

of 1949), are not applicable to the properties situate in Chandigarh, and the question as to what would be the effect of the relevant provisions of that Act in respect of some property to which the Act may apply is not being decided by us.

(13) The last contention of Mr. Mittal is based on the judgment of the Madras High Court in *Naivarani Matathil Ayya Pattar v. Krishnan and others* (1). While dealing with the provisions of sections 40 and 42 of the Madras Revenue Recovery Act (2 of 1864), a Division Bench of the Madras High Court observed that tenants holding under *kanamdar* of a property claiming a right to be paid the value of improvements made by them cannot be held to have an encumbrance over the property within the meaning of section 42, and that since the purchaser has no protection the tenants of the *kanamdar* cannot be evicted in proceedings following the sale of the property of the owner for recovery of arrears of the Government revenue under the said Madras Act. We have seen the Madras Act, but have not been able to find in it any provision relating to the matter in dispute which corresponds to the provisions of sub-section (1) of section 76 of the Act. That being so, the judgment of the Madras Court is not relevant to the issue before us. In fairness to the learned Advocate-General for the State of Haryana, it may be noticed that he raised an objection before that the main point had not at all been argued before the learned Single Judge in the manner in which it has been argued now. In view of the importance of the question involved in the relevant submission of Mr. Mittal, we allowed this point to be urged and have dealt with it.

(14) No other argument having been advanced before us, this appeal fails and is dismissed. In the circumstances of the case, however, we direct that the costs shall be borne by the parties as incurred by them.

R.N.M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Jain, JJ.

BASANT LAL MALHOTRA,—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

**Civil Writ No. 559 of 1963.**

July 31, 1968

*Punjab Civil Services Rules Volume II—Rule 4.2—Punjab High Court Rules and Orders, Volume I, Chapter 22-D—'Recruitment' and 'appointment'—Distinction*

(1) A.I.R. 1938 Madras 835.

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*between —Word “recruited” in Rule 4.2—Whether means actual appointment—Officers recruited before 11th September, 1937 appointed after that date—Whether entitled to benefit of the Rule.*

*Held*, that Rules in Chapter 22 of the Punjab High Court Rules and Orders Volume I provide for the appointment of persons as Subordinate Judges in the Punjab Civil Service (Judicial Branch) and regulate the recruitment and the conditions of service of persons appointed thereto. A clear distinction is being drawn therein between the words ‘recruitment’ and ‘appointment’. Before actual appointment is ordered, a candidate has to undergo such periods of training as are required of him under rule 6. After the formalities are completed as provided under rules up to Part ‘C’, the appointment takes place under Part ‘D’. The appointment to the post of a Subordinate Judge is made whenever a vacancy occurs in the cadre of the Judicial Branch and when the same is required to be filled, selection is made out of those persons who are recruited for this purpose and whose names exist in the register kept by the High Court. So ‘recruitment’ is only for the purpose of making up the deficiency which occurs in the cadre while ‘appointment’ means an actual act of posting a person to a particular office. The terms ‘recruitment’ and ‘appointment’ are not synonymous and connote different meanings. The term ‘recruitment’ connotes and clearly signifies enlistment, acceptance, selection or approval for appointment and not actual appointment or posting in service while ‘appointment’ means an actual act of posting a person to a particular office.

(Paras 9 and 10)

*Held*, that the word ‘recruited’ existing in rule 4.2 of the Punjab Civil Services Rules, Volume II, does not mean actual appointment and officer recruited before 11th September, 1953 and appointed after that date are entitled to the benefit of Rule 4.2.

(Paras 9 and 10)

*Case referred by the Hon’ble Mr. Justice P. D. Sharma on 25th November, 1966 to Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon’ble Mr. Justice D. K. Mahajan and the Hon’ble Mr. Justice P. C. Jain decided the case finally on 31st July, 1968.*

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondents Nos. 1 and 2 to refix the pension of the petitioner by allowing him the benefit of Rules 4.2 of the Punjab Civil Services Rules, Volume II.*

H. L. SARIN, SENIOR ADVOCATE WITH A. L. BAHARI AND SHRI A. L. BAHAL, ADVOCATES.

I. S. SAINI, ADVOCATE, FOR ADVOCATE-GENERAL.

## JUDGMENT OF THE DIVISION BENCH

JAIN, J.—This is a petition filed by Basant Lal Malhotra, retired Additional District and Sessions Judge under Articles 226 and 227 of the Constitution of India for the issuance of writ of *mandamus* or any other appropriate writ, direction or order directing respondents Nos. 1 and 2 to refix the pension of the petitioner by allowing him the benefit of rule 4.2 of the Punjab Civil Services Rules (Volume II).

(2) The facts as alleged in the petition are that the petitioner was recruited or enlisted to the P.C.S. (Judicial Cadre) as a result of the competitive examination held by the Lahore High Court in the year 1935 and thereafter having been declared medically fit and having passed the departmental examination in the higher standard and having undergone the prescribed course of six months' revenue and judicial training, the petitioner was appointed as a Subordinate Judge in October, 1938. The petitioner on acquiring superannuation at the age of 55 years eventually retired from service in April, 1962, as Additional District and Sessions Judge. According to the petitioner, the provision as contained in rule 4.2 of the Punjab Civil Services Rules (Volume II) marked a distinction between the cases of officers recruited to the service before 11th of September, 1937, and of those recruited after the said date in the matter relating to the condonation of a period not exceeding five years for the purposes of pension and on the interpretation of this rule, the petitioner claimed that his actual period of 23 years and 6 months' service be counted for the purposes of fixation of pension as 28 years and 6 months. For this purpose, the petitioner moved the Punjab Government through the Registrar, Punjab High Court in the year 1956 to obtain the confirmation for his being entitled to the benefit of five years' period of service for the purposes of fixation of pension. In due course, respondent No. 1 (State of Punjab),—*vide* its letter, dated 25th of June, 1956, sent a reply to the effect that the petitioner would not be entitled to the benefit of the said rule because he had been appointed to the P.C.S. (Judicial Branch) after 11th of September, 1937. It was further alleged that a representation was also made to the Accountant-General, Punjab at Simla, as also to the State of Punjab, but again he was informed that as he was appointed after the 11th of September, 1937, he would not be entitled to the benefit of rule 4.2 of the Pension Rules referred to above. According to the petitioner, absolutely wrong interpretation has been put on rule 4.2 as respondents 1 and 2 are

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confusing the expression 'recruitment' with the expression 'appointment'. According to the petitioner, the very fact that a candidate on recruitment to the P.C.S. (Judicial Branch) under the rules was required to produce a certificate of medical fitness and to undergo six months' revenue and judicial training receiving a stipend of Rs. 80 per mensem and to pass a departmental examination in higher standard as conditions precedent to his appointment in service, was indicative of the vast difference between the terms 'recruited' and 'appointed'. Respondents 1 and 2 in utter disregard to the difference between the said two terms have declared the petitioner as disentitled to the benefit of rule 4.2 and this action of the respondents is unwarranted and clear breach of the fundamental rules governing the pension and conditions of service of the petitioner.

(3) In the joint written statement filed on behalf of respondents 1 and 2, it was emphatically asserted that the petitioner joined service as Subordinate Judge on 4th of October, 1938, i.e., after the crucial date of 11th of September, 1937, and as such he could not claim to have been recruited to the post or service earlier than 4th of October, 1938, even though he got training for the period from 12th of March, 1937 to 2nd of August, 1937, and from 1st of September, 1937, to 10th of October, 1937. For purposes of rule 4.2, no distinction could be drawn between the expression 'recruitment' and 'appointment'.

(4) Earlier this matter came up for hearing on 25th of November, 1966, before P. D. Sharma, J., and considering the importance of the matter, it was desired that the matter be placed before a larger Bench. It is under these circumstances that the matter has been placed before us.

(5) Mr. H. L. Sarin, the learned counsel for the petitioner, submitted that there was a marked distinction between the term 'recruited' and 'appointed' and that being so, the petitioner should be considered as recruited to the P.C.S. (Judicial Branch) prior to 11th September, 1937, and was entitled to the benefit of rule 4.2 of the Punjab Civil Services Rules (Volume II).

(6) On the other hand, the learned counsel appearing on behalf of the State, contended that there was no difference between the two words 'recruitment' and 'appointment'. According to him, the word 'recruited' used in rule 4.2 was synonymous with the word

'appointed' and that the petitioner should be deemed to have been recruited or appointed on the 4th of October, 1938, and not entitled to the benefit of rule 4.2.

(7) On the above mentioned contentions of the learned counsel for the parties, the only point which requires determination is whether the petitioner was recruited before 11th September, 1937, or after this date to the P.C.S. (Judicial Branch) and was entitled to the benefit of rule 4.2 of the Punjab Civil Services Rules (Volume II). In this case, there is no dispute between the parties on the following facts: The petitioner was born on 3rd of April, 1907, and was nominated as a candidate for appointment in P.C.S. (Judicial Branch) on 26th of March, 1936. He was declared medically fit by the Standing Medical Board, Lahore, on 4th of April, 1936. He received administrative training at Lahore from 12th of March, 1937 to 11th of June, 1937, and revenue training from 12th of June, 1937, to 2nd of August, 1937, and from 1st of September, 1937 to 10th of October, 1937, on payment of a stipend of Rs. 80 per month. It is further not disputed by the learned counsel appearing on behalf of the State that in case the petitioner is deemed to be recruited before the 11th September, 1937, he is entitled to the benefit of rule 4.2.

(8) After considering the respective merits of the contentions of the learned counsel and the rules in Chapter 22 of the Rules and Orders of the Punjab High Court, Volume I, relating to appointments, etc., of the Subordinate Judges, and rule 4.2 of the Civil Services Rules, I find that there is force in the contention of the learned counsel for the petitioner. Here it is necessary to reproduce (an extract from the Punjab Government Gazette, Part I), Home Gazette Notification No. 3010-C-51/1-6094, dated 26th October, 1951, rule 4.2 of the Punjab Civil Services Rules, and rules 6 and 7 in Part 'D' of Chapter 22 of the Rules and Orders of the Punjab High Court, Volume I.

"No. 3010-G-51/1-6094: In supersession of the rules published with Punjab Government notification No. 24019, dated the 16th October, 1923, as subsequently amended and in exercise of the powers conferred by Article 234 read with the proviso to Article 309 of the Constitution of India, the following rules are made after consultation with the

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State Public Service Commission and the High Court of Punjab providing for the appointment of persons as Subordinate Judge in the Punjab Civil Service (Judicial Branch) and regulating the recruitment and the conditions of service of persons appointed thereto."

"Rule 4.2: Government servants, subject to the provisions of rule 1.2, who were recruited on or before 11th September, 1937, to any of the services or posts specified in the schedule below, at an age exceeding 25 years, may add to their service qualifying for superannuation pensions (but not for any other class of pension) the actual period, not exceeding five years, by which their age at recruitment exceeded twenty-five years. This concession will not be granted to individual Government servants appointed at an age exceeding twenty-five years to Departments or posts other than those given in the schedule below. No Government servant can claim the benefit of this rule unless his actual qualifying service at the time he quits Government service is not less than ten years".

"Rule 6, Part 'D', Chapter 22 :

On completing the Department Examination mentioned in rule 5 above, each candidate shall undergo such periods of training as are required of him before he can be appointed as a Subordinate Judge."

"Rule 7, Part 'D', Chapter 22:

Whenever it shall appear to the Judges that a vacancy or vacancies in the cadre of the Judicial Branch of the Punjab Civil Service should be filled, they will make a selection from the High Court register in the order in which the names have been entered in the register under rule 1 above. The names or name of the selected candidates will be forwarded to Government for appointment as Subordinate Judges under Article 234 of the Constitution of India. Every Subordinate Judge shall at first be appointed on probation for not less than one year."

(9) Rules in Chapter 22 provide for the appointment of persons as Subordinate Judges in the Punjab Civil Service (Judicial Branch) and regulate the recruitment and the conditions of service of persons appointed thereto as is clear from the gazette notification reproduced above. From the reading of the gazette notification and the rules made thereunder in Chapter 22, it is evident that a clear distinction is being drawn between the words 'recruitment' and 'appointment'. Before actual appointment is ordered, a candidate has to undergo such periods of training as are required of him under rule 6 reproduced above. After the formalities are completed as provided under rules up to Part 'C', the appointment takes place under Part 'D'. The appointment to the post of Subordinate Judge is made whenever a vacancy occurs in the cadre of the Judicial Branch and when the same is required to be filled, selection is made out of those persons who are recruited for this purpose and whose names exist in the register kept by the High Court. The dictionary meaning of the word 'recruit' is "fresh supply of number of persons either as additional to the previous number or to make up for the decrease". So 'recruitment' is only for the purpose of making up the deficiency which occurs in the cadre while 'appointment' means an actual act of posting a person to a particular office.

(10) After giving my thoughtful consideration to all the relevant provisions of the subject, I am led to an irresistible conclusion that the terms 'recruitment' and 'appointment' are not synonymous and connote different meanings. The term 'recruitment' connotes and clearly signifies enlistment, acceptance, selection or approval for appointment and not actual appointment or posting in service while 'appointment' means an actual act of posting a person to a particular office. In this view of the matter, the word 'recruited' existing in rule 4.2 of the Punjab Civil Services Rules, Volume II, does not mean actual appointment and the petitioner should be deemed to have been recruited on the 26th of March, 1936.

(11) Accordingly I hold that the petitioner was recruited before 11th of September, 1937, and is legally entitled to the benefits of rule 4.2 of the Punjab Civil Services Rules, Volume II.

(12) For the aforesaid reasons, this petition is allowed and respondents 1 and 2 are directed to refix the pension of the petitioner

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by allowing him the benefit of rule 4.2. In the circumstances of the case, there will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

R.N.M.

INCOME-TAX REFERENCE

Before D. K. Mahajan and P. C. Jain, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU AND KASHMIR AND HIMACHAL PRADESH, PATIALA,—Appellant

versus

NAND LAL,—Respondent.

Income-tax Reference No. 33 of 1964

August 6, 1969

*Income-tax Act (XI of 1922)—S. 28(1)(c) and 34(3)—Voluntary return filed after 4 years—Whether valid—Section (28)(1)(c)—Whether applicable—Assessment made on such return—Whether barred by time.*

*Held*, that a voluntary return filed after the expiry of four years from the assessment year is not a valid return and such a case should be regarded as if no return has been filed at all. As such, it cannot be said that there has been a concealment of the particular of income or deliberately furnishing of inaccurate particular and section 28(1)(c) of Income-tax Act, 1922 will not be applicable. Accordingly, the case will not be taken out of the operation of section 34(3) of the Act and an assessment made beyond period of four years on such return will be barred by time.

(Para 2)

*Case referred by the Income-tax Appellate Tribunal (Delhi Bench 'B') under Section 66(1) of the Income-tax Act, 1922 on 1st November, 1962 for opinion of the Hon'ble High Court on the following questions of law regarding Assessment year 1949-50:—*

"1. *Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the return filed by the assessee on*