was made by the plaintiffs which led to the change in position of the latter. The finding of the trial Court under issue No. 5 must, therefore, be affirmed.

(37) Section 27(2) to which reference has already been made is a clear answer to issue No. 6. Registration of trade-mark can have no effect on a passing-off action as such actions are clearly saved by the said provision of law.

(38) For the foregoing reasons, we find no merit in the appeal which stands dismissed with costs.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula and A. D. Koshal, JJ.

HARBANS SINGH UBEROI,—*Petitioner.*

versus

STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ No. 3158 of 1971.

October 19, 1971.

Punjab Civil Service (Executive Branch) Rules (1930)—*Rules* 5, 6(b) *and* 8—*Constitution of India* (1950)—*Article* 320(3) (b)—*Applicability of the Article to a particular service—Ways of exclusion there from—Stated—Selection and nomination to Punjab Civil Service (Executive Branch)—Consultation with Public Service Commission—Whether excluded—Person having lien on ministerial post officiating in gazetted capacity on non-ministerial post—Whether ceases to hold ministerial appointment—High Court Establishment (Appointment and Conditions of Service) Rules* (1952)—*Rule* 3—*Punjab Civil Services Rules* (1952)—*Rule* 2.40—*Post of a High Court Reader—Whether ministerial and continues to be so on attainment of gazetted rank.*

Held, that there are only two ways in which the operation of Article 320(3) (b) of the Constitution of India, 1950 can be excluded for any particular service or post. Firstly, the Governor can, in exercise of the powers

conferred on him by the proviso to clause (3) of Article 320, make regulations specifying the matters in which either generally, or in particular class of cases or in any particular circumstances, it shall not be necessary for the State Public Service Commission to be consulted as respects services and posts in connection with the affairs of a State. Secondly, the application of the relevant provision can be excluded only by the operation of some other provision contained in the constitution itself. The regulations framed under the proviso to clause (3) of Article 320 of the Constitution by the Governor of Punjab have not specified the Punjab Civil Service (Executive Branch) or nomination thereto as a matter in which the State Public Service Commission may not be consulted. There is no other provision in the Constitution which, either expressly or impliedly, aims at such an exclusion. Hence the application of Article 320(3)(b) of the Constitution to the selection or nomination of candidates for Punjab Civil Service (Executive) Branch has not been excluded by any provision of law and the State Government does not commit any irregularity in consulting the Commission in the matter of selection to the Service. (Para 9)

Held, that rule 6(b) of the Punjab Civil Service (Executive Branch) Rules 1930 only requires the holding of a ministerial "appointment". The word "appointment" has been deliberately used in this rule to distinguish it from the posting of a government servant at a particular time. As soon as a government servant is appointed to a service, he starts holding that appointment even though he may not yet have been posted on a particular job. Once a government servant holds an appointment he will continue to hold the same so long as he is either working against that appointment or holds a title to the post to which he has been substantively appointed. The word "hold" in rule 6(b) cannot be restricted to mean "occupy" i.e. actually work against. It means being invested with legal title or right to claim the post. The object of the rule is to provide an incentive to members of ministerial cadres and if the word "hold" occurring therein were to be given the restricted meaning "occupy", it is likely to defeat that object. Hence, a person holding a substantive ministerial appointment and holding lien on such a post, does not cease to hold a ministerial appointment within the meaning of rule 6(b) simply because he is officiating at the relevant time in a non-ministerial post even in a gazetted capacity.

(Para 12)

Held, that rule 3 of the High Court Establishment (Appointment and Condition of Service) Rules, 1952, provides that ministerial establishment of the High Court shall consist *inter alia* of Division 'D' of the service consisting of Readers. High Court Readers, despite being gazetted officers, and even if they happen to be in class II service, continue to be ministerial servants within the meaning of rule 2.40 of the Punjab Civil Service Rules. The duties of Readers to High Court also are predominently ministerial.

(Para 14)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, *or any other appropriate writ order or direction be issued quashing the nomination of Respondents 4 to 8 as candidates for the selection to Punjab Civil Service (Executive Branch) from Registrar A-II and further praying that Rule 8 of the Punjab Civil Services (Executive Branch) Rules 1930 be declared* ultra-vires *the Constitution of India and directing the respondents not to send the list of the selected nominees to the Punjab Public Services Commission and instead the same be sent to the Governor for appointment as provided under the Rules and further praying that the respondents be directed to consider the name of the petitioner for nomination on Register A-II and his name be sent to the Governor Punjab for appointment and also praying that during the pendency of the Writ Petition, the holding of the interviews by the Punjab Public Services Commission, be stayed.*

Kuldip Singh, Bar-at-law and R. S. Mongia and J. S. Narang, Advocates, *for the petitioner.*

Gurbachan Singh, Advocate for Advocate-General (Punjab), *for respondents 1 to 3.*

Respondents Nos. 5, 6, 8 and 9 Present in person.

JUDGMENT.

Narula, J.—(1) The following questions relating to the scope and construction of Rules 6(b) and 8(1) of the Punjab Civil Service (Executive Branch) Rules 1930 (Annexure A), hereinafter called the 1930 Rules, have been raised in this writ petition filed by Harbans Singh Uberoi, Assistant in the Punjab Raj Bhawan at Chandigarh (hereinafter referred to as the petitioner) for quashing the nomination of respondents Nos. 4 to 8 by the Chief Secretary, Punjab Government (respondent No. 2), as candidates for the selection to the Punjab Civil Service (Executive Branch) from Register A-II :—

(1) Whether a person holding a substantive ministerial appointment and holding lien on such a post can be said to have ceased to hold a ministerial appointment (within the meaning of Rule 6(b) of the 1930 Rules) merely because he is officiating at the relevant time in a non-ministerial post ?

(2) Whether there is any bar to the name of a Gazetted Officer holding a ministerial post other than that of a Personal Assistant being brought on Register A-II of accepted candidates maintained under Rule 6(b) of the 1930 Rules ?

(3) Whether a Reader to an Hon'ble Judge of the Punjab and Haryana High Court holds a ministerial post or not ?

(4) If the answer to the preceding question is in the affirmative, whether such a Reader ceases to hold a ministerial post merely because he attains a Gazetted rank ?

(5) Whether consultation with the State Public Service Commission is necessary for putting the name of any Government servant on Register A-II of accepted candidates for appointment to the Punjab Civil Service (Executive Branch) under Rules 6 and 8 of the 1930 Rules ?

(6) If no provision of law requires consultation with the State Public Service Commission, what would be the effect of such consultation being had and the selection for nomination being influenced by the opinion of the Commission ?

(2) Though a prayer had been made in the writ petition to declare Rule 8 of the 1930 Rules to be ultra vires the Constitution of India, the learned counsel for the petitioner expressly gave up that point at the hearing of the petition and did not, therefore, deal with it. The facts leading to the filing of the petition may first be briefly surveyed. The petitioner who is an Assistant in the Governor's Secretariat made a representation for being nominated to the Punjab Civil Service (Executive (Branch), hereinafter referred to as the Service. The Secretary to the Governor forwarded the petitioner's representation to the Chief Secretary, Punjab Government, for disposal. The Chief Secretary was authorised to send the nomination rolls of five eligible persons. He considered the claim of the petitioner for selection as one of the Chief Secretary's nominees. He did not, however, select the petitioner but selected respondents No. 4 to 8. Thereupon the petitioner approached this Court under Articles 226 and 227 of the Constitution for quashing the nomination of respondents No. 4 to 8 and for directing respondents No. 1 and 2 (the State of Punjab and the Chief Secretary to Punjab Government) not to send the list of the Chief Secretary's nominees to the Punjab Public Service Commission, but to send the same to the Governor. It has further been prayed that after setting aside the nomination of respondents No. 4 to 8, the other respondents (the State of Punjab, the Chief Secretary to Government, Punjab, and the Punjab Public Service Commission) may be directed to consider the name of the petitioner for nomination on Register A-II.

(3) In order to appreciate the grounds on which the above-mentioned relief has been claimed, it appears to be necessary to take notice of the relevant provisions of the 1930 Rules at this stage. Rule 5 authorises the Governor of Punjab to appoint members to the Service from time to time from amongst accepted candidates whose names have been duly entered in accordance with the 1930 Rules in one or other of the registers of accepted candidates to be maintained under those Rules. The particulars of the four registers of accepted candidates, which are required to be maintained by the Chief Secretary to the Government, are given in rule 6. Since we are concerned, in the instant case, only with Register A-II, I quote below rule 6(b) dealing with that Register:—

"6. The following Registers of accepted candidates shall be maintained by the Chief Secretary, namely:—

(a) * * * *

(b) Register A-II of members of Class III Service holding ministerial appointments accepted as candidates;

(c) * * * *

(d) * * * *

(4) Rule 8 deals with selection of candidates for Register A-II. Relevant part of that rule reads as follows:—

"8(1) Each of the authorities specified in the first column of the table below may by the first day of December each year submit to the Governor of Punjab in Form I attached to these rules the nomination rolls of such number of persons as is specified in each case in the second column of the said table from among his personal assistants not being gazetted officers or other persons holding ministerial posts, in his office or in the office subordinate to him—

Nominating Authority	Number of nominations
** **	**
Chief Secretary	5
** **	**
(2) ** **	**

(3) Unless the Governor of Punjab otherwise directs, the name of no person shall be submitted under the provisions of sub-rule (1) or sub-rule (2) who—

(a) has not completed five years' continuous Government service; and

(b) has attained the age of thirty five years on or before the first day of November immediately preceding the date of submission of names.

(4) The Governor of Punjab may select from the persons whose names are submitted under the provisions of sub-rule (1) or sub-rule (2) such persons as he may deem suitable for the Service, and the names of the persons so selected shall be entered in Register A-II."

(5) The rest of the 1930 Rules are not relevant for deciding this petition and are, therefore, not referred to.

(6) The claim of the petitioner is that none of the five persons selected by the Chief Secretary is eligible for nomination under the Rules as each of them is holding a gazetted post and none of them can be considered to be holding a ministerial post in Class III Service. The admitted relevant facts are that respondents 6 to 8 have their lien on posts of Assistants in Class III Service but are holding at present gazetted posts of Section Officers in the secretariat in officiating capacity. Respondent No. 4 similarly holds a lien on a ministerial post in Class III Service but is officiating as Deputy Director, Lotteries Department, Punjab, Chandigarh, which is a gazetted post. Respondent No. 5 is similarly officiating on the gazetted post of an Officer on Special Duty in the Election Department though he also holds a lien on his substantive post in Class III ministerial Service. Respondents 9 to 33 have been impleaded by the petitioner on the ground that their interests may also be affected in case any of the petitioner's contentions are accepted by this Court Out of them only respondenut No. 9, Shri Ajaib Singh Rana, a Reader of this Court, appeared to contest the petition. In the matter of selecting candidates for nomination to the Service, the consultation with the State Public Service Commission by the Government has also been objected to by the petitioner as being illegal.

(7) In the written statement filed on behalf of the State of Punjab the validity of the selection of respondents 4 to 8 has been supported on the ground that even those members of Class II Service, whose duties are predominantly clerical, have to be classed as ministerial servants for the purpose of rules 6 and 8 in view of the statutory note to rule 2.40 of the Punjab Civil Services Rules Volume I, Part I (Annexure R/4) which defines a ministerial Government servant. It has been further averred that persons holding ministerial gazetted posts are also eligible for the purpose of nomination to the Service and that gazetted status is disqualification only in respect of Personal Assistants and not for other ministerial government servants.

(8) It has also been contended that respondents 4 to 8 and some of the other respondents continue to hold lien against non-gazetted ministerial posts and are, therefore, eligible for nomination even though at the moment they are officiating in gazetted capacity on non-ministerial posts. Consultation with the State Public Service Commission has been supported on the ground that Article 320(3)(b) of the Constitution makes it incumbent on the Government to consult the Commission as the posts in the Service have not been taken out of the purview of the Commission. On the facts of the case it has been stated that, since respondents 4 to 8 are still officiating in gazetted capacity, they are not substantively members of Class II Service.

(9) In case of respondents 6 to 8 (viz. D. Justine, Manohar Singh and Prithipal Singh Chawla) it has further been deposed that though they are officiating as Section Officers/Superintendents in the Punjab Civil Secretariat, the duties performed by them are predominantly clerical in the spirit of the note below rule 2.40 of the Punjab Civil Service Rules, Volume I, Part I. Annexures 'R-6' and 'R-7' respectively are the copies of the recommendation made by the Punjab Government to the State Public Service Commission and the reply of the Commission agreeing that respondents 4 to 9 are eligible for nomination. In paragraph 15 of the State's return, it has been averred as below:—

> "Since the consultation with the Punjab Public Service Commission about the suitability of persons selected as nominees for appointment to PCS (Executive Branch) from Register A-II is necessary, it acts as a sufficient safeguard against the alleged arbitrary exercise of power by the Nominating Authorities. The powers to nominate have

been vested in the high dignitaries, as : the Hon'ble Judges of the High Court of Punjab, the Chief Minister, Ministers, Speaker, Punjab Vidhan Sabha, Chief Secretary, Financial Commissioners etc. etc. This in itself is adequate safeguard against arbitrariness. There is ample guidance in rules themselves, for the purpose of selection of the nominees."

The Secretary to the Punjab Public Service Commission has, in his affidavit dated September 2, 1971, deposed as under:—

"It is correct that the Punjab Public Service Commission had objected to the nomination of officials holding gazetted posts and refused to interview them but it was explained by the Chief Secretary to Government, Punjab in his letter dated the 7th April, 1971, that these officials were holding gazetted posts *in an officiating capacity only*. It was further intimated by him that (i) all these officials were holding their liens on the permanent substantive posts in Class III Service and unless their liens on Class III posts were terminated, they could not be deprived of their membership to Class III Ministerial Service; (ii) the position of these officials was to be judged from their permanent substantive status and from that angle, all these officials (except Shri Amar Nath Gupta who was a permanent Gazetted Officers) were 'ministerial Government servants within the meaning of Rule 6(b) of the Punjab Civil Service (Executive Branch) Rules, 1930; (iii) According to Rule 8(1) *ibid* 'Personal Assistants not being gazetted officers or others persons holding ministerial posts' are to be nominated for appointment to the PCS (E.B.) on Register A-II and (iv) Respondents Nos. 4, 6, 7 and 8 were permanent Assistant Section Officers (non gazetted) in Class III Service as their officiating appointments as Section Officers had been quashed by the Hon'ble High Court in Civil Writ No. 1403 of 1970 by the judgment of the Single Bench delivered on the 9th March, 1971."

In reply to the petitioner's contention about consultation with the Commission being unwarranted, it has been stated in the Commission's written statement as under:—

"There may not be any provision in Rule 8 of the Punjab Civil Service (Executive Branch) Rules, 1930 to consult

the Commission before making appointment to the PCS (Executive Branch) on Register A-II, yet Article 320(3)(b) of the Constitution of India, which over-rides these Rules, does provide for consultation with the Commission on the suitability of candidates for appointments to Civil Services and Posts."

An analytical reading of the relevant 1930 Rules shows that only such a person can be considered for being brought on Register A-II as a candidate for nomination to the Service who—

(i) is a member of some Class III Service;

(ii) is holding a ministerial appointment;

(iii) is either a non-gazetted Personal Assistant of the nominating authority;

or

is holding some other ministerial post (other than that of a Personal Assistant) in the office of the nominating authority or in any office subordinate to the nominating authority; and

(*iv*) has completed at least 5 years continuous service and has not attained the age of 35 years on the date specified in rule 8(3)(b);

or

may not have completed 5 years continuous Government service or may have attained the age of 35 years on the relevant date if the Government, that is, the State Government in the name of the Governor, has relaxed the relevant condition regarding length of service or maximum age or both as the case may be either by a general order for all candidates or by a special order in respect of any particular candidate.

There is no specific provision in the 1930 Rules requiring consultation with the State Public Service Commission in the matter of selection for Register A-II but Article 320(3)(b) of the Constitution

provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted "on the principles to be followed in making appointments to civil services and posts and in makig promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers." Whereas the argument of Mr. Kuldip Singh, the learned counsel for the petitioner, was that the application of sub-clause (b) of clause 3 of Article 320 of the Constitution has been excluded by implication by the 1930 Rules, the submission of Mr. Gurbachan Singh, the learned counsel who appeared for the State, was that no rules can abrogate *or exclude* the application of a constitutional provision. According to the State counsel, there are only two ways in which the operation of Article 320(3)(b) of the Constitution can be excluded for any particular service or post. Firstly, the Governor can, in exercise of the powers conferred on him by the proviso to clause (3) of Article 320, make regulations specifying the matters in which either generally, or in particular class of cases or in any particular circumstances, it shall not be necessary for the State Public Service Commission to be consulted as respects services and posts in connection with the affairs of a State. Secondly, the application of the relevant provision can be excluded only by the operation of some other provision contained in the Constitution itself. I find great force in this submission of Mr. Gurbachan Singh. The regulations framed under the proviso to clause (3) of Article 320 of the Constitution by the Governor of Punjab in 1955 have not specified the Service or nomination to the Service as a matter in which the State Public Service Commission may not be consulted. There is no other provision in the Constitution which, either expressly or impliedly, aims at such an exclusion. An illustration of a constitutional provision excluding the operation of any particular sub-clause of clause (3) of Article 320 by implication is available in the case of subordinate judicial services in Articles 233 to 235 of the Constitution. Sub-clause (c) of that clause provides that the State Public Service Commission shall be consulted on all disciplinary matters affecting a person serving the Government of a State. But "control" over District Courts and Courts subordinate thereto has been vested by Article 235 of the Constitution in the High Court. Their Lordships of the Supreme Court have observed at more than one place in *The State of West Bengal and another* v. *Nripendra Nath Bagchi*, (1), that

(1) A.I.R. 1966 S.C. 447.

the word "control" was used for the first time in the Constitution and is accompanied by the word "vest" which is a strong word and shows that the High Court is made the sole custodian of the control over the subordinate judiciary. In that sense, "control" does not merely envisage the power to arrange the day-to-day working of the Court but also contemplates disciplinary jurisdiction over the Presiding Officers of the subordinate courts. It was held that within the exercise of the control vested in it the High Court can hold enquiries, impose punishments other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal if granted thereby and to the giving of an opportunity requisite under Article 311 and that to hold otherwise would be to reverse the policy which has moved determinedly in this direction. The policy referred to by the Supreme Court is the policy of ensuring the independence of the judiciary in order to achieve which the separation of the Executive from the Judiciary has been effected. Article 235 of the Constitution as interpreted by the Supreme Court, therefore, rules out consultation with the State Public Service Commission on all disciplinary matters affecting the members of the subordinate judiciary for whom it enacts a special provision which excludes the application of the general provision contained in sub-clause (c) of clause (3) of Article 320 of the Constitution. If, therefore, in disciplinary matters relating to subordinate judicial services, the State Government were to consult the State Public Service Commission under Article 320(c) of the Constitution, it would amount to a consultation with an extraneous body and any action taken on such advice of an extraneous institution would amount to a nullity and be liable to be set aside on the analogy of the principles settled by the Supreme Court in *Chandra Mohan* v. *State of Uttar Pradesh and others* (2). Such a provision in Article 235 is justified because the checks and counter-checks for providing which the services of the State Public Service Commission have to be invoked is not necessary in the case of the High Court where such checks and counter-checks are already available inasmuch as administrative decision in such disciplinary matters are taken by the whole Court. In the case of selection to the Service, no such exclusion is either called for or can possibly be spelt out from any constitutional provision. Emphasis was laid by Mr. Kuldip Singh on rule 7(2), 10, 11 and 13 of the 1930 Rules. It was argued that whereas for bringing the name of a candidate for nomination to the service on Registrar A-I

(2) A.I.R. 1966 S.C. 1987.

(all Tehsildars and Naib Tehsildars accepted as candidates) it has been made obligatory for the Governor by sub-rule (2) of rule 7 to consult the Commission on the suitability of each such person as a condition precedent to the enrolment of a Tehsildar or Naib Tehsildar and such consultation has also been specifically provided by rule 13 in case of selection of names for Register 'C' and the selection itself is left to the Commission in case of Register "B", any possible reference to the Commission has been deliberately and consciously omitted from rule 8 which deals with enrolment on Register A-II. According to the learned counsel a deliberate and conscious departure from the provisions of Article 320(3)(b) has been made in Rule 8 in view of the fact that the authorities who have to recommend persons for nomination and enrolment on Register A-II (named in the schedule contained in rule 8(1) are such high authorities as the Chief Minister, the Speaker of the Vidhan Sabha, the Chief Secretary, the Judges of the High Court etc., who do not require the counter-check of consultation with the Commission. Mr. Kuldip Singh referred in this respect to the averment in paragraph 15 of the State's return (already quoted in an earlier part of this judgment) wherein it has been stated that the powers to nominate have been vested in high dignitaries, and this in itself is an adequate safeguard against arbitrariness. Though that averment has been made in reply to the charge on the vires of rule 8, which was claimed to contain an arbitrary provision, counsel submitted that the consideration in question is also valid for excluding the operation of Article 320(3) of the Constitution in regard to the nominations by those high dignitaries including the Chief Secretary. Howsoever attractive this argument may appear, there is no force in it as the constitutional requirement of Article 320(3) cannot be abrogated either by implication or even by making an express provision in rules framed by the State Government. I have already held above that the only two possible ways in which the requirement of consultation with the Commission can be abrogated is either by making a provision in the regulations framed under the proviso to Article 320(3) or by invoking some provision of the Constitution itself.

(10) Counsel for the petitioner lastly submitted that the Supreme Court having repeatedly held that non-consultation with the Commission under Article 320 is not fatal to the decision arrived at by the Government, we should hold that such consultation is not necessary. This again is a fallacious argument. Though the

requirement to consult the Commission is there, it has been held to be directory in the sence that noncompliance with that requirement would not render the action taken by the Government a nullity. This does not, however, mean that a direction can be issued to the Government not to consult the Commission where the Constitution requires the Commission to be consulted. I have, therefore, no hesitation in holding that the application of Article 320(3)(b) to the selection for nomination of candidates on Register A-II has not been excluded by any provision of law and that the State Government has not committed any irregularity in consulting the Commission in the matter of selection to the Service of respondents Nos. 4 to 8.

(11) Mr. Kuldip Singh next argued that the mere fact that respondents 4 to 8 hold gazetted posts disqualifies them from consideration for being brought on Register A-II. I am unable to find any force in this argument. Holding a gazetted post is a disqualification only for Personal Assistants of the nominating authority and not for any other ministerial Government servant. None of the contesting respondents was or is a Personal Assistant of the Chief Secretary to Punjab Government whose selection for nomination is being challenged in the instant case. It is, therefore, clear that the mere holding of gazetted posts by respondents 4 to 8 does not make them ineligible for nomination to the Service. Nor can respondent No. 9 be said to be disqualified merely because posts of Readers in the High Court have been ascribed a gazetted status.

(12) The next question which calls for decision is whether by officiating in a non-ministerial post respondents 4 to 8 have ceased to hold ministerial appointments on which they admittedly held lien. So far as rule 6(b) is concerned, it only requires the holding of a ministerial "appointment". I think, the word "appointment" has been deliberately used in the relevant rule to distinguish it from the posting of a Government servant at a particular time. As soon as a Government servant is appointed to a service, he starts holding that appointment even though he may not yet have been posted on a particular job. Once a Government servant holds an appointment he would, in my opinion, continue to hold the same so long as he is either working against that appointment or holds a title to the post to which he has substantively been appointed. Counsel contended that the word "hold" in rule 6(b) can only mean "occupy" i.e. actually work against. "To hold", submitted counsel, can only mean "to

occupy" the post. According to Mr. Kuldip Singh, a person substantively appointed to a particular cadre does not hold appointment in that cadre if he is actually working on a post in a different cadre either in an officiating capacity or otherwise. I am unable to agree with this contention. It is stated at page 406 of Volume 40 of the Corpus Juris Secundum that the word "hold" as a verb has innumerable legal definitions and that obviously its meaning depends on the context or its relation to other parts of the sentence or instrument in which it is used. Though in its primary sense, the word means "to retain" etc., in the technical sense "hold" embraces two ideas, namely, (i) that of actual possession of some subject of dominion or property and (ii) that of being invested with legal title or right to claim such possession. I am inclined to think that the word "hold" has been used in rule 6(b) in the latter sense. It is a well established principle governing interpretation of statutes that when a word employed by the legislature can be construed in more ways than one, the meaning which will further the object of the legislature is to be adopted as the one which was intended to be given to it. This principle also governs the construction of statutory rules. The object of rule 6(b) is to provide an incentive to members of ministerial cadres, and if the word "hold" occurring therein were to be given the restricted meaning "occupy", it is likely to defeat that object. Suppose a Class III official is promoted for a day as an officiating hand to a non-ministerial post falling vacant on account of the absence on leave of its regular incumbent and that day happens to be the one on which selection of candidates for nomination to Register A-II is made by the prescribed authority. According to the interpretation sought to be placed on the word "hold" by Mr. Kuldip Singh, the official cannot be considered for the nomination, even though on the very next day he ceases to hold the officiating position———a result which defeats the object of the rule and could not, therefore, have been intended by the rule-making authority. The word "hold" must thus be construed in the wider sense, in conformity with which the expression "holding ministerial appointments" in rule 6(b) would mean "actually occupying or being invested with legal title or right to hold or claim ministerial appointments. The first question posed by me in the opening part of the judgment is, therefore, decided against the petitioner as I am of the opinion, for the reasons already recorded, that a person holding a substantive ministerial appointment, and holding lien on such a post, cannot be said to have ceased to hold a ministerial appointment within the meaning of rule 6(b) simply because he is

officiating at the relevant time in a non-ministerial post. Such a right admittedly vests in the contesting respondents because they are substantive Class III ministerial Government servants and hold lien on such posts and have not been confirmed in any non-ministerial post in Class II in which they are merely officiating. It is, therefore, held that the selection of respondents 4 to 8 does not in any manner contravene rule 6(b) of the 1930 Rules.

(13) The next question which calls for decision relates to the interpretation of rule 8(1). I have already held that there is no bar to the name of a gazetted officer holding a ministerial post other than that of a Personal Assistant being brought on Register A-II of accepted candidates maintained under rule 6(b) of the 1930 Rules. The submission which has been canvassed by Mr. Kuldip Singh is that for persons other than non-gazetted Personal Assistants it is necessary that they should be "holding ministerial posts" at the relevant time. The argument was that though respondents 4 to 8 may be said to be "holding ministerial appointments" for purposes of rule 6(b) they cannot be said to be "holding ministerial posts", as a post must necessarily mean the particular post on which the concerned Government servant is actually working at the relevant time. On the other hand, Mr. Gurbachan Singh submitted that the word "appointments" and the word "posts" have been used in rule 6(b) and 8(1) in the same sense, i.e., in the sense of appointments and that in order to give sense to the rules, we must construe the word "posts" occurring in rule 8(1) as meaning "appointments". I do not think it to be necessary to go to that length for deciding this case. In the sense in which I have construed the word "hold", I think, the respondents continue to hold the ministerial posts of Assistants so long as they have a title to those posts irrespective of their actual working in some other posts in an officiating or temporary capacity. Respondents 4 to 8, therefore, continue to hold the ministerial posts of Assistants in the Chief Secretary's office despite their officiating in other posts.

(14) It was urged by the learned State counsel that on a collective reading of the Punjab Civil Secretariat (State Service Class III) Rules, 1952, and the definition of the word "ministerial" contained in rule 2.40 of the Punjab Civil Services Rules, Volume I, Part I, those memers of Class II service whose duties are predominantly clerical have to be classed as ministerial servants for the purposes of rules 6(b) and 8(1) of the 1930 Rules. "The service" has been defined in

rule 2(d) of the abovementioned 1952 Rules as the "Punjab Civil Secretariat Class III Service.". Rule 7 states that the said service shall comprise the posts shown in appendix 'B' subject to such additions and reductions in the cadre of that service which may be made by the Government either permanently or temporarily from time to time. Appendix 'B' to those Rules includes posts of at least two Superintendents and one Deputy Superintendent. Rule 2.40 above mentioned defines a ministerial servant to mean "a Government servant belonging to Provincial Service Class III, whose duties are entirely clerical, and any other class of Government servants especially defined as such by general or special order of the competent authority." The statutory note under that rule reads as follows:—

> "Those members of Class II service whose duties are predominantly clerical, shall be classed as Ministerial Servants for the purpose of this rule."

It has been contended by the learned State counsel that the duties of Superintendents or Section Officers in the Secretariat which are being performed by some of the contesting respondents are predominantly clerical and, therefore, in spite of the fact that the Superintendents or Section Officers belong to Class II Service they are still ministerial servants within the meaning of rule 2.40 and are, accordingly eligible for nomination to the Service. According to him, in so far as the Readers of the High Court are concerned, the matter is still more simple because rule 3 of the High Court Establishment (Appointment and Condition of Service) Rules, 1952, provides that ministerial establishment of the High Court shall consist *inter alia* of Division 'D' of the service consisting of Readers and High Court Readers, despite being gazetted officers, and even if they happen to be in Class II Service, therefore, continue to be members of a minsterial establishment and continue to be minsterial servants within the meaning of rule 2.40 of the Punjab Civil Services Rules. Mr. Kuldip Singh contended that duties of Superintendents in the Punjab Secretariat are not ministerial but supervisory though he conceded that the duties of a Reader of this High Court are predominantly ministerial. In any case, it was not even contested by the State Counsel that the duties of the Deputy Director of Lotteries and of the Officer on Special Duty, Election Department, are not clerical. This does not, however, make any difference to the merits of the controversy as the respondents were holding those posts in an

officiating capacity and still hold their permanent ministerial appointments as Assistants in the Secretariat.

(15) Mr. Kuldip Singh referred in this connection to an unreported judgment of their Lordships of the Supreme Court in *Chandulal* v. *Ramdas*, (3). A report of that case appears in 1969 Unreported Judgments (S.C.) 161. The question that arose for decision before their Lordships of the Supreme Court in that case related to the meaning of the expression "holding office of profit" used in the Representation of People Act. It was in that context that it was held that to "hold" meant to "occupy". Reliance was placed on the meaning ascribed to the word "hold" in the Shorter Oxford Dictionary used in connection with "position, office or quality" and the word having been equated in that connection to the word "occupy". It was held that a person cannot occupy an office until he enters upon the office and the entry upon an office is not necessarily simultaneous with the appointment to the office. If any thing, the observations of the Supreme Court referred to above support the respondents' case. Distinction has been drawn by their Lordships between entry upon an office on the one hand and appointment to the office on the other. Respondents might have entered the office of an Assistant and even walked out of it temporarly but they still hold the appointment to the post of an Assistant. Rules 3.11 to 3.16 of the Punjab Civil Services Rules which deal with the holding of lien clearly show that the title to a post is something different from the post itself. The expressions "holding of a post" and "holding of an appointment" have, in my opinion, been used in the 1930 Rules in the sense of occupying or having title to the office or the post and not in the sense of mere occupation of a post.

(16) Mr. Kuldip Singh then invited our attention to the judgment of the Supreme Court in *The State of Assam* v. *Ranga Muhammad and others*, (4). That was a case under Articles 233 and 235 of the Constitution and has no relevance to the points under consideration.

(17) Some emphasis was laid by counsel on the observations of P. C. Jain, J. in the Division Bench judgment of this Court in *Basant Lal Malhotra* v. *The State of Punjab and others*, (5), It was observed

(3) C.A. No. 1518 of 1968 decided by Supreme Court on 7th February. 1969

(4) A.I.R. 1967 S.C. 903.

(5) 1968 P.L.R. 985.

in the course of the Division Bench judgment that "recruitment" is only for the purpose of making up deficiency which occurs in a cadre while "appointment" means an actual act of posting a person to a particular office. Their Lordships of the Division Bench were concerned in that case with the distinction between "recruitment" and "appointment". These are not words of art and their exact meaning depends on the context in which they are used. I have already held that the word "appointment" has been used in rule 6(b) as a post in the service to which a Government servant has been appointed. The word "appointment" does not, therefore, in this context mean an actual act of posting to a particular office.

(18) Mr. Gurbachan Singh also referred to the judgment of the Calcutta High Court in *Baleshwar Bagarti* v. *Bhagirathi Dass* (6), and to certain observations in the judgment of the Pepsu High Court in *Mst. Ishro* v. *Om Parkash* (7), to support his submission to the effect that the expressions in question in the 1930 Rules must be interpreted "in view of the construction which has been placed upon" them for a long series of years by all concerned. He further submitted that the object of nominating the best men out of Class III Service would be defeated if it could be held that persons belonging to the Class III Service who happen to be officiating in higher posts because of their merit should be excluded from consideration. He asked us to go to the length of resorting to the principle of interpretation of statutes laid down by their Lordships of the Supreme Court in *Tirath Singh* v. *Bachittar Singh and others* (8), to the effect that "where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience of absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. "On the basis of the above mentioned principle, Mr. Gurbachan Singh asked us to read the word "appointment" in place of the word "post" in rule 8(1). I have already held that it is not necessary to go to that length in this case as a person who is working against a non-ministerial post in an officiating capacity is, in my opinion, nevertheless holding the ministerial post on which he has already been confirmed and on which he holds a lien.

(6) I.L.R. 35 Cal. 701.

(7) A.I.R. 1953 Pepsu 201.

(8) A.I.R. 1955 S.C. 830.

(19) None of the points raised by Mr. Kuldip Singh having succeeded, this petition must fail and is accordingly dismissed though without any order as to costs.

KOSHAL, J.—I agree.

N.K.S.

APPELLATE CIVIL

Before Prem Chand Pandit and Gopal Singh, JJ.

SHRI DURGA INDUSTRIES,—*Appellant.*

versus

THE UNION OF INDIA,—*Respondent.*

Regular Second Appeal No. 664 of 1967
Civil Misc. No. 1550-C of 1967.

October 20, 1971.

Railways Act (IX of 1890)—Sections 47 and 73—Goods Tarrif General Rules Part I—Rule 138—Whether administrative and ultra vires *Section 73.*

Held, that rule 138 of the Goods Tarrif General Rules Part I, makes it obligatory upon a consignee taking delivery of the goods to give his objection about the damage or loss of the goods in writing to the Station Master before taking delivery of the goods received and their removal from the premises of a ralway. Such objection recorded in writing or service of notice to that effect upon the Station Master cannot be regarded as something pertaining to the use of the railway. The expression "use of the railway" in clause (g) of Section 47 of Railways Act refers to the matters pertaining to the actual user of the railway. Rule 138, therefore, cannot be framed in pursuance of this clause. Hence the Rule is not statutory but is administrative in character and consequently not one of binding validity. (Para 23)

Held, that Section 73 of the Act makes railway administration liable for the loss, damage or non-delivery of goods in course of their transit on account of any cause except the causes constituting *vis major* and other causes referred to therein, for which the railway administration can for no fault of theirs be held responsible. But for Rule 138 of the Rules, a claimant will, under Section 73 of the Act be entitled to decree of his claim