shall also be constituted. It was further mentioned in the letter aforesaid that the Cadre Review Committee shall also take care of the demand regarding upgradation of the post of Superintendent Grade-III to the level of Superintendent Grade-II and that the demand relating to the discontinuance of the Assistant Grade Examination was receiving active consideration of the Government.

(21) There is some other correspondence upto 15th January, 1990 but since it pertains to matters other than Assistant Grade Examination, no reference of the same is required to be made. A letter was received by the Government on January 24, 1990 that if the demands were not accepted by January 31, 1990 the Union would go on indefinite strike. It appears that on the threat aforesaid a meeting was

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held on January 29, 1990, under the Chairman-ship of Finance Secretary wherein the representatives of the Union stated that the terms of reference of the Cadre Review Committee required modification so as to bring the service conditions within its scope and also that the decision to abolish the Assistant Grade Examination should be taken expeditiously. The Finance Secretary, however, advised the representatives of the Union to discuss the aforesaid issues with the Chief Secretary in a subsequent meeting as the same mainly fell within the scope of Personnel Department only. Meanwhile it appears there was strike throughout the State. All the Government, Semi-Government Departments except Punjab Civil Secretariat Police and Judicial Courts were affected. The registration work and issuing of driving licences etc. had come to a stand still. The Treasury Offices were not working which could lead to lapsing of Government funds for different purposes in different Departments as only 13 working days were left for the closure of the financial year 1989-90. The aforesaid strike, it appears commenced on March 13, 1990. The meeting of the Crises Management Committee was held on March 15, 1990 to consider the 'Stay-in-Strike' launched by the Ministerial Staff Union. One of the items for consideration was with regard to abolition of Assistant Grade Examination. While giving the position with respect to various demands of the Union, it was mentioned with regard to abolition of Assistant Grade Examination that on the basis of earlier discussions with the representatives of the Union, it was agreed to have the views of some of the Departments/Heads of Departments. On the questions of desirability or otherwise of having Assistant Grade Examination information from five departments had been received, three of which had recommended for the continuation of the examination. On March 28, 1990 the Government of Punjab, Department of Personnel and Administrative Reforms addressed a letter to all the Heads of Departments informing that the demands of the employees were listed for final decision of the State Government in the meeting of the Governor-in-Council to be held on that day i.e. March 28, 1990 and the employees should have awaited those decisions as they had earlier promised to do. It was further mentioned in the aforesaid letter that the Government was of the opinion that it will not be desirable to take any decision on the demands of the employees under duress and that the decision had, thus, been deferred. The Government expected the agitating employees to call off their strike and resume their duties forthwith so that peaceful and congenial atmosphere was created for considering their demands sympathetically and expeditiously, as shall be made out from the contents of the additional affidavit. It

was on April 11, 1990 on the assurance of the Chief Secretary to Government, Punjab that their demands would be sympathetically considered that the strike was called off and it was on April 17, 1990 that the Governor-in-Council considered the memorandum of the Finance Department regarding eighth report of the Committee for removal of anomalies in the revised scales of pay regarding common categories where a decision was also taken that those Clerks who had put in minimum of 18 years of service should be exempted from passing the Assistant Grade Examination. This file, thus, reveals that at no stage whatsoever, the matter came to be considered either on the grounds given now in the additional affidavit so as to exempt the examination or any other ground and it appears that the matter was taken in the meeting of Governor-in-Council which was off the agenda and orders issued simply on account of impending further agitation to be resorted to by the employees.

The second file bearing Part I Volume I dated 1st July, 1989-1 JCM which consists of 114 pages starts with a lengthy note dated 8th May, 1989 which came to be recorded when the supplementary charter of demands had since been submitted by the Employees Union and the matter was discussed with the representatives of the Union on 15th February, 1989. In so far as the demand of Union with regard to abolition of Assistant Grade Examination is concerned, the same has been mentioned at page 10 and after recording the demands, it has been mentioned that the same does not fall within the purview of Anomalies Committee and also that the same at the very face of it appears to be unjustified. In the end, however, it has been recommended that the same can be considered by the Personnel Policies Branch of the Department in depth which has been issuing instructions on the subject. The next relevant note on the file is of 7th July, 1989. It appears that the said note came to be recorded as the Chief Secretary was to hear the representatives of the Punjab State Ministerial Services Union on 11th July, 1989 and it was though proper to find out what exactly had been done with regard to demands of the employees. At page 25, while dealing with the action having already been taken on some demands of the employees, with regard to their demand for abolition of Assistant Grade Examination, it was mentioned that the matter has been forwarded to the Personnel Policies II Branch for examination. There is yet another note dated 25th July, 1989 dealing with the action taken in respect of various demands of the Union and while dealing with their demand with regard to abolition of Assistant Grade Examination, it is mentioned that the same had been forwarded

to the Personnel Policies Branch for examination. It was intimated that the same could not be acceded to as it carried no weight.

(22) The next relevant note on the file is dated 19th October, 1989 which, it appears, was prepared after meeting of the Chief Secretary with the Punjab State Ministerial Services Union held on 17th October, 1989. While dealing with the demand of abolishing the Assistant Grade Examination, it was mentioned that according to the representatives of the Union, this test was not the only method to judge one's knowledge of rules and regulations. It has been further mentioned that the Finance Secretary expressed that much could be said both in favour and against the Assistant Grade Examination and it was not desirable to abolish the Assistant Grade Examination altogether. Reference of this note has already been given in the earlier part of judgment. On the file aforesaid, the next available and relevant note is of 7th November, 1989. The aforesaid note came to be prepared after the representatives of Union had met the Chief Secretary on 6th November, 1989. It is here that the Chief Secretary enquired from the representatives of the Union as to how they could prove that the Assistant Grade Examination had failed to increase efficiency, even though he finally agreed that the views of the Heads of Departments shall be obtained on the merits of the examination particularly in the light of the financial, experience and litigation aspects of the matter. On 21st December, 1989, on yet another meeting of the representatives of the Services Union with the Chief Secretary, the various demands were discussed and the Chief Secretary had directed to take immediate action on various demands inclusive of with regard to abolition of Assistant Grade Examination. In respect of the said examination, the views of 34 Departments were sought but the views of Public Health, Education and Agriculture Departments were to be collected within one week and were to be submitted to the Chief Secretary. On record is available a note made by the Chief Secretary himself on 21st December, 1989 which has been already reproduced while making a mention of additional affidavit.

(23) The matter was discussed once again, in the note dated 5th January, 1990. It is a comprehensive note dealing with number of demands of employees but with regard to withdrawal of Assistant Grade Examination, the same reads as follows :—

“So far as abolition of Assistant Grade Examination is concerned, views of four Departments have been received.

Director Agriculture, Head of Ayurveda Department of D.P.I. (C) have favoured the abolition of Assistant Grade Examination. Only Director Horticulture has favoured to continue it. The Branch has issued reminders on 5th January, 1990 to the remaining 7 departments to expedite their views. The notification/instructions for constitution of a Cadre Review Committee is under issue."

(24) On 9th January, 1990, after ascertaining the position from PPII and PPI Branch, it is mentioned that in so far as the abolition of Assistant Grade Examination is concerned, the view of our Departments had been received. Director Agriculture, Head of Ayurveda Department and D.P.I. (C) favoured the abolition of Assistant Grade Examination. Director Horticulture favoured to continue the examination. Reminders were issued to the remaining seven departments to expedite their views. As per note dated 16th January, 1990 the F.D. and Personnel Department were requested to expedite decision. Inasmuch as the demand of the employes with regard to withdrawal of Assistant Grade Examination was referred to the Personnel Department,—vide note dated 25th January, 1990 the said department was requested to expedite decision. Vide note prepared by the Chief Secretary himself on 12th February, 1990, the matter with regard to abolition of the qualifying examination for promotion to the grade of Assistants, was being processed by the Senior Officers Committee headed by Financial Commissioner Administrative Reforms and that Committee was asked to give its report within a couple of weeks so that final view could be taken at Government level. Vide note dated 26th February, 1990, the personnel Policies II Branch was to submit the case separately to the Chief Secretary for consideration of abolition or otherwise of the Assistant Grade Examination so that the matter could be considered in the meeting to be held under the Chairmanship of the Chief Secretary with the representatives of the Punjab State Ministerial Services Union. As per note prepared on 8th August, 1990, as the views from some of the Heads of Departments had been received, therefore, an agenda note had been prepared and submitted to the S.S.P. suggesting a discussion with the representatives of the Union. It is thereafter that the Management Committee was constituted to review the situation and take appropriate steps. It requires to be mentioned here that the matter came to be discussed resulting into taking of steps like seeking views of the Heads of Departments as also of the personnel Department from time to time on account of pressing demand of the Employees Union and their never ending threat of going on "Stay-in-strike, Dharnas" and procession to Raj Bhawan etc.

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(25) The third file bearing No. 6/45/89-IPPI Volume I consists of 136 pages. The first page has heading as "Government of Punjab, Department of Personnel & A.R. (P.P. II Branch). Subject—Demand of Punjab State Ministerial Services Union". It starts with note dated 23rd October, 1989 by discussing some of the demands of the employees sent to the department by the Chief Secretary. The views of some of the Departments commenting for and against the examination have been summarised at page 24 of the file. At page 32 of the file, the suggestions of the Union to rationalise the Assistant Grade Examination have been detailed. In para 2(a), it is mentioned that there is a request of the Union that the system of Assistant Grade Examination be either scrapped or at least, improvements be brought in that system to remove the defects/malpractices therein as detailed in the earlier part of the Judgment.

The defects/malpractices mentioned in para 2(a) (i) to (iv) were discussed in the office note which appears at page 41 and continues upto page 43.

The Under Secretary Personnel was asked to give his comments on the suggestions aforesaid which appear at page 46 and run thus :—

- (i) As per the existing practice, after the examination is over, the Invigilators/Supervisors of Centres cross blank spaces in the answer sheets of candidates and hand over the same to the Secretary S.S.S. Board. The Secretary, S.S.S. Board, allots fictitious Roll Numbers to the Answer Sheets and gets the papers evaluated from officers of P.S.S., P.C.S. and I.A.S. cadres, Each examiner is given around 300 answer sheets for evaluation. Desk marking of answer sheets can be possible if the officers entrusted with the work relating to evaluation of answer sheets agree to work on holidays or after office hours. For evaluating answer sheets of paper containing five questions, five officers shall be needed each officer evaluating one question in the answer sheet.
- (ii) Paper I of the Assistant Grade Examination consists of five questions, one question each on translation from Punjabi to English, re-translation from English to Punjabi, letter drafting, noting and precis writing. As the qualification prescribed for the post of Clerk is Matriculation and only the Clerks appear in this examination, the level

of the examination is of the level of the Matriculation Standard.

- (iii) Paper II of Accounts and service matters can be made objective type but in order to avoid mass copying in the examination, it shall be desirable to have atleast five sets of question papers prepared. The candidates at Sr. No. 1 getting first set, at Sr. No. 2 getting 2nd set, at Sr. No. 3 getting 3rd set, at Sr. No. 4 getting 4th set, at Sr. No. 5 getting 5th set, Against the candidate at Sr. No. 6 will get the 6th set and so on. The paper can, however, continue to be with the help of books.
- (iv) Under Rule 5(3) of the Punjab State Assistant Grade Examination Rules 1984 a person working in an 'A' Class office shall be considered to have qualified the test only if he secures a minimum of 50 per cent marks in the aggregate but not less than 40 per cent marks in each paper and a person working in a 'B' Class Office shall be considered to have qualified the test only if he secures a minimum of 40 per cent marks in the aggregate but not less than 33 per cent marks in each paper. A person who has secured the prescribed minimum pass marks in each paper but has failed to secure the prescribed minimum marks in the aggregate may re-appear in either or both the papers so as to qualify the test. In the case of such a re-appear. If a person appears in one of the papers in a subsequent examination and fails to get 40 per cent or 33 per cent marks, as may be necessary for him, he is considered to have failed, meaning that the benefit of re-appear in only one paper which had accrued to him earlier gets withdrawn. It has also been observed that some candidates get more than 50 per cent marks in one paper but they fail to get 33 per cent 40 per cent as the case may be in the 2nd paper and so they are declared 'failed' and are required to again appear in both the papers. Consequently, there has been a large number of failures in the various examinations so far held under the Punjab State Assistant Grade Examination Rules, 1984. In fact the prevailing resentment against this examination is mostly because of the large number of failures in the examination. The examination being only a qualifying test it is proposed that the scheme should be modified to the extent that if a candidate secures 40 per cent 50 per cent marks (equal to

aggregate relevant to him) in one paper he should be allowed exemption from that paper irrespective of the percentage of marks obtained by him in the 2nd paper. This examination should be on permanent basis and should not be withdrawn under any circumstances.

Note dated 9th May, 1990 starting at page 54 of this file reveals that Chief Secretary,—vide letter dated 7th May, 1990 asked the department to proceed to examine the following items :—

- (1) It should be ensured that direct recruitments against the posts of senior Assistants (previously Assistants) as per prescribed percentage is made by the Department.
- (iii) The eligibility for taking the Department Examination for promotion to the post of Senior Assistant (Previously Assistant) should be 5 years of service as Clerk.
- (iv) The employees who have put in a minimum of 18 years of service as Clerk/Senior Clerk/Junior Assistant should henceforth be exempted from passing the Assistant Grade Examination."

The note at page 57 talks of decision of Anomalies Committee contained in 8th report for removal of anomalies in the revised scales of pay regarding common categories of employees being under consideration. It further talks of recommendations, *inter alia* involving three points on which action was proposed to be taken on the file in view of the decisions taken on the memorandum submitted by the Finance Department to the Governor-in-Council at item No. 7 (2, 3 and 4). The said items are as follows :—

- (1) It should be ensured that direct recruitment against the post of Senior Assistant (Previously Assistant) is made by the Department.
- (2) The eligibility for taking the Department Examination for Promotion to the post as Senior Assistant (Previously Assistant) should be 5 years of service as Clerk.
- (3) The employees who have put in a minimum of 18 years of service as Clerk/Senior Clerks/Junior Assistant should henceforth be exempted from passing the Assistant Grade Examination."

(26) Further, it is mentioned that in so far as item No. 3 is concerned, the intention behind the decision of Governor-in-Council is that Clerks/Senior Clerk/Assistants who have put in 18 years service as such should be exempted from passing Assistant Grade Examination and this will involve amendment of Punjab State Assistant Grade Examination Rules, 1984, it is further mentioned that it would be relevant to determine the criteria for exempting persons from this examination i.e. as to how the seniority of persons exempted will be determined vis-a-vis those who have already passed the said examination. In the note which starts from page 60, it is mentioned that there would be no necessity to amend the Assistant Grade Examination Rules. Ultimately,—vide note dated 29th June, 1990 starting at page 62, orders were issued exempting all such persons who had completed 18 years of service as Clerks/Senior Clerks/Junior Assistants from passing the examination. Nothing else relevant is available in this file.

(27) The fourth file bearing No. 6/45/89-IPPI Volume I consists of 167 pages. Some of the official notes are the same, reference of which has been given earlier and, therefore, need no repetition. The Director of Horticulture Punjab while giving his comments said that there was since long a genuine need to evolve a system that could encourage growth of efficient and qualitative manpower within the administrative machinery. The Assistant Grade Examination has, so far, succeeded in achieving this objective. It was further commented by him that to expect incompetent personnel to administer the policies/decisions of the Government would be injecting inefficiency at lower levels of administration and that the persons qualifying the Assistant Grade Examination can be relied upon for efficient discharge of their assignments and tend to display a greater sense of initiative, responsibility and competency. In ultimate analysis, it was said that the examination should be allowed to continue in public interest. The Director of Agriculture Punjab,—vide letter dated 29th December, 1989 opined that the newly appointed Clerks who had passed Assistant Grade Examination had started drawing Rs. 300 to Rs. 700 per month increase in their salary whereas if the promotion to the post of Assistant is done by virtue of seniority, they will get only an increase of two increments and, therefore, there was definitely a financial burden on the Government exchequer due to the imposition of this examination. He further opined that experienced old persons feel humiliated when newly recruited officials after passing the examination become senior to them. He further observed that the efficiency in this Cadre increases by experience and by dealing the cases of different nature of service

and in many cases it has been reported that the newly recruited Clerks after passing the examination when posted as Assistants seek guidance from the experienced and old seasoned Clerks in their day to day disposal of cases. A suggestion was, thus, given to scrap the examination. Director Ayurveda, Punjab D.P.I. Punjab as also Director Health and Family Welfare, Punjab commented that the promotion of a Clerk to that of Assistant by dint of experience had stood in good stead in the past. The Chief Engineer (Design) Irrigation opined that examination should be continued. The Superintendent Administration also opined that the examination should be continued. Deputy Secretary (Administration) to Government, Punjab, Financial Commissioner's Secretariat opined on various aspects like financial, litigation, experience and efficiency as follows :—

(i) *Financial*

There does not appear that any financial burden has been imposed on the State exchequer with the introduction of Assistant Grade Examination except the expenditure incurred on the conduct of the examination and Special classes for the coaching of Government employees etc. with regard to which the Punjab Civil Secretariat is in a better position to know the actual financial implications. It is, however, felt that this expenditure is more than compensated with the development and growth of efficiency among the employees.

(ii) *Litigation.*

With the re-introduction of the Assistant Grade Examination, no fresh litigation has been faced by this Department except at the initial stage when Government was involved in C.W.P. No. 2490 of 1984 challenging the Punjab State Assistant Grade Examination Rules, 1984 by the officials who already stood promoted as Assistant or to higher posts. There has been no case of litigation in this regard afterwards.

(iii) *Experience and Efficiency.*

The Assistant Grade Examination builds up the necessary efficiency and competency to deal with the cases according

to rules, policy and instructions of the Government. This definitely benefits the Government as well as the employees inasmuch as there is less scope of erroneous dealing of the cases which may involve financial loss to the Government. No doubt experience also adds to the efficiency of an employee but if it is built upon the actual study of financial and administrative rules/instructions, the efficiency is increased many a times. Moreover, the inducement of promotion which the Assistant Grade Examination produces among the employees is helpful both for the employees and the Government”.

P.W.D. (B. & R.) preferred continuation of Assistant Grade Examination.

(28) The Chief Electrical Inspector.—*vide* letter dated 14th February, 1990 recommended that previous practice of promoting the senior most Clerks/Senior Clerks as Assistant should be switched on and the existing Assistant Grade Examination be abolished. The Director, Colonization Punjab, the Chief Conservator of Soils Punjab, Director of Horticulture Punjab, Director Youth Services and Chief Architect Punjab preferred continuation of examination. The D.P.I. (Schools) had recommended to exempt those employees from passing this examination who had been appointed prior to 1984. The Chief Conservator of Forest recommended scrapping of this examination. At page 72 of the file is available an extract of decision taken in the meeting of the Chief Secretary held with the Punjab Civil Secretariat Staff Association on 5th March, 1990 which runs as follows :—

“PARA 2

- (a) They requested that the system of Assistant Grade Examination be either scrapped or, at least, improvements be brought about in that system to remove the following defects/malpractices therein :—
- (i) There was lot of corruption in the matter of marking of papers of candidates and some fool proof method should be devised in this behalf. The introduction of a system of ‘table marking’ of papers would go a long way in this behalf.
 - (ii) There was need for changing the syllabus and contents of paper ‘A’ as all the Clerks cannot be expected to

have the experience of dealing with the subjects now included in the paper 'A' while working as Clerks. The Association promised to give their concrete suggestions, in this behalf, to JSSA within a few days.

Changing the form of paper 'B' to 'objective' type may also be considered for improving the present system.

(iii) Pending decision on the abolition of the system of Assistant Grade Examination altogether, a change could be made by reserving 50 per cent of posts of Assistants for promotion on seniority-cum-suitability basis and 50 per cent posts could be filled through departmental examination, restricted to the departmental candidates only. JSSA was advised to examine all these matters immediately and put up for orders on the file.

PARA 4.

In order to honour the commitments made, it should be ensured by JSSA that action on all these points is processed and pursued in a time-bound manner and the progress of action taken is reported to the Chief Secretary one every fortnight."

(29) *Vide* note dated 22nd March 1990, the Chief Secretary desired that the file on which a request for scrapping the Assistant Grade Examination was received earlier by the P.P. Branch has been examined and it should be put up to him immediately. Shri R. N. Gupta, Secretary addressed a letter to Special Secretary to the Government of Punjab, Department of Personnel, Chandigarh on 11th October, 1990 which was with regard to prescribing of uniform pass percentage of marks for qualifying the Assistant Grade Examination for 'A' and 'B' Class Offices when all the Assistants in the State had been given uniform scale of pay of Rs. 1,800—3,200. The amendment had since already been suggested as per letter aforesaid on that behalf which should be made in the Punjab State Assistant Grade Examination, 1984. Since the next Assistant Grade Examination was to be held on 25th November, 1990, it was thought necessary that the decision in the matter should be taken well before that date and necessary action taken accordingly.

(30) On page 86 is available a proposed notification,—*vide* which clause 3 of Rule 5 was to be substituted as follows :—

“A person working in a State Government office shall be considered to have qualified the test only if he secures a minimum of 50 per cent marks in the aggregate but not less than 40 per cent marks in each paper. A person who has secured the prescribed minimum pass marks in each paper but has failed to secure the prescribed minimum marks in the aggregate, may re-appear in either or both the papers so as to qualify the test.”

Rule 7 was to be substituted as follows :—

“Persons eligible to sit in test—All persons who have five years regular service on the post of Clerks/Senior Clerks/Junior Assistants or other posts, by whatever designation called from which they could be appointed by promotion to the post of Senior Assistant, shall be eligible to sit in the test.”

Since the views of Finance Department had been considered,—*vide* note dated 4th June, 1991 the following actions were to be taken in that regard :—

- (i) The proposal regarding amendment of Assistant Grade Examination Rules is at final stages and would be brought before the Governor-in-Council in the month of June;
- (ii) This department is circulating a letter informing all Heads of Departments etc. that Assistant Grade Examination Rules, 1984 are being amended and the persons who will appear in this examination shall have to obtain 50 per cent marks in aggregate and 40 per cent marks in each paper.”

(31) As per note prepared by D.S.P.(S) dated 30th May, 1991, a circular letter was to be issued to all the Heads of the Departments that for qualifying the Assistant Grade Examination in June, 1991 all the candidates, irrespective of the categories of office to which they belong will have to pass with 40 per cent marks in individual papers and 50 per cent in the aggregate. The amendment of Assistant Grade Examination Rules 1984 was to be carried out before the examination.

(32) At page 98 is available a draft notification containing amendment of Rules 3 and 5 as indicated above. At page 102 is available a memorandum for the Governor-in-Council which requires to be reproduced in all its details as it is this memorandum which was before the Governor-in-Council and in pursuance to which exemption was given to all the Clerks/Senior Clerks who had put in 18 years of service from passing the Assistant Grade Examination. The memorandum reproduced hereunder in extenso would demonstrate that the same only pertains to amending the Rules so as to reduce the percentage of pass marks as also to make clerks who had put in only five years of service ineligible to take the examination.

“Government of Punjab,
Department of Personnel and Administrative Reforms.
(Personnel Policies II Branch).

MEMORANDUM FOR THE GOVERNOR-IN-COUNCIL.

Administrative Secretary : Chief Secretary to Government.
Punjab.

Subject :—Amendment of the Punjab State Assistant Grade Examination Rules, 1984.

The Punjab State Assistant Grade Examination Rules, 1984 which came into force with effect from 12th April, 1984, regulate the eligibility for appointment by promotion to the post of Assistant (now Senior Assistant) in all the Departments through a test called the Assistant Grade Examination. Under these rules the passing of the Assistant Grade Examination has been made an essential qualification for promotion to the post of Assistant (now Senior Assistant).

2. After considering the report of the Third Punjab Pay Commission the Department of Finance notified the Punjab Civil Services (Revised Pay) (Third Amendment) Rules, 1990. In these rules, the Assistants of all the departments including Secretariat have been designated as 'Senior Assistants', and grades of Assistants have been made equal i.e. 1,800—3,200 with effect from 1st January, 1986 in all the A & B Class offices.

3. As per sub-rule 3 of Rule 5 of the Punjab State Assistant Grade Examination Rules, 1984, the following provisions were made keeping in view the different scales of pay of Assistant in A & B class offices :—

5(3) A person working in an A-Class office shall be considered to have qualified the test only if he secures a minimum of 50 per cent marks in the aggregate but not less than 40 per cent marks in each paper and a person working in a B-Class shall be considered to have qualified the test only if he secures a minimum of 40 per cent marks in the aggregate but not less than 33 per cent marks in each paper. A person who has secured the prescribed minimum pass marks in each paper but has failed to secure the prescribed minimum marks in the aggregate, may re-appear in either or both papers so as to qualify the test.

As stated in para 2 above the grades of all the Assistants working in A & B class offices have been made equal with effect from 1st January, 1986, keeping this in view it is proposed that the sub-rule 3 of rule 5 of the Punjab State Assistant Grade Examination Rules, 1984 may be substituted as under :—

“5(3) A person working in a Government office shall be considered to have qualified the test only if he secures a minimum of 50 per cent marks in the aggregate but not less than 40 per cent marks in each paper.

A person who has secured the prescribed minimum pass marks in each paper but has failed to secure the prescribed minimum marks in the aggregate, may reappear in either or both the papers so as to qualify the test.

4. In Rule 7 of the Punjab State Assistant Grade Examination Rules, 1984, it is provided that all persons holding the post of Clerks or other posts, by whatever designation called from which they could be appointed by promotion to the post of Assistants shall be eligible to sit in the test. According to the above provision in the rules a newly appointed Clerk can sit in the Assistant Grade Examination even before completing his probation period and also without having prescribed experience on

the post. Keeping in view this aspect, it is proposed that the Clerks etc., who have put in five years of service on the post should only be allowed to sit in the test. Keeping this in view rule 7 of the Punjab State Assistant Grade Examination Rules, 1984, is being substituted as under :—

7. *Persons eligible to sit in test.*—All persons holding the posts of Clerks or Senior Clerks or Junior Assistants or other posts by whatever designation called from which they could be appointed by promotion to the post of Senior Assistants, having an experience of working as such for a period of five years in a cadre, shall be eligible to sit in the test.'
5. Department of Finance,—*vide* its notification dated 15th June, 1990 the designation of 'Assistant' has been re-designated as 'Senior Assistant.' In view of it sub-rule 1(1) in rule 2 in clause (a), (d), (e) and (g); in rule 3/4(1) except the proviso thereunder; in rule 9 and also in the Appendix to these Rules the word ('Assistant' is being substituted as 'Senior Assistant'). Similarly in Rule 2 Clause (e) and Rule 10(2) the word 'Clerk' is being substituted as 'Clerk' or Senior Clerk or Junior Assistant.'
6. A draft notification in this regard was sent to Secretary, Punjab Public Service Commission and Registrar, Punjab and Haryana High Court,—*vide* letter No. 6/45/89-2 PPII/5064-65, dated 9th April, 1991 for the comments of the Punjab Public Service Commission and Punjab and Haryana High Court within a period of 21 days, failing which it will be presumed that they have no comments to offer. No comments were sent by them till 29th May, 1991, so on 29th May, 1991 they were again requested to send the comments within a period of ten days, failing which it will be presumed that they have no comments to offer and the matter for making the amendments will be placed before the Governor-in-Council. No comments have been received from the Registrar, Punjab and Haryana High Court so far. In view of the above said clear letters it is presumed that they have no comments to offer in this regard. Secretary, Punjab Public Service Commission, as well as the Department of Finance have, however, given their concurrence in this regard,—*vide* letter

No. S.R. 2/81/7794, dated 27th May, 1991 and I.D. No. 10/28/90-FPI/756, dated 27th March, 1991, respectively (Annexures 'B' & 'C').

7. The draft of the amendments, at Annexure 'A' has been got vetted from the Department of Legal and Legislative Affairs.
8. The Governor-in-Council may kindly approve the proposal to notify the amendments of rules as at Annexure 'A'.
9. Approval of the Governor has been obtained for placing this memorandum before the Governor-in-Council.

Dated 20th June, 1991.

TEJINDER KHANNA,
CHIEF SECRETARY TO GOVERNMENT PUNJAB.

(33) There is a check list for submission of Cabinet Memorandum available at pages 109 to 110.

(34) There appears to be rough draft of notification at page 115 which is in tune with the suggestions put up before the Governor-in-Council.--*vide* memorandum referred to above.

(35) At page 112, the Joint Secretary (Co-ordination) mentions that the case was considered in the meeting of the Governor-in-Council on 26th June, 1991 and the following is the record of what was decided :—

“The proposal of the Department of Personnel and Administrative Reforms for amendment of Punjab State Assistant Grade Examination Rules, 1984 as per para 3 and 4 of the memorandum was approved. Likewise in the draft amendment at Annexure 'A' clauses 1 to 5 and 7 were approved. It was however, decided to delete clause 6 in Annexure 'A' which goes against the principles of natural justice and fixation of seniority.

It was decided that there would be no limit to the number of chances which can be availed of for passing the Assistant Grade Examination and at the time of filling up a vacancy of Assistant, preference would have to be accorded to the more senior official in the clerical cadre who has passed

the qualifying examination earlier. Likewise in the Assistants cadre, seniority will be based on the length of continuous officiation in that cadre”.

(36) The action as per note aforesaid so as to implement the decision of the Governor-in-Council was to be intimated to the Cabinet Affairs Branch within a fortnight from the date of issue of the communication.

(37) There appears another notification dated 28th June, 1991 at page 125 which is quite in consonance with the suggestions noted above.

(38) There was some mistake in the notification aforesaid and corrigendum was, therefore, issued on 29th July, 1991.

(39) Resume of facts fully narrated above, would thus, reveal that the Assistant Grade Examination came to be introduced for the first time when the Punjab State Assistant Grade Examination Rules came into being in the year 1984. As per provisions contained in Rule 4, no person was to be eligible for appointment to the post of Assistant unless he qualified the test. This test was, however, exempted to those who had qualified the Assistant Grade Examination in terms of Punjab Government circular dated 23rd October, 1957. Further, those who were holding the post of Assistant or a higher post, on provisional basis on the commencement of these Rules or were of the age of fifty years or more were also exempted to qualify the test. All others including the persons who had been appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of the Rules, were required to qualify the test within a period of three years from the commencement of Rules and failure to qualify the test within the specified period was necessarily to result in reversion of such person to the post of Clerk. In a situation where no person who had qualified the test was available for promotion to the post of Assistant, the appointing authority could promote a person to the post of Assistant on provisional basis but the same was only to last till a qualified person had become available. Even though by issuing various amendments in the years 1984 and 1985, as have been detailed above, the Rule was diluted to some extent by providing more chances to qualify the test from the chances which were originally provided but the fact remains that all through it was thought necessary to qualify the test to become eligible to the

post of Assistant by way of promotion. No doubt all those who had already qualified an equivalent test and were already holding the post of Assistant far prior to the coming into force of the Rules were exempted from qualifying the test, yet persons who were promoted on provisional basis were given a period of three years to qualify the test and if they could not do so they had to be reverted to the post of Clerk or Senior Clerk as the case may be. The Rule, in our view, in no uncertain terms, recognises the necessity of passing the test for a promotional post. It is true that in pursuance to the powers vested in the Government under Rule 12, where the so, it can by order for reasons to be recorded in writing, exempt Government is of the opinion that it is necessary or expedient to do any class or category of persons from the operation of these Rules including the requirements specified in Rule 4 yet the necessity recognised for qualifying the test in Rule 4 and the language employed in Rule 12, in no uncertain terms mandates that the Government has first to form an opinion whether it is necessary or expedient to grant exemption by recording valid reasons in writing. Once the formation of opinion is there, the order exempting class or category of persons from the operation of these Rules can be passed by specifying reasons. The reasons spelt out in the additional affidavit do not find any mention in the records of the case and it is only in an endeavour to defend impugned action that the said reasons have been put forth. In our view, as is also the conceded position between the parties, post decisional reasons cannot validate the order or the notification as the case may be as the mandate of Rule 12 requires formation of an opinion to be followed by reasons after which alone exemption can be granted. That being the position, Mr. Girish Agnihotri, the learned counsel appearing for the petitioners has rightly not commented upon the merits of reasons given in the additional affidavit. He has, rather, chosen to point towards non-formation of opinion as also non-recording of reasons before issuing the impugned order/notification.

The records of the case reveal that at no stage it was thought necessary or expedient to exempt all those who had put in 18 years of regular service from passing the test. In the meeting that was held between the Finance Secretary and the representatives of the Punjab State Ministerial Services Union on October 17, 1989, the Finance Secretary expressed that much can be said both in favour and against the Assistant Grade Examination and it was not desirable to abolish the Assistant Grade Examination altogether. He, however, had promised with the agitating Union leaders that the matter with regard to the exemption would be examined. He also

promised to examine whether pass percentage of the examination could be lowered to make it comparatively easy to qualify it. In the meeting that was held between the representatives of the Union and the Chief Secretary, a specific query was made by the Chief Secretary as to how they could prove that the Assistant Grade Examination had failed to improve efficiency. The aforesaid query was made by him after considering the view point of the representatives of the Union who were claiming that the examination had resulted in increased number of disputes in seniority and litigation on that count. They had contended before the Chief Secretary that the examination had failed to increase efficiency which depended mostly on length of experience. The Chief Secretary, however, wanted to have the views of heads of Departments and as is clear from the narration of facts as called out from the additional affidavit or from the files made available to the Court that the cause of the representative of the Union was pleaded by far less departments and opposed by more departments. We do not wish to go into the reasons given for and against by the departments and suffice it to mention that when the matter was examined specifically on the count of financial, litigation, experience and efficiency, the views of the departments favouring continuation of examination were fully supported. In the meeting that was held between the Chief Secretary and the representatives of the Union on March 5, 1990, it was only thought that amendment should be brought about in the system of examination in order to remove the defects/malpractices and on that count concrete steps were taken as have been detailed in the earlier part of the judgment. Final decision was also taken in the matter. When the matter was again discussed with the representatives of the Union on March 15, 1989, it has been mentioned in the relevant note that the demand of the employees with regard to doing away with the Assistant Grade Examination at very face of it, appeared unjustified. Earlier to that also when the matter was forwarded to the Personnel Policies Branch for examination, it intimated its opinion that the demand could not be acceded to as it carried no weight. Even though this was the background of the matter and in fact the case was proceeding to bring about some amendments in the Rules with a view to make the examination little more easier than the earlier by reducing the pass percentage as also by debarring Clerks who had put in only five years of service from qualifying the test, the matter was put before the Governor-in-Council in the meeting held on April 17, 1990. The agenda memorandum and the recommendations as have been reproduced in extenso do not show that at any stage it was thought

necessary or expedient that those who had put in 18 years of service should be exempted from passing the Assistant Grade Examination. In fact the aforesaid memorandum shows that it was desired to bring about some amendments the tenor of which has been noticed above and it is for that reason that it has been pleaded in the written statement that the matter was off agenda and the Governor-in-Council decided to exempt altogether the persons who had put in 18 years of service from passing the examination. It appears that this decision was taken simply with a view to bring an end to indefinite strike resorted to by the employees. As referred above, the employees went on indefinite strike from March 26, 1990 which was called off in April 11, 1990 only on the assurance of the Chief Secretary Government of Punjab that the demands of the employees would be sympathetically considered. It was on April 17, 1990, about a week thereafter that it was decided to exempt persons from passing the examination if they had put in 18 years of service. The records of the case, thus demonstrate that whereas there were reasons to bring about amendments in the Rules of 1981 so as to lower down the pass marks as also to make Clerks who had put in only five years of service ineligible for passing the qualifying test, there are absolutely no reasons for exempting altogether the persons who had put in 18 years of service from passing the Assistant Grade Examination.

(40) The learned counsel appearing for the parties have cited case law for and against to show the effect of non-recording of reasons in the order itself. Obviously, the contention of learned counsel appearing for the petitioners is that the Rule necessarily requires recording of reasons in the order itself whereas the Deputy Advocate General has canvassed otherwise but we do not wish to go into this question as in the files dealing with the matter, neither in express terms reasons are recorded at the time of exempting a class of persons from qualifying the test nor such reasons are recorded elsewhere. The notes prepared from time to time reference of which has been given above also do not contain any reason for exempting those who had put in 18 years of services from qualifying the test. That being the position, we hold that the decision recorded in Civil Writ Petition No. 13310 of 1991 is correct. In fact, the other case i.e. Civil Writ Petition No. 9828 of 1991 is not in conflict with the decision in the petition mentioned earlier as it has been specifically mentioned in the aforesaid matter that power to exempt is a statutory power and it is exercised by the competent authority by recording reasons on the departmental file. While issuing notice of motion in the aforesaid case, the respondents were

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specifically directed to produce at the time of hearing, the file relating to the issuance of the impugned orders so as to ascertain as to whether any valid reasons were recorded before issuing the notification.

(47) In view of the discussion made above, notification dated 21st January, 1991 (Annexure P3)—*vide* which all such persons who have put in 18 years of service as Clerks/Senior Clerks/Junior Assistants were exempted from qualifying the Assistant Grade Test is quashed. However, the parties are left to bear their own costs.

January 5, 1994.

V. K. Bali,
Judge.

Notes : 1. Since my learned brothers J. S. Sekhon and N.K Kapoor, JJ. have upheld notification dated 21st January, 1991 (Annexure P3) whereas I have quashed the same, the word "We" wherever mentioned be read as "I".

2. As I have held notification exempting Clerks/Senior Clerks/Junior Assistant who had put in 18 years of service to be against the mandate of Rule 12 of the Punjab State Assistant Grade Examination Rules 1984, I have not gone into retrospective or prospective applicability of the same. However, if I were to uphold the notification, the same, in my view, would operate prospectively and not retrospectively as held by my learned brothers J. S. Sekhon and N. K. Kapoor, Judges.

January 5, 1994.

V. K. Bali,
Judge.

J. S. Sekhon, J.

(1) I have the added advantage of going through the judgment prepared by my learned colleague V. K. Bali, J., but with utmost

respect fail to subscribe to his observations that notifications dated January 21, 1991 (Annexure P-3), exempting from qualifying the Assistant Grade Examination of such persons who had completed eighteen years' service as Clerks/Senior Clerks/Junior Assistants was illegal being violative of the provisions of rule 12 of the Punjab State Assistant Grade Examination Rules, 1984 (or short the 1984 Rules) on the ground that the concerned authority has not passed any order in writing with reasons regarding the necessity of expediency of such exemptions before issuing the said notification.

(2) It may, however, be noticed that in the instant writ petition preferred by Surinderjit Singh and others the vires of the notification (Annexure P-3) dated January 21, 1991, have not been challenged. On the other hand the petitioners seek the quashment of the order, Annexure P-4 dated June 28, 1991 of the respondent-State, whereby clarification was issued to all the Heads of the Departments of the State Government *qua* the promotion and seniority *inter se* between those Clerks/Senior Clerks/Junior Assistants for promotion to the posts of Assistant (now Senior Assistants) of those employees who had passed the Assistant Grade Examination before the order dated January 21, 1991 and those employees who had by virtue of exemption from passing such examination were not required to clear such test shall be treated at par and their promotion to the post of Assistant/Senior Assistants shall be made on seniority-cum-merit basis. It is further explained that those Clerks/Senior Clerks/Junior Assistants, who had completed 18 years' service and who have been given exemption from passing the Assistant Grade Examination and are senior to Clerks etc. who have passed the examination their promotion shall be made on the basis of seniority-cum-merit.

3. All these writ petitioners in the case in hand had passed their Assistant Grade Examination before January 21, 1991 when the above referred notification (Annexure P-3) was issued. The petitioners contend that rule 12 of the 1984 Rules clearly provides that such exemption shall operate prospectively, but,—*vide* impugned clarification (Annexure P-4) the authorities had made the operation of order dated January 21, 1991 retrospectively. They seek a writ of mandamus or any other direction to the respondents to frame or to grant seniority to the petitioners in accordance with the Assistant Grade Examination (1984 Rules) so as to safeguard the interests of the employees prior to January 21, 1991. In nutshell, the grouse of the petitioners is that they having cleared the Assistant Grade Examination prior to January 21, 1991 be treated as

senior to those persons who had been exempted,—*vide* notification (Annexure P-3) on January 21, 1991 from clearing the said test for promotion to Assistant/Senior Assistants.

(4) The validity of instructions, Annexure P-4 is supported by the respondent-State through return filed by Shri P. C. Sangar, Deputy Secretary to Government of Punjab, Department of Personnel and Administrative Reforms contending that these instructions are only clarificatory of the earlier order dated January 21, 1991, exempting the Government employees from clearing the Assistant Grade Examination for next promotion to the Assistants or Senior Assistants and clearly provide that persons who have passed the Assistant Grade Examination on or before January 21, 1991 and have already been promoted as such on the available vacancies of the Senior Assistant will not be reverted. It is further maintained that these instructions in no way give the order dated January 21, 1991 retrospective effect as the qualification of passing Assistants Grade Examination and the exemption from passing that examination is similar. Therefore, those exempted from passing the examination had to be treated at par with those qualifying the test and their promotion to the posts of Assistants are to be made on the basis of seniority-cum-merit from the post from which promotion is to be made.

(5) Shri K. S. Battu, Additional Director, Department of Finance (Treasuries and Accounts Branch), Punjab, Chandigarh also in the return filed by him on behalf of respondent No. 4 supported the above referred stand of respondent No. 1 Shri Ram Chand, Chief Engineer/KAD, Irrigation Works Punjab, Chandigarh also filed separate return on behalf of respondent No. 2 and maintained that impugned instructions dated June 28, 1991 are to be implemented keeping in view the earlier instructions dated April 27, 1982 and thus the vacancies of Assistants/Senior Assistants which are in existence prior to the date of exemption i.e. January 21, 1991 are to be filled in accordance with the rules which are in force at that time and keeping in view the eligibility of persons to be promoted under those rules. He also admitted that the petitioners whose names figure at Sr. Nos. 12/22 and 25 to 31 in Annexure P-1 are working as Clerks in the Irrigation Departments and they had qualified the Assistant Grade Examination as per details figuring in Annexure P-1.

(6) The Division Bench of this Court,—*vide* order dated January 20, 1992 admitted this writ petition to Full Bench in view of the orders in C.W.P. 9828 of 1991 dated September 23, 1991 and C.W.P. No. 13310 of 1991 decided on December 16, 1991 on the assumption that the vires of notification dated January 21, 1991 are involved in this writ petition although the challenge in this writ petition was only to the clarificatory instructions (Annexure P-4) dated June 28, 1991. It is worth-noticing that C.W.P. No. 9828 of 1991 challenging the notification dated January 21, 1991 as well as policy decision dated June 28, 1991 *inter alia* on the ground that power of exemption has been exercised in an arbitrary and vague manner without recording any reason as also that exemption has been granted to all those persons who had completed 18 years of regular service without ascertaining whether such persons formed a class by themselves, came up for motion hearing on July 8, 1991 before the Division Bench constituted by M. R. Agnihotri and V. K. Jhanji, JJ. who were reluctant to issue notice of motion to the respondents but did so as in the connected writ petition (No. 9720 of 1991) notice of motion has already been issued. Para 2 of the order reads as under :—

“.....

After hearing the learned counsel for the petitioners we do not find any *prima facie* ground to interfere in the matter as the power to exempt is a statutory power and it is always exercised by the competent authority by recording reasons on the departmental file which need not be disclosed. However, since notice of motion has been issued for 23rd September, 1991 in a connected petition (C.W.P. No. 9720 of 1991) notice of motion in this case for that very date. Respondents are directed to produce at the time of hearing the file relating to the issuance of the impugned orders. Annexures P/2 and P/3 in order to ascertain as to whether any valid reasons were recorded before passing the impugned orders.

(7) On September 23, 1991, C.W.P. No. 9828 of 1991 again came up before the Division Bench. The Division Bench after examining the record and hearing the learned counsel for the parties did not find any merit in the contention of the counsel for the petitioners with regard to the legality of the exemption granted in favour of the persons who had completed 18 years of regular service. but notice of motion was issued on the question as to whether the

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vacancies which were in existence prior to the date of exemption i.e. January 21, 1991 are to be filled in according to the rules which were in force at that time keeping in view the eligibility of the persons to be promoted. Thus, the Division Bench upheld the validity of the notification dated January 21, 1991, exempting all those persons from Assistant Grade Examination who had put in 18 years of regular service of Junior Clerks etc.

(8) In C.W.P. No. 13310 of 1991, the Division Bench comprising of A. L. Bahri and V. K. Bali, JJ. quashed the notification dated January 21, 1991 on the ground that no reasons were recorded in the instruction as to why such persons should be exempted from passing the test as required under rule 12 of the Rules,—*vide* order dated 16th December, 1991. Thus, both the above referred Division Benches had taken a contrary view *qua* the validity of the notification dated January 21, 1991 exempting all those persons who had put in eighteen years of regular service as Clerks/Senior Clerks/Jr. Assistant from qualifying the Assistant Grade Examination. In this background even though the controversy regarding the legality of the notification dated January 21, 1991 is not directly in issue in this case, yet all the same since the Division Bench had admitted this writ petition to Full Bench in view of the order in C.W.P. No. 13310 of 1991 and C.W.P. No. 9228 of 1991, there is no justification to brush aside this controversy on the technical ground that in the writ petition in hand, the validity of above referred instructions dated January 21, 1991 is not involved.

(9) The Punjab Government framed the Assistant Grade Examination (1984 Rules),—*vide* notification dated April 11, 1984 published in the extraordinary Punjab Government Notification dated April 12, 1984, providing for the passing of Assistant Grade Examination for promotion to the post of Assistant including all such posts, higher in rank to that of the post of Clerk, as are in the same or in an identical pay scale and carry superior responsibilities. Rule 4 of 1984 Rules provides that no person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualifications and experience prescribed for appointment by promotion to the post of Assistant, he qualifies the test. However, a person who had already qualified the Assistant Grade Examination *inter alia* in terms of Punjab Government Circular No. 4809-GII-57/21176, dated the 23rd October, 1957, or who was holding on regular basis the post of Assistant on the 23rd October, 1957 were exempted from qualifying the test. Persons

who were holding the posts of Assistants or higher posts on provisional basis before the commencement of these rules and of the age of 50 years or more were also exempted. Moreover, those persons who were appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of these rules, were required to qualify the test within a period of three years from such commencement and failure to qualify the test within the specific period shall result in reversion of such person to the post of Clerk or to the post by whatever designation called from which he was appointed by promotion to the post of Assistant on provisional basis. Clause (2) of this rule, however, provided that if no person, who has qualified the test, is available for promotion to the post of Assistant in service, the appointing Authority may appoint a person by promotion to the post of Assistant on provisional basis till a person who has so qualified the test becomes available in that service. Rule 10 provides for seniority of those persons who have been promoted as Assistants before the commencement of these rules on provisional basis subject to their qualifying the test within a period of three years and in that case their seniority shall be determined with reference to their date of provisional promotion. Rule 12 of the Rules gives powers to the State Government to grant exemption from the operation of these rules. Rule 12 reads as under :—

“12. *Power to grant exemption.*—Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded, in writing, exempt any class or category of persons from the operation of these rules and such exemption shall operate prospectively.”

Vide instructions dated 3rd May, 1985, issued by the Punjab Government, Department of Personnel and Administrative Reforms Annexure P-2(B) the Government exempted all those persons who had prior to the coming into force the rules have been appointed by promotion on provisional basis to the post of Assistant or to any higher as defined in rule 2(c) and rule 2(d) from qualifying the Assistant Grade test. Again,—*vide* notification dated 16th September, 1985 (Annexure 2-C), sub-rule (2) of rule 10 of 1984 Rules was amended, so as to substitute four chances instead of two chances for clearing the examination. The above referred rules were amended with retrospective effect i.e. from 12th day of April, 1984. *Vide* notification dated October 18, 1986 (Annexure P-2D), sub-rule (2) of rule 10 of 1984 Rules was further amended for providing five

chances instead of four chances for clearing the qualifying test. Ultimately,—*vide* notification dated January 21, 1991, all persons who had completed 18 years of regular service as Clerks/Senior Clerks/Junior Assistants were exempted from qualifying the Assistant Grade Examination.

(10) During the course of arguments on November 16, 1992, it came to our notice that the State has filed review application for reviewing the order of the Division Bench in C.W.P. 13310 of 1991, wherein Mr. P. S. Sangar, Deputy Secretary to Government, Punjab, had filed detailed affidavit in support of the reasons for exempting of passing of Assistant Grade Examination. The Bench then called upon the respondent State to file a detailed affidavit. Accordingly, Shri Karam Chand Ahuja, Under Secretary (Personnel to Government of Punjab; Department of Personnel and Administrative Reforms, filed the affidavit besides producing the original file, put in the said affidavit the excerpts from the original files were not reproduced in support of the conclusion that the State Government did apply its mind to the facts and circumstances of the case and passed an order in writing regarding such exemption. Consequently, the Bench directed the learned Deputy Advocate-General to file a better affidavit. Accordingly, Shri Karam Chand Ahuja filed another detailed affidavit dated 30th November, 1992..

(11) Mr. Girish Agnihotri, the learned counsel for the petitioner, contended that as per the detailed return dated 30th November, 1992, the decision taken in the meeting of the Governor-in-Council held on 17th October, 1989 was off the Agenda *qua* the exemption of employees who had put in 18 years of service as Senior Clerks/Junior Assistants from passing the Assistant Grade Examination and that facts imbibed in the written statement which weighed with the Governor-in-Council in this regard, being not under consideration in any of the meetings of the employees of the Ministerial Staff Union with the Chief Secretary or other authorities clearly show that the Government has not passed any order in writing giving reasons for the expediency or necessity to give such exemption whereas rule 12 of the 1984 Rules clearly provided so.

(12) Mr. S. S. Saron, the learned Deputy Advocate-General appearing for the State of Punjab, as well as Sarvshri J. S. Kehar, Ravinder Chopra, Shri P. K. Goklaney, the learned counsel for interveners, supported the legality of the order dated January 21, 1991 on the ground that the wording of the order exempting those

employees who had put in eighteen years service regularly as Clerks/Junior Assistants/Senior Clerks itself shows that the experience of 18 years as Clerks etc. was considered by the authorities as sufficient criteria for giving exemption from qualifying the Assistant Grade Examination. They further maintained that the employees who had put in eighteen years of service are a class or a category apart by themselves and thus the impugned notification dated January 21, 1991 is in accordance with the rule 12 of the 1984 rules.

There is no controversy between the parties that rule 12 does require order in writing giving reasons for justifying the necessity or the expediency of exempting certain class or category of employees from the application of Assistant Grade Examination Rules. The only controversy between the parties pertains to the factum whether the State Government had passed such order after recording reasons on the file while granting the exemption from qualifying the Assistant Grade Examination to those employees who had put in eighteen years' service as Clerks/Senior Clerks/Junior Assistants. V. K. Bali, J. has taken the view that the State Government is required to give reasons in writing either in the order itself or on the file as to why 18 years' period was treated as sufficient criterion of exempting such persons from passing the Assistant Grade Examination, but in the case in hand, no reasons in writing have been given in this regard in the order or on the file.

(13) I fail to subscribe to the above view because the period of 18 years in regular service as Clerk/Senior Clerk/Junior Assistant as imbibed in the order itself provides a reason in writing for granting such exemption. The order, Annexure P-3, reads as under :—

“GOVERNMENT OF PUNJAB, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS (PERSONNEL POLICIES II BRANCH).

ORDER

In exercise of the powers conferred under rule 12 of the Punjab State Assistant Grade Examination Rules, 1984, the President of India is pleased to exempt from qualifying the Assistant Grade test, all such persons who complete 18 years or regular service as Clerks/Senior Clerks/

Junior Assistants. These orders shall take immediate effect.

Dated 21st January, 1991.

Sd/-
Chief Secretary to the Government of Punjab."

A bare glance through the same leaves no doubt that all such persons who had completed 18 years' of regular service as Clerks/Senior Clerks/Junior Assistants were exempted from qualifying the Assistant Grade test. It is further provided that this order shall take immediate effect. It is noteworthy that the above order (Annexure P-3) was issued on January 21, 1991, although the return dated November 30, 1992 filed on behalf of respondent No. 1 shows that the Governor-in-Council has taken this decision in the meeting held on April 17, 1990. Obviously, in order to satisfy the demands of the Punjab State Ministerial Services Union, who had resorted to one day's token strike on March 13, 1990 and to indefinite strike from March 26, 1990 onwards which was called off on April 11, 1990 on the assurance of the then Chief Secretary to Government Punjab, that their demands would be sympathetically considered. The demand at Sr. No. 10 of the Demands Charter dated March 3, 1990 submitted by the State Services Union and reproduced in para 1 of the said return clearly indicate that the employees were agitating against the introduction of the Assistant Grade Test,—vide notification dated April 12, 1984 in the State of Punjab, although no such test has been prescribed in the neighbouring States of Haryana and Himachal Pradesh. The employees were demanding the abolition of this test or in the alternative providing for two increments to the employees who had cleared such test by considering it as extra-qualification, but urging that there should be no disturbance in the seniority due to non-passing of this test and the promotion to the post of Assistant should be strictly made in accordance with the seniority as otherwise the Senior Clerks who had put in 15/20 years of service will feel demoralized if the new-comer qualifies the test and gets promotion.

(14) Thereafter, the Ministerial Staff Union representatives held a meeting with the Finance Department on 17th October 1989. The extracts of the proceedings of this meeting figuring in para 2 of the return further shows that the representatives of the Union demanded the abolition of the Assistant Grade Examination. The

Finance Secretary expressed his views that much can be said both in favour and against the Assistant Grade Examination but it was not desirable to abolish the same altogether. He also promised to examine whether exemption could be given to the Clerks after fixed service, say ten years or so or on attaining certain age say 45 and 50 years. The Finance Secretary also promised to examine whether percentage of marks in this examination can be lowered for qualifying the test. Consequently, there is no doubt that a dialogue was going on between the representatives of the employees, Union and the concerned authorities regarding the exemption from qualifying the test by the Clerks after a fixed length of service or on attaining certain age as far back as 17th October, 1989.

(15) Yet another meeting was held by the representatives of the Union with the then Chief Secretary on 6th November, 1989. The extract of the proceedings of this meeting reproduced in the return reveals that the Union again demanded the abolition of the Assistant Grade Examination on the ground that it had resulted in increasing the number of disputes in seniority and litigation on that account and that this examination had failed to increase efficiency which depended mostly on length of experience. The Chief Secretary questioned this stand of the representatives of the Union. However, it was ultimately/finally agreed that the views of the Heads of the Departments be obtained in this regard. Para 3 of the return shows that seven Heads of the Departments were in favour of the continuation of such examination while other seven heads were in favour of its abolition. The Director, Public Instructions (Schools), however, was of the view that if such examination was to be retained then it should apply to persons appointed in the year 1984 itself and those who have put in sufficient service as Clerks should not be subjected to test keeping in view their length of service.

(16) Again, on December 21, 1989, the then Chief Secretary had a meeting with the representatives of the Union and promised that the removal of alleged anomalies in their pay-scales shall be processed expeditiously and taken to the Governor-in-Council for decision. He further promised that the other demands of the Ministerial cadre employees are also being processed in the Department of Finance for being taken to the Governor-in-Council in this regard. The representatives of the Union then promised to get back to their followers and also promised to do their very best to see that no agitation takes place.

(17) The matter regarding the abolition of Assistant Grade Examination was also discussed by the then Chief Secretary in the

meeting of the Administrative Secretaries held on 9th January, 1990, wherein certain views were formulated with a view to improve the efficiency in the Secretariat services while at the same time taking care of any problems of stagnation among the staff. Again, a meeting of the Chief Secretary with the representatives of the Union was held on February 12, 1990. The then Chief Secretary informed the representatives of the Union about the action taken on their demands and progress of the Anomalies Committee and the Finance Department and that on receipt of these reports a memorandum shall be brought before the Governor-in-Council for final decision. The Chief Secretary also advised the representatives of the Union not to adopt/indulge in pressure tactics of going on 'pen down strike' from 13th February, 1990 to 16th February 1990, so that congenial atmosphere was created.

(18) The Chief Secretary again discussed with the representatives of the Staff Union the demands of the Punjab Civil Secretariat Staff Association on 5th March, 1990 and certain suggestions were made regarding the scrapping of or at least making improvements in the Assistant Grade Examination. It was also proposed that till the final decision of the abolition of the examination, interim arrangement should be made by reserving 50 per cent posts of Assistants on seniority-cum-suitability basis and 50 per cent posts should be filled through departmental examination, restricted to the departmental candidates only.

(19) The matter does not rest here as on 14th March, 1990, the Punjab Civil Secretariat Staff Association also submitted a Demand Charter. One of the items of the Charter was promotion of the Clerks as Assistants who cannot pass Assistant Grade Examination. It reads :—

"Promotion of the Clerks as Assistant, who cannot pass the Assistant Grade Examination :—

In the Secretariat and the other offices of the State Government there are so many Clerks, who are working sincerely to the satisfaction of their superiors. They have good experience of official work due to the length of service. They have also earned out-standing reports. Due to age factor rush of work and family circumstances, they cannot devote much time to study for the preparation of Assistant Grade Examination. Otherwise they are intelligent and can work better

even than the qualified officials. It will be agreed that maturity and experience is prime need for the post of an Assistant. Only mugged up knowledge cannot improve the standard of official work. The assistant grade examination was imposed in the year 1984 but after a gap of six years the Administrative Secretaries in their meeting on 8th February, 1990, have felt that the standard of quality in the Administration has declined further. It is very much clear that the introduction of Assistant Grade Examination has not achieved the desired efficiency."

The perusal of the above referred demand of the Association further shows that they had emphasized and had high-lighted the plight of many clerks who were working sincerely and getting outstanding reports but due to age factors, rush of work and family circumstances, they cannot devote much time to studies for preparation of the Assistant Grade Examination, although otherwise they are intelligent and can work better even than the qualified officials because they had attained maturity and experience meant for the post of Assistants.

(20) It is noteworthy that after the submission of that demand notice dated 14th March, 1990 and the State Government failed to take any action to fulfil the demands of the employees, they went on indefinite strike from 26th March, 1990 which was called off on 11th April, 1990 on the assurance from the then Chief Secretary to consider their demands sympathetically. With this background of protracted dialogue between the authorities and the representatives of the employees' union, the matter came up for decision before the meeting in Governor-in-Council held on 17th April, 1990. The Governor-in-Council took the following decision under recommendation No. 7 which was off the Agenda :—

"It should be ensured that direct recruitment against the posts of Senior Assistants (previously Assistant) as per prescribed percentage is made by the departments. The eligibility for taking the Departmental Examination for promotion to the post of Senior Assistant (previously Assistant) should be five years of service as Clerk. The employees who have put in a minimum of 18 years of service as Clerk/Senior Clerk/Junior Assistant should hence forth be exempted from passing the Assistant Grade Examination."

Keeping in view the above referred protracted agitation of the Secretariat Ministerial Staff Union and Secretariat Employees, Association and the dialogue between the authorities from time to time it transpires that the demand of the Union for exempting certain employees from qualifying Assistant Grade test for promotion to Assistant (now Senior Assistant) was conceded by the concerned authorities as genuine and therefore, the Finance Secretary undertook to examine the same keeping in view the fixed length of service from ten years or so or on attaining certain age from 45 to 50 years. Thus, it cannot be said by any stretch of imagination that off hand decision was taken by the Governor-in-Council in this regard on 17th April, 1990. The factum that the employees were earlier on indefinite strike from 26th March, 1990 to 11th April, 1990 simply shows that the pressure mounted by the employees worked as a catalytic agent to finalized their demands. This decision of the Governor-in-Council continued pending for consideration as to whether the relevant rules should be amended or instructions should be issued. Ultimately, on 21st January, 1991, the notification (Annexure P-3) was issued exempting those employees who had completed 18 years service of Clerks/Senior Clerks/Junior Assistants from passing the Assistant Grade Examination. Obviously, the State Government had taken into consideration the experience gained by such employees as Clerks during long period of 18 years of service as sufficient for enabling them to perform the duties of Assistants (now Senior Assistants) effectively. Thus, this experience of 18 years was considered as sufficient and valid reason to exempt such employees from qualifying the Assistant Grade Examination for promotion to the post of Assistant (now Senior Assistant). As already discussed, the very factum of considering 18 years of regular service as Clerks/Senior Clerks/Junior Assistants for exempting to pass the Assistant Grade Examination itself shows that the Government have considered such a long experience as sufficient/ground for exempting such persons from qualifying the test. It is not disputed that a person who had put in 18 years of service as Clerks/Senior Clerks/Junior Assistants had gained sufficient experience, so as to form a class or category by themselves. Consequently there is no escape but to conclude that the decision of the Governor-in-Council itself as well as the notification spells out the reasons justifying the expediency or necessity of exemption from passing the Assistant Grade Examination.

(21) If that is so then, it cannot be said that the Government had taken the decision on 17th April, 1990 or issued notification dated

January 21, 1991, in violation of the provisions of rule 12 of the Rules. Therefore, the notification dated January 21, 1991 is perfectly valid and legal as the State Government had issued the same in pursuance of the powers vested in it under rule 12 of the Rules. Consequently, the observations of the Division Bench at motion stage in C.W.P. No. 9828 of 1991 are correct while with utmost respect it cannot be said that the Division Bench in C.W.P. No. 13310 of 1991 have laid down the correct law.

Qua the retrospective implementation of the notification dated January 21, 1991 through clarificatory letter Annexure P-4 dated 28th June, 1991, it transpires that rule 12 of the Rules clearly provides in mandatory terms that the exemption from the operation of these rules to any class or category of employees shall be prospective only, which in turn implies that the posts of Assistant (now Senior Assistant) lying vacant prior to January 21, 1991 has to be filled up under the then existing rules because the exemption from the qualifying test, would ensure to the benefit of such persons only with effect from January 21, 1991 as they had become eligible for promotion to the post of Assistant from that day. In other words, it can be well said that the persons who had put in 18 years of regular service as Clerks/Senior Clerks/Junior Assistants and had failed to qualify the requisite test would be treated at par with those members of the service who had qualified such test for promotion to the post of Assistant (now Senior Assistant) which fell vacant on January 21, 1991 or later on or which remained vacant on 21st January, 1991 after promoting all the eligible Clerks/Senior Clerks/Junior Assistant to such posts. The observations of the Division Bench of this Court in *Charan Singh, Under Secretary and others v. The State of Punjab and others* (1), can be safely referred in this regard. The controversy in that case also pertained to the interpretation of the operation of exemption from test granted under rule 12 with effect from May 2, 1985. After elaborate discussion, it was held that such exemption shall operate prospectively and not from the date from which such persons who had been exempted from test were promoted on provisional basis to the post of Assistant (now Senior Assistant) or to any higher post. In para 15 of the Judgment, the Division Bench had summed up its findings as under :—

“It was only with a view to save the petitioners from the rigour of the 1984 Rules that the State Government thought it advisable or expedient to exempt them or their class or category of persons and passed the exemption order

Annexure P. 2. The latter part of the rule clearly lays down that such an exemption shall operate prospectively. "It is so in spite of the fact that the order of exemption is silent about the date of its effectiveness. It is because of the reason that the rule itself lays down that any exemption granted under this rule shall operate prospectively. In case the stand of the learned counsel for the petitioners is to be accepted that the exemption granted to them,—*vide* Annexure P. 2 is to be operative with effect from the respective dates of their promotions or, in other words retrospectively, it will not only be contrary to the clear language of the rule but will also render the last words "shall operate prospectively" as totally superfluous and redundant. It is one of the established principles of interpretation of statutes that no word of a statute can possibly be treated as superfluous or devoid of any meaning. Therefore, the stand of the learned counsel for the petitioner cannot possibly be accepted. The exemption granted to the petitioners,—*vide* Annexure P. 2 has to operate prospectively i.e. with effect from the date the order was passed, i.e. May 2, 1985. With the rejection of this stand of the petitioners, there is hardly any other argument on their behalf which needs to be met to uphold the consequential impugned orders or the action of the State Government. With this conclusion of ours, we also do not feel called upon to go into some of the technical matters raised on behalf of the respondents with regard to the non-impleading of the necessary or proper parties etc.

In the case in hand, the State Government by way of clarification,—*vide* impugned notification Annexure P-4 had made the operation of the order dated January 21, 1991 retrospective by treating the Clerks/Senior Clerks/Junior Assistants who have completed 18 years regular service and have been given exemption from passing the Assistant Grade Examination and are senior to those Clerks/Senior Clerks/Junior Assistants who have already passed such examination as senior because their orders of promotion are to be issued on the basis of seniority-cum-merit. For properly understanding the import of instructions (Annexure P-4), it will be worthwhile to reproduce the English translation of the same, which reads as under :—

"...

...

...

"Subject :—Exemption regarding passing of Assistant Grade Examination to those employees who have put in 18 years

service as Clerks/Senior Clerks/Junior Assistant while promoting them as Senior Assistant as per Punjab State Assistant Grade Examinations Rules, 1984.

Sir,

(22) I am directed to bring to your notice in the Punjab Government order dated 21st January, 1991 issued,—*vide* Endorsement letter No. 6/45/89-2PP/1302, dated 22nd January, 1991,—*vide* which employees who have been in regular service as Clerk/Senior Clerk/Junior Assistant for the last 18 years have been given exemption from passing Assistant Grade Examination. After issuance of this order several departments have been asking for clarifications regarding the promotions to be given to those employees, who have passed Assistant Grade Examination or to promote those Clerks/Senior Clerks/Junior Assistant who have been given exemption. After a careful analysis of this matter and keeping in view this fact that the persons who had already passed this examination and after issuance of this order dated 21st January, 1991 wherein the concerned Clerks/Senior Clerks/Junior Assistants have been given exemption from passing this examination, it has been decided that Clerks/Senior Clerks/Junior Assistant from both the categories will be promoted as per seniority-cum-merit. It means that the Clerks/Senior Clerks/Junior Assistants who have completed 18 years of regular service and who have been given exemption from passing the Assistant Grade Examination and are senior to those Clerks/Senior Clerks/Junior Assistants who have passed that examination their orders of promotion are to be issued on the basis of seniority-cum-merit.

2. Those Clerks/Senior Clerks/Junior Assistants who on 21st January, 1991 (the date from which the Clerks/Senior Clerks/Junior Assistants have been given exemption from passing the Assistant Grade Examination after putting in 18 years service) have already passed the Assistant Grade Examination and have already been promoted against the available vacancies of Senior Assistants will not be reverted on the basis of decision contained in para 1 above.

(Sd) . . . ,

Deputy Secretary Personnel.”

A bare glance through para 1 of the instructions leaves no doubt that the persons who had been exempted from passing the Assistant Grade Examination,—*vide* order dated 22nd January, 1991 and those who had already passed such examination have been treated at par and their

promotion to the next higher post will be made on the basis of seniority-cum-merit basis, which in turn implies that the persons who have been given exemption from passing the test and who are senior to those Clerks/Senior Clerks/Junior Assistants, who had already passed the examination has to be treated senior to the latter category. The instructions are altogether silent whether these pertain to the posts of Assistant (now Senior Assistant), which had already fallen vacant prior to 21st January, 1991. Thus, it can be well said that the instructions in para No. 1 are vague and make the operation of notification dated 21st January, 1991 retrospective, because by clarification, the seniority of those persons who had been exempted from qualifying the test have been kept intact *vis-a-vis* those persons who were junior to them but who had already qualified the test for promotion to the post of Assistants/Senior Assistants for promotion to the posts of Assistant.

The perusal of para 2 of these instructions reproduced above, reveals that the promotion of those Clerks/Senior Clerks/Junior Assistants, who had put in 18 years of regular service and have passed the Assistant Grade Examination has been kept intact by clarifying that the decision contained in para 1 of the instructions shall not be applicable to them. There is no indication in para 2 of the instructions that any provisional promotion has been saved. Consequently, it cannot be said that para 2 of the instructions had in any way made the operation of the order dated 21st January, 1991 operative prospectively.

(23) The apex Court in *Y. V. Rangaiah and others v. J. Sreenivasa Rao and others* (2), in para 9 of the judgment, had held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.

(24) The Full Bench of Kerala High Court in *C. I. Varghes and others v. State of Kerala and others* (3), in para 4 of the judgment, observed that the date of occurrence of the vacancy should be relevant for determining the question of promotion and not the date on which the order of promotion is passed.

(25) The Division Bench of this Court in *Deva Ram Bajaj v. State of Punjab and others* (4), while interpreting the import of Rule

(2) A.I.R. 1983 S.C. 852.

(3) 1981 (2) All India Service Law Journal 309.

(4) 1992 (1) R.S.J. 572.

12 *ibid* of the 1984 Rules also held that the exemption from qualifying the test after completion of 18 years' service will be operative for those promotional posts which had fallen vacant after 21st January, 1991.

Consequently, for the reasons recorded above, para 1 of the instructions, Annexure P, 4, so far as it violates the provisions of Rule 12 of the Rules by making the notification dated 21st January, 1991 operative retrospectively stands quashed by accepting this writ petition to that extent. It is further clarified that the promotion to the posts of Assistant (now Senior Assistant) lying vacant prior to 21st January, 1991 shall be made from the eligible candidates on the basis of then existing rules by ignoring the exemption from qualifying the test granted with effect from 21st January, 1991 to those persons who had put in 18 years of service while for promotion to the posts remaining vacant due to non-availability of eligible persons or falling vacant on 21st January, 1991 and onwards, such persons who had been exempted from qualifying the test had to be treated at par with those persons who had already qualified such test and their promotion has to be made on the basis of their original seniority-cum-merit basis as Clerks/Senior Clerks/Junior Assistants.

(26) The writ petition stands disposed of accordingly. There is, however, no order as to costs in view of the peculiar circumstances of the case.

(27) In view of the majority decision this writ petition is disposed of with no order as to costs.

R.N.R.

Before Hon'ble J. B. Garg, J.

SURINDER PAL SINGH SAINI,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Misc. No. 1920-M of 1993

October 21, 1993

Criminal Procedure Code (II of 1974)—S. 482—Insecticides Act 1968—Ss. 3(k) (1), 29(1), 24(4) and 31—Complaint filed as sample of Milron not in conformity to specifications—Quashing of complaint