

Before D. V. Sehgal, J.

DEVINDER SINGH and others,—Petitioners.

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 746 of 1984.

February 29, 1988.

*Punjab Public Works Department (Irrigation Branch), Zilledar's State Service Class III Rules, 1955—Rule 10 and Appendix 'B'—Government of Punjab Public Works Department (Irrigation Branch) Manual of Administration—Para 6.6—Constitution of India, 1950—Article 162—Candidate Zilledars appointed on recommendation of the Subordinate Services Selection Board—Such candidates under training required to pass departmental Zilledars Examination—Written test held—Viva voce postponed and held after declaration of result of written test—Only such candidates as selected in written test called—Postponement of interview and calling only candidates on select list—Whether vitiates selection—Deputy Collector of Circle required under Rule to assist a Sub-Committee as an expert for viva voce examination—Non-association of Deputy Collector—Effect on selection, stated—Selection—Whether void—Right to challenge Constitution of Committee—Whether right stands waived by appearance—Stoppage of payment of salary of failed candidates in the written test—Whether valid.*

*Held*, that para 6.6 of the Punjab Public Works Department (Irrigation Branch) Zilledar's State Service Class III Rules, 1955 does not run counter to the provisions of Manual of Administration.

(Para 25)

*Held*, that if the petitioners had no knowledges about the persons with their designations who constituted the Committee for the *viva voce* test, it cannot be said that some of them who had appeared for the said test waived their right to challenge the Constitution of this committee on the ground that a Deputy Collector did not assist the Committee and was in fact not associated with the committee for the *viva voce* test.

(Para 28)

*Held*, that if the Chief Engineer of his own could not curtail the right of the candidate Zilledars to appears for the *viva voce* test. Had there been an intention to limit the *viva voce* test only to those candidates who passed the written test in the three preceding subjects a definite provision to that effect would have been made.

(Para 31).

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*Held*, that by postponing the *viva voce* test, by first securing the result of the three written tests and then holding the *viva voce* test, by not calling for *viva voce* test all the candidates of the Zilladari examination, and by not associating a Deputy Collector for assistance in the *viva voce* test in the sub-committee which held the said test, the result of the examination declared to void and is, therefore, liable to be quashed. (para 32)

*Held*, that so long as the name of a selected candidate is not removed from the list he is entitled to payment of stipend/fixed salary as laid down in Appendix 'A' to the Rules. He shall continue as a member of the Service holding a post of a Zilladar candidate as laid down by rule 14 of the Rules. In fact, the Rules do not contemplate that a Zilladar candidate can be allowed to appear in the Zilladari examination once more if his name is removed from the list of the selected candidates. When the respondents allowed all the failed candidates to appear in the examination once again they treated all these persons as Zilladar candidates. They were very much members of the service and their stipend/fixed salary as provided by Appendix 'A' to the Rules could not be denied to them. (Para 35)

*Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:—*

- (i) to produce the complete records of the case;
- (ii) to quash the selections of Respondents 3 to 63;
- (iii) the orders at Annexures 'P-2' & 'P-5' be quashed;
- (iv) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;
- (v) this Hon'ble Court may also grant all the consequential reliefs in the nature of seniority, arrears of salary etc. ;
- (vi) filing of the original annexures be dispensed with ;
- (vii) the costs of this writ petition may also be awarded to the petitioners.

C.M. No. 1050 of 1987.

*Application under Order 1 Rule 10 read with section 151 C.P.C. praying that the applicant above named may kindly be allowed to be impleaded in the writ petition as one of the petitioners in the interest of justice.*

J. L. Gupta, Sr. Advocate (T. S. Dhindsa, Advocate with him) (in other writ petitions), for the Petitioners.

B. S. Malik, Addl. A.G. Haryana, for Respondents, 1 & 2.

Deepak Agnihotri, Advocate, for Respondents. 3, 4, 6 to 13, 15 to 21, 23, 25, 28, 32 to 36, 51, 56 to 59, 61 & 63.

B. N. Sharma with Kapil Sharma, R. K. Mahajan.

## JUDGMENT

*D. V. Sehgal, J.*

This judgment shall dispose of C.W.Ps. Nos. 4903 of 1983; 730, 746, 3794 and 4047 of 1984; and 4594 and 5646 of 1985; 677 and 1421 of 1986; and 129 of 1987. All these writ petitions arise out of the same set of facts but pertain to different stages in their chronological sequence. However, the crucial questions both of law and facts involved in them are common. Reference to parties, pleadings and documents shall, however, be made from C.W.P. No. 746 of 1984 unless otherwise specifically mentioned.

(2) The Subordinate Services Selection Board, Haryana (for short 'the Board'), issued two advertisements in the years 1978 and 1979 inviting applications from the eligible candidates for 20 posts and 60 posts of Zilladars respectively in the Irrigation Department, Haryana. Advertisement No. 9 of 1979 was published on 22nd December, 1979 and is Annexure P. 1. In response to these advertisements, the petitioners applied for these posts. They amongst other applicants were interviewed and ultimately the Board recommended the names of 205 candidates, including the petitioners. The recommendation was accordingly sent to the Chief Engineer, Irrigation Department, Haryana, respondent No. 2. The petitioners claim that all of them had the requisite qualifications. They are Graduates and have knowledge of Hindi up to Matriculation Standard.

(3) The Chief Engineer, Irrigation Department, Haryana, respondent No. 2,—*vide* his letter dated 3rd March, 1982 circulated a list of 79 such candidates who were appointed as Zilladar candidates on training at a fixed salary of Rs. 550 per month till the completion of their training. He issued yet another list of 126 direct candidates,—*vide* his letter dated 12th March, 1982 appointing them as candidate Zilladars under training at the same salary. The names of the petitioners figured in these lists. In this manner, all the 205 candidates recommended by the Board were so appointed by the Chief Engineer, respondent No. 2.

(4) The recruitment and conditions of service of Zilladars in the Haryana P.W.D. (Irrigation Branch) are governed by the Punjab Public Works Department (Irrigation Branch), Zilladars' State Service, Class III, Rules 1955 (for short 'the Rules'), contained in para

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7.32 of the Government of Punjab, Public Works Department (Irrigation Branch), Manual of Administration (for short 'the Manual of Administration'). Rule 6, *inter-alia*, provides that no person shall be appointed to the Service unless, in the case of direct candidates, he has passed a Degree Examination or some other equivalent examination of a recognised University. Rule 8 lays down that all appointments to the posts in the Service shall be made by the Chief Engineer. The relevant provisions of rule 10 concerning the direct candidates are to the following effect :—

"10. *Method of recruitment* :

- (a) Initial appointments to the Service shall be made to the grade of candidate Zilladars.
- (b) Prior to appointments, candidates for training shall be selected from amongst — — — — —  
— — — — —
- (i) direct candidates.  
— — — — —
- (d) The selected candidates will be required to undergo the training specified in Appendix B and on passing the examination and tests prescribed therein will be appointed as Zilladars on probation as and when posts become available."

Appendix B to the Rules referred to in rule 10(d) provides for training of Zilladar candidates for appointment as Zilladars and, *inter-alia*, lays down thus—

"Candidates provisionally selected under Rule 10(d) shall be required to undergo the following training :—

(d) *Direct Candidates* :

1. Khataunis.
2. Canal Act.
3. Revenue Manual.
4. *Viva Voce*.

Six months of training under selected Zilladars during which period they shall be required to pass the Patwar's examination referred to in rule 12 of paragraph 7.34 of this Manual. At the end of this period they shall be required to hold charge of a Patwari's section for at least one whole crop, viz., from 1st April to 30th September, or from 1st October to 31st March, or longer if necessary to ensure that they take a final measurement with the preparation of Khataunis etc. After having completed this training they shall be required to pass an examination in the tests noted in the margin in which not less than 50 per cent of the marks allotted for each subject and 66 per cent of the aggregate must be obtained in order to secure pass marks. No candidate shall be allowed to appear more than once for this examination except for special reasons in the absence of which the names of those that fail shall be removed from the list of selected candidates. On passing this examination they shall be required to undergo training for a period of about four months under a Quanungo in the Land Revenue Department and final acceptance shall depend on the result of this training. If appointed as officiating Zilladars on probation or finally accepted as 'candidate Zilladars' they shall be additional Revenue Clerks in the Circle to which they are attached.

- (2) During the above periods of training, examination and joining time, all direct candidates shall receive a subsistence allowance of Rs. 45 per mensem.

This allowance shall not be admissible during the periods they officiate as Zilladars or after appointment as Zilladars on probation.

Reference to paragraph 7.34 of "this Manual" made in Appendix B above is without doubt to the corresponding paragraph of the Manual of Administration, which contains the Punjab Public Works Department (Irrigation Branch), Patwaris' Service, Class III, Rules, 1955, and prescribe the Patwar's examination. It is further not in

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dispute that the subsistence allowance of Rs. 45 per mensem mentioned in sub-para 2 of clause (d) of Appendix B has since been raised to Rs. 550 per month.

(5) Chapter VI of the Manual of Administration makes provisions for examinations and training of the new incumbents of different services in the Public Works Department (Irrigation Branch). Para 6.6 thereof makes provision for examination for Zilladar candidates and is to the following effect:—

*“6.6. Examination for Zilladar Candidates :*

The examination for Zilladar candidates referred to in Appendix B under paragraph 7.32 will be held on the group system and the following procedure will be observed :—

- (1) The circles shall, for the purpose of this examination, be divided into three groups as follows:—
  - (a) Western Group — For candidates attached to Ferozepur Canal, Upper Bari Doab Canal and Sirhind Canal Circles.
  - (b) Central Group — For candidates attached to 1st Bhakra Main Line, Narwana, Bhakra Dam, Directorate of Construction and Plant Design and Nangal Circles.
  - (c) Eastern Group — For candidates attached to Western Jumna Canal (East). Western Jumna Canal (West) and Second Bhakra Main Line Circles.
- (2) The Superintending Engineers of the Circles in each group shall convene the committee of examination for each group in rotation in the order of circles given above or by mutual arrangement.
- (3) The committee shall consist of the Superintending Engineers convening the Board, as president, with one Executive Engineer and one Deputy Collector from his circle who shall be nominated by him.

- (4) The examination shall ordinarily be held twice a year in April and October at such dates, time, centre and place as may be fixed by the Superintending Engineer whose turn it is to convene the committee.

A candidate desiring to appear at an examination in April or October should apply to his divisional officer for permission to do so by 1st February or 1st August, respectively.

The divisional officer shall transmit such applications to his Superintending Engineer by the 15th February or the 15th August, respectively.

The Superintending Engineer of each circle shall report the names of candidates by 1st March or 1st September, respectively, to the examiner of the group, whose turn it is to arrange and supervise the examination.

- (5) The examination centre for each group will be the circle headquarters in rotation within that group, as per clause (2) above, or as otherwise directed by the Chief Engineer.
- (6) The Superintending Engineer of the circle determined by clause (2) will also supervise the examination with the assistance of the Executive Engineer and Deputy Collector selected by him,—*vide* clause (3).
- (7) The papers will be set by the examiner and the Executive Engineer and the Deputy Collector selected by him for his assistance and will be examined and marked by the officer setting the paper, the marks being subject to revision after scrutiny by the Examiner.
- (8) 100 marks will be assigned to each subject. The Canal Act and Revenue Manual papers will be of six questions with a time limit of two hours for each paper. The time limit for the Khatauni paper will be 3 hours.

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(9) The result will be communicated by the examiner to Chief Engineer and to the Superintending Engineers concerned.

(10) The condition of one's appearance in the examination as laid down in Appendix B referred to under paragraph 7.32 will normally be strictly enforced. An excuse for failure on account of sickness will not be accepted unless the candidate produces suitable certificates at the time and satisfies the examiner that he is unfit to appear.

If a Superintending Engineer recommends that a candidate be given a second opportunity to pass the examination he should at the same time report as to the candidate's general work and probable suitability for appointment to the superior revenue establishment. There is no point in giving a candidate a second chance if he is obviously unlikely to be a good Zileदार.

(11) The answer papers are to be destroyed after one year by the examiner as soon as the results have been intimated to the Chief Engineer and Superintending Engineers concerned."

(6) It is not in dispute that the Rules as also the provisions in the Manual of Administration were in force before reorganization of the erstwhile State of Punjab and are in force in the State of Haryana with effect from 1st November, 1966 when this State was carved out and came into being. Thus, the candidates who joined as candidate Zileदारs under training appeared in the Patwar's examination. Its result was declared on 20th October, 1982. Out of the total number of 188 candidates who appeared in the examination, only 74 were declared fully successful. The remaining candidates were required to re-appear in the given papers of the examination. All the candidates who appeared again were also declared successful. The candidates who thus passed the Patwar's examination were asked to work as Patwari Halqa independently for a period of six months. The petitioners were amongst those who passed the patwari's examination and worked as Patwari independently as required.

(7) To enable the candidates who had passed the Patwar's examination and had held independent charge of Patwari Halqa to appear in the departmental Zilladari examination prescribed by



Appendix B to the Rules, the Chief Engineer respondent No. 2 decided to hold the said examination. He fixed the date-sheet and appointed the supervisors for holding this examination,—*vide* his letter dated 9th May, 1983 Annexure P. 3. The date-sheet fixed was to the following effect :—

<i>Sr. No.</i>	<i>Date</i>	<i>Time</i>	<i>Name of paper.</i>
1.	25th June, 1983	8 A.M. to 11 A.M.	Khatauni.
2.	26th June, 1983	8 A.M. to 11 A.M.	Canal Act.
3.	27th June, 1983	8 A.M. to 11 A.M.	Revenue Manual.
4.	28th June, 1983	8 A.M. onwards.	<i>Viva voce</i> ( <i>Viva voce</i> will be conducted by the Supervisors of the examination of the respective Centres assisted by the Deputy Collector of his Circle).

(8) The following officers were appointed as Supervisors of the Centres indicated against each. The trainee candidate Ziladars of the Circles were required to appear in the Centre mentioned in the 'Remarks' column :—

<i>Sr. No.</i>	<i>Name of Supervisor</i>	<i>Name of Centre</i>	<i>Remarks Name of Circles/Divisions</i>
1.	Shri A. K. Malhotra, Superintending Engineer, W. J. C. (East) Circle, Delhi.	Delhi	(i) W.J.C. Feeder/Gurgaon Canal Circle, Delhi. (ii) Delhi Division of W.J.C. (East) Circle, Delhi. (iii) Haryana Division of W. J. C. (West) Circle, Rohtak. (iv) Rohtak Division of W.J.C. (West) Circle, Rohtak.
2.	Shri B. R. Chopra, Superintending Engineer, Bhakra Canal Circle, Kaithal.	Kaithal	(i) Bhakra Canal Circle, Kaithal. (ii) Karnal Division of W.J.C., East Circle. (iii) Dadupur Division of W.J.C., East Circle. (iv) Jind Division of W.J.C., West Circle, Rohtak.

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| 3. Shri R. K. Bhatia, Superintending Engineer, Hissar, Bhakra Canal Circle, Hissar. | Hissar | (i) Hissar Bhakra Canal Circle, Hissar.<br>(ii) Sirsa Bhakra Canal Circle, Sirsa.<br>(iii) Bhiwani Irrigation Circle, Bhiwani.<br>(iv) Bhiwani Irrigation Division of W.J.C. (West) Circle, Rohtak. |
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179 candidates appeared in the written test at all the three centres mentioned above. The *viva voce* test fixed for 28th June, 1983 as per the time-table was, however, postponed. It was later on fixed for 26th and 28th of August, 1983, by respondent No. 2,—*vide* his letter dated 19th August, 1983 Annexure P. 4 appended to C.W.P. No. 730 of 1984. The *viva voce* test was to be held at Karnal and Hissar respectively on these dates. The petitioners state that it later transpired that only 106 candidates were called for interview whereas 179 candidates had appeared in the written test. The result was finally declared on 28th September, 1983 and 61 candidates were declared successful,—*vide* office order of the same date Annexure P. 2 issued by respondent No. 2. The name of none of the petitioners figured in this list. Subsequently,—*vide* letter dated 7th November, 1983 Annexure P. 5 the advice given by the Administrative Officer, Irrigation Department, Haryana, on telephone was communicated to all the Superintending Engineers to the effect that pay should not be disbursed to the candidate Zilladars who have failed in the examination till further orders.

(9) The petitioners assail the action of respondents Nos. 1 and 2 postponing the *viva voce* test and subsequent constitution of the committees which conducted this test. A perusal of Annexure P. 3 shows that Sarvshri A. K. Malhotra, B. R. Chopra and R. K. Bhatia, Superintending Engineers, were appointed as Supervisors for Delhi, Kaithal and Hissar Centres respectively. These Supervisors assisted by the Deputy Collectors of their respective Circles were to conduct the *viva voce* test at their respective centres. The *viva voce* test was, however, held on 26th and 28th of August, 1983 at two centres only, viz., Karnal and Hissar. The *viva voce* test was conducted by a committee consisting of Shri K. K. Jagia, Chief Engineer respondent No. 2, and two Superintending Engineers, namely, Sarvshri J. P. Gupta and D. R. Aggarwal. No Deputy

Collector as per the provisions of para 6.6 of the Manual of Administration assisted this committee for conducting the *viva voce* test. The petitioners maintain that it was necessary to associate a Deputy Collector for the *viva voce* test as a Deputy Collector has the knowledge of the revenue law which is very essential for appointment to the post of Zilladar. The constitution of this interview committee, according to the petitioners, was, wholly illegal. According to para 6.6(6) *ibid*, the Superintending Engineer of the Circle was to supervise the entire examination including the *viva voce* test with the assistance of the Executive Engineer and the Deputy Collector selected by him.

(10) The petitioners allege that the constitution of the selection committee for *viva voce* test as also the venue for this test and the date were changed with ulterior motive to help certain candidates. They contend that since the examination including the *viva voce* test was not completed in accordance with para 6.6 *ibid* the petitioners could not be treated to have failed in the same and there was no occasion to stop the payment of salary to them. They, therefore, contend that the order Annexure P.5 to this effect is illegal. They continue to be the Zilladars under training till examination in accordance with Appendix B to the Rules and para 6.6. is held and result thereof is declared.

(11) In C.W.P. No. 730 of 1984, challenge to the result of the examination and stoppage of the fixed salary to the petitioners,—*vide* the impugned orders has been made on identical grounds. There is, however, an additional ground added to the effect that as many as 40 candidates out of 61 candidates who have been declared successful through the impugned office order were given grace marks. There is no provision for giving grace marks either in the Rules or in para 6.6 *ibid*. Therefore, the result is vitiated.

(12) It may be noted here that C.W.P. No. 746 of 1984 was admitted by a Division Bench on 24th September, 1984 and the operation of the impugned order Annexure P.5 stopping payment of salary to the petitioners was stayed. C.W.P. No. 730 of 1984 was admitted on 24th July, 1984 and operation of the similar order Annexure P.9 therein stopping payment of salary to the petitioners was stayed. It is further worthwhile to mention that C.W.P. No. 4903 of 1983 makes a similar challenge against the impugned result and the order stopping payment of salary.

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(13) Through their respective written statements, the respondents have opposed these petitions. A preliminary objection has been raised by respondents Nos. 1 and 2 to the effect that selection/appointment of candidate Zilladars is made through the Subordinate Services Selection Board, Haryana, which has not been made a party to the writ petition. It is, therefore, bad for non-joinder of a necessary party.

(14) On merits, it has been contended that para 6.6. of the Manual of Administration does not embody any statutory rules. These are mere instructions for the guidance of the departmental officers. Some of these provisions have become obsolete inasmuch as the groups of circles mentioned therein no longer exist. It is further explained that if the examinations are held by different authorities as envisaged by para 6.6 *ibid* the results are not likely to be uniform as varying standards are likely to be adopted by different examiners. In order to maintain equal and uniform standard the examination was conducted under the direct supervision of the Chief Engineer who is the appointing authority in the manner suitable under the changed circumstances. It is further contended that sub-para (d) of Appendix B to the Rules does not specify the authority who should conduct the Zilladars examination. The postponement of the *viva voce* test from 25th June, 1983 to 26th and 28th August, 1983, and granting of grace marks to the extent of 2 have been defended. It is maintained that the grace marks were granted under the orders of the Government, which has the power to relax any condition of the Rules as provided by rule 20 thereof. It is stated that the *viva voce* test was conducted by a committee consisting the Chief Engineer and two Superintending Engineers who were fully conversant with the subject by virtue of their experience and status in the department. The Deputy Collectors are subordinate to the Superintending Engineers and the Chief Engineer and their work is supervised by the latter officers. Therefore, the assistance of presence of the Deputy Collector at the time of *viva voce* test was not necessary. It is further maintained that 106 candidates who were called for interview were those who had qualified the three written papers and had a chance to get 66 per cent aggregate marks, after the marks secured by them in the *viva voce* test were added to their grading. The remaining candidates fell far behind. It would have been futile to call these remaining candidates for the *viva voce* test as even on their getting 100 per cent marks in the

*viva voce* test they would not have been declared successful in the examination. Short listing on this ground is based on well recognised principles and cannot be said to be arbitrary. It is further maintained that since the petitioners had failed in the Zilladari examination and they were not entitled to another chance to sit in the examination, their salary was rightly stopped.

(15) In C.W.Ps. Nos. 3794 and 4047 of 1984 it has been brought out that after the aforementioned three writ petitions came up for motion hearing in this court and the order stopping payment of salary to the petitioners therein had been stayed, respondents Nos. 1 and 2 with a view to render those petitions infructuous decided to hold another examination for the candidate Zilladars who had not been declared successful earlier. *Vide* letter dated 16th July, 1984 Annexure P.2 in C.W.P. No. 3794 of 1984 the Chief Engineer informed the respective Superintending Engineers that the Government in relaxation of the Rules had decided to give one more chance by holding departmental examination of the failed candidates who appeared in June, 1983 examination. The following time table for holding the second examination was prescribed:—

Serial No.	Date	Time	Paper
1.	11th September, 1984	9 AM to 12 noon	Khatauni
2.	12th September, 1984	9 AM to 12 noon	Canal Act
3.	13th September, 1984	9AM to 12 noon	Revenue Manual
4.	14th September, 1984	9 AM onwards	<i>Viva voce</i> ( <i>Viva Voce</i> will be conducted by the Supervisor of the examination to be assisted by the Deputy Collector of the Circle).

(16) Shri S. C. Ahuja, Superintending Engineer was appointed the Supervisor to conduct the second examination. The circular Annexure P.2 no doubt was in accordance with the relevant provisions but contained a rider to the effect that the roll numbers

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should be issued to the candidates for sitting in the examination after obtaining affidavits from them as per the condition imposed by the Government. The affidavit is aimed at getting an undertaking on solemn affirmation from the examinees that they will not claim any stipend (salary) from the date of the declaration of the result of the previous examination held in June, 1983 in which they had failed and will not claim as a matter of right appointment in the Government service in the event of their passing the examination/completing civil training after the abovesaid examination. The affidavit made reference to rule 9(d) of the Haryana Irrigation Department, Zilladars State Service Rules (Group 'C'), 1979. The petitioners therein claim that there are no such rules in existence. The affidavit sought to be obtained in pursuance thereof is, therefore, not valid. It was further brought out that these petitioners were not prepared to give the affidavit as required and thus did not appear in the second examination. Written statements to these two writ petitions have been filed by the respondents. It is *inter-alia*, stated therein that the rule referred to in the draft affidavit attached to ANNEXURE P.2 has been inadvertently referred to. Thus, it was admitted that the 1979 Rules to which reference is made in that said draft affidavit are not in existence. It has been further maintained that the State Government,—*vide* order dated 25th June, 1984 Annexure R.2 decided to relax the Rules. It was decided that all the failed candidates who could not pass the first examination should not be allowed any stipend from the date of declaration of the first result; if a candidate has obtained 66 per cent or above marks in any particular subject he may be allowed exemption from re-appearing in that subject and the marks obtained in that subject be added for working out the aggregate; such failed candidates shall submit an affidavit before they are allowed to sit in the second examination that they will not claim any stipend and after passing the examination in the second chance/completion of civil training they shall not claim entitlement to appointment; the candidates passing in the second chance will be considered for appointment against the vacancies available in the next two years; and in relaxation of the Rules all candidates should be given 2 per cent grace marks as due to high pass percentage very few candidates had passed. It is maintained that this order was just and valid. It was further brought out that the result of the second examination was declared on 17th September, 1984,—*vide* office order Annexure R.3. In all 78 candidates had appeared in this

examination. Out of them 31 passed the examination. It is maintained that the condition imposed requiring the candidates to give an affidavit on solemn affirmation not to claim stipend/salary and holding of the second examination in relaxation of the Rules was valid. The contention of the petitioners that the condition imposed on the candidates to furnish an affidavit and then to sit in the second examination was to circumvent the stay order passed in C.W.P.s Nos. 746 and 730 of 1984 was vehemently denied.

(17) Still later C.W.Ps Nos. 5646 of 1985 and 1421 of 1986 were filed. Through these writ petitions the validity of both the examinations, i.e. the one held in June, 1983 and the other held in September, 1984, was challenged on almost identical grounds as contained in the preceding writ petitions. A subsequent order dated 16th October, 1984 Annexure P.6 whereby as many as 86 candidates have been declared to have failed in the Zilladari Examination has also been challenged. Written statements to these writ petitions have been filed and defence has been taken on the same lines as earlier. The validity of the order Annexure P.6 has also been defended. It is maintained that when the candidates mentioned therein could not pass either the first or the second examination they were rightly declared to have failed in the said examination, and were removed from the select list from the date of declaration of the result of the second examination, i.e. 17th September, 1984.

(18) In C.W.P. No. 4594 of 1985 the result of the second examination has been challenged, *inter alia*, on the ground that the question paper of Khatauni had been set by an officiating Executive Engineer who had no knowledge or experience of preparation of Khataunis. The question paper itself provides a clear indication of lack of this knowledge and expertise. It rather shows his ignorance of the subject. It is contended that the examiner respondent No. 3 did not bother to prepare the 'Model Answer' to the question paper set by him. It was claimed that he himself could possibly not answer the questions set by him. It is maintained that the petitioner was high up in the list of successful candidates in the other subject both in the first and the second examinations. He was, therefore, shocked to know that he could not get the qualifying marks in the Khatauni paper. It is pleaded that since the petitioner got 45 marks in the Khatauni paper he should have been allowed 5 grace marks to enable him to qualify in this paper also. It is further complained that no revaluation/review of the

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answer book was allowed. The petitioner thus impugns the order dated 16th October, 1984 Annexure P.1 by which he has been declared to have failed in the second examination and prays that a direction be issued to the respondents to award him grace marks and declare him successful in the Khatauni paper. Written statement has been filed by the Chief Engineer on behalf of respondents Nos. 1 to 3. It is denied that respondents No. 3 lacked knowledge of the paper of Khatauni. It is further maintained that only two grace marks in the subject could be allowed under the Government instructions. C.M. No. 3415 of 1985 was filed by the petitioner with a request to allow him to place on the record the replication enclosed therewith. This C.M. was ordered to be heard with the main case. I find that it is in the interest of justice to allow the petitioner to place the replication on record. C.M. is consequently allowed.

(19) C.W.P. No. 677 of 1986 also poses a challenge to the result of the second examination, Annexure P. 4 therein. It is maintained that the Khatauni paper was not properly set and in fact most of the questions contained therein are not intelligible. The petitioner has filed an affidavit Annexure P. 3 of one Abhey Singh, retired Deputy Collector, Haryana, Irrigation Department, wherein he has brought out various howlers and incongruities in the question paper of Khatauni as set in the second examination. Besides challenging the order by which the petitioner has been declared to have failed in the second examination, the petitioner also prays that he should be allowed subsistence allowance/salary for the entire period. He has challenged the order dated 26th December, 1983 Annexure P. 1 by which the stipend/salary of the candidate Zilladars who had failed to pass the examination was stopped. He points out that in the case of a number of other candidate Zilladars who had failed to pass the examination the Chief Engineer,—vide letter dated 30th August, 1985 Annexure P. 8 conveyed the sanction of the Government to make payment of the stipend/salary to them in pursuance of the stay order of the Division Bench in C.W.Ps. Nos. 730 and 746 of 1984. He states that disallowance of stipend/salary to him in the circumstances amounts to discrimination. Written statement has been filed on behalf of respondents Nos. 1 and 2. They have denied any howlers or incongruities in the Khatauni paper and maintain that the same was properly set by the examiner. The petitioner had applied for revaluation/review of his answer book for the Khatauni paper but this request was rightly rejected. It is maintained that stipend/salary is allowed during the period of training and joining time. The



petitioner was, therefore, rightly denied the payment of stipend/salary. In case of the petitioners in C.W.Ps. 730 and 746 of 1984 it is admitted that in pursuance of the stay order of this Court they have been allowed stipend/salary,—*vide* order Annexure P. 8 but it is maintained that this does not amount to discrimination.

(20) The last C.W.P. No. 129 of 1987 has been filed by as many as 11 petitioners who were declared successful in the second Zilladari examination. Their challenge is confined to denial of subsistence allowance/fixed salary to them after the date of declaration of the result of the first examination,—*vide* order dated 26th December, 1983 Annexure P. 1. It is maintained that the affidavits which had been obtained from them for their eligibility in the second examination with an undertaking that they shall not claim stipend/fixed salary are the result of coercion and against the stipulation of the Rules. They point out that in the case of the petitioners in C.W.Ps. Nos. 730 and 746 of 1984 stipend had been sanctioned by the Government,—*vide* letter dated 30th August, 1985 Annexure P. 3. *Vide* a subsequent letter dated 13th November, 1985 Annexure P. 4 the Chief Engineer has conveyed the sanction of the Government for continuation of 117 training posts of Zilladars for payment of stipend at the rate of Rs. 550 per month for the period 1st March, 1984 to 28th February, 1986 or till the date of decision of this Court, whichever is earlier. They thus point out that out of 178 candidates who appeared in the first examination, barring 61 candidates who were declared successful in the same, sanction of training posts of Zilladars for grant of stipend has been accorded in respect of all the remaining 117 candidates who were declared to have failed in the first examination. Thus, there is no reason to deny payment of stipend to the petitioners who stand included in the sanction Annexure P. 4 on the mere ground that they were made to give affidavits which was laid down as a condition precedent to their taking the second examination. This petition has been opposed by the respondents. The Chief Engineer on their behalf has filed the written statement. He contends that no legal or fundamental right of the petitioners has been infringed. They are estopped from claiming subsistence allowance/fixed salary in view of the affidavits furnished by them. Their claim, therefore, merits rejection.

(21) I have heard the learned counsel for the parties. I find it convenient first to take note of the contentions raised by the learned counsel for the respondents in defence and to deal with them so as to reach at a correct finding. The first submission

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made by him is that para 6.6 of the Manual of Administration which is relied on by the petitioners has no force of law. The instructions contained therein have not been issued under Article 162 of the Constitution. It is further maintained that these instructions are bad for the reason that they are opposed to the provisions of the Rules. These were rightly not acted upon for valid reasons and no right on their basis accrues to the petitioners. It is further contended that under the Rules the Chief Engineer is the appointing authority of the Zilladars. Even if the instructions contained in Para 6.6 *ibid* are issued by the Government these are in the nature of fetters placed in the exercise of the powers by the Chief Engineer which are, therefore, bad. Another submission made is that some of the petitioners appeared in the *viva voce* test held on 26th and 28th of August, 1983. They are, therefore, estopped from challenging the validity of this test. The other petitioners did not even qualify the written test and would not have passed the examination even if 100 per cent marks were awarded to them in the *viva voce* test. Short listing was, therefore, done for valid reasons.

(22) The learned counsel for the respondents to support his above assertions has placed reliance on *Shri Tarlok Singh Pat-Patia v. The State of Punjab and others*, (1), to contend that since the instructions contained in para 6.6 have not been issued under the authority of the Government, these are not valid. He has then referred to *G. J. Fernandez v. The State of Mysore and others*, (2) and submits that Article 162 of the Constitution does not confer any power on the Government to frame rules. It only indicates the scope of the executive power of the State. The State can give administrative directions to its servants how to act in certain circumstances but that will not make such instructions statutory rules which are justiciable. He has then relied on *The Chief Secretary to the Government of Mysore, Bangalore, and another v. S. C. Chandraiah etc.* (3) to support his submission that the Manual of Administration is only a compilation of Government instructions and these instructions have no statutory force. Next he relied on *Union of India and others v. Maiji Jangammayya and others*, (4)

(1) 1974(1) S.L.R. 728.

(2) A.I.R. 1967 S.C. 1753.

(3) 1967 S.L.R. 155.

(4) 1977(1) S.L.R. 614.

and contends that there is a clear distinction between statutory Rules and administrative instructions of the Government. An administrative instruction or an order is not a statutory rule. Such instructions if not carried into effect for good reasons cannot confer any right. To support the same submission he relies on a Division Bench judgment of the Patna High Court in *Pashupati Singh and others v. The State of Bihar and others*, (5).

(23) I do not find force in these submissions made by the learned counsel for the respondents, firstly, for the reason that the Manual of Administration has been published by authority and it contains the instructions which have been issued by the Government. In *Rattan Chand, Sub Divisional Officer, v. The State of Punjab*, (6), this Court had the occasion to deal with the provisions of the Manual of Administration. Para 11.4 of this Manual came in for consideration. It was, inter-alia, observed thus—

“According to the Chief Engineer, this Manual is a compilation of Government instructions which means that these instructions can be substituted, amended, or modified by the appropriate authority. It has not been shown that the amendment has not been made by the appropriate authority. The new para 11.4 has no less force than the previous one which it has replaced. If before the amendment the Department was giving effect to the provisions of that para, it is also incumbent on the Department to give effect to the new para after it was substituted with effect from 29th January, 1968. ....”

Thus, relying on the provisions of para 11.4 of the Manual of Administration, it was held that the petitioner therein fulfilled the conditions laid down by para 11.4. He could not, therefore, be reverted to the post of Sectional Officer as long as any qualified Sectional Officer or Sectional Officer junior to him was officiating as Sub Divisional Officer.

(24) Thus, it is recognised that the Manual of Administration is published by authority and contains instructions issued by the Government which have been given effect to by the Government from time to time. There is, therefore, no reason why on one particular occasion these instructions should be deviated from. It is to be noted that while holding the second examination respondent

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(5) 1978 S.L.W.R. 496.

(6) 1969 S.L.R. 231.

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No. 2,—*vide* letter dated 16th July, 1984 once again fixed the *viva voce* test to be held on a day next following the written test in the three subjects and further directed the Superintending Engineer, who was to act as Supervisor, to take the assistance of the Deputy Collector for the said test. It is, thus, to be seen whether there was any good reason to depart from the instructions contained in para 6.6 on one particular occasion, i.e., the first Zilladari examination, which is the subject-matter of challenge.

(25) It is to be noted that Appendix B to the Rules does not provide either for the mode of holding Zilladari examination or for the maximum marks to be allotted for each subject. It further does not lay down who are the competent officers who can be the examiners. Thus, the Rules are silent so far as the infra-structure for the Zilladari examination is concerned. It has thus advisedly been provided by the Government instructions contained in para 6.6 of the Manual of Administration. The contention of the learned counsel that para 6.6 runs counter to the Rules is not correct. He no doubt points out that according to rule 8 Chief Engineer is the appointing authority. When the examination is to be conducted by the Superintending Engineers as Supervisors the Chief Engineer abdicates his functions. I do not find force in this submission. The Supervisors are to communicate the result of the examination to the Chief Engineer. Further a candidate is to be given a second opportunity to pass the examination if the Superintending Engineer recommends to him and submits a report as to the candidate's general work and probable suitability for his appointment as Zilladar. The learned counsel submitted that the Rules came into force in the year 1955, wherein the appointing authority of the Zilladars is prescribed to the Chief Engineer. He submits that it appears that earlier the Superintending Engineer was the appointing authority of the Zilladars and it was only in that situation that para 6.6 was workable. This submission, however, is without force. The learned counsel for the respondents has brought to my notice the Punjab Public Works Department (Irrigation Branch) Zilladars' Service Rules, 1943. Rule 4 thereof provides that all appointments to the posts in the Service shall be made by the Chief Engineer. Appendix B to the 1943 Rules is remarkably identical to Appendix B to the Rules. I am, therefore, not at all satisfied with the contention of the learned counsel for the respondents that para 6.6 of the Manual of Administration in any way runs counter to the provisions of the Rules.

(26) The above discussion in fact meets with the next contention of the learned counsel for the respondents to the effect that when the function of conducting the Zilladari examination is assigned to particular Superintending Engineers as Supervisors, the authority of the Chief Engineer as the appointing authority and its exercise is obstructed by the fetters placed by para 6.6 of the Manual of Administration. It may, however, be added here that it is the Chief Engineer himself who in his discretion,—*vide* letter dated 9th May, 1983 Annexure P. 3 appointed the Supervisors, fixed the three centres for the examination and also set out the timetable for conducting the examination. Through this very order he further directed that the *viva voce* test shall take place on the date following the date of the examination in the three written papers and that the *viva voce* test will be conducted by the Supervisors of the respective centres assisted by the Deputy Collectors of their Circles. This amply shows that the Chief Engineer as the appointing authority not only issued the order Annexure P. 3 consistent with para 6.6 *ibid* but in fact felt it convenient to do so. Sub-para (9) of para 6.6 *ibid* lays down that the result will be communicated by the examiner to the Chief Engineer has only to make a recommendation whether a candidate should be given a second opportunity to pass the examination. The decision as regards the final declaration of the result as also on the question whether or not second opportunity 'should be given to a candidate rests with the appointing authority, i.e., the Chief Engineer. Simply because the three groups, viz., the Western Group the Central Group and the Eastern Group, no longer exist as they were before the reorganisation of the State of Punjab on 1st November, 1966 as mentioned in sub-para (1) of para 6.6 *ibid*, the said instructions are not rendered obsolete. The Chief Engineer had in fact regrouped the existing Circles of Haryana P.W.D. (Irrigation Branch) in three groups,—*vide* his order Annexure P. 3 and thus made it consistent with the aforesaid instructions. I, therefore, reject this contention also.

(27) Reliance placed by the learned counsel for the respondents on *The Excise and Taxation Commissioner, Punjab and another v. Jagan Nath Sharma and others*, (7), *Shri Ravinder Kumar v. The State of Punjab and others*, (8), *Palwinder Singh and others v.*

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(7) 1980(2) S.L.R. 744.

(8) 1983(1) S.L.R. 247.

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*Director of Public Instruction, Punjab and others*, (9) and *Shri Dharam Pal Singh and others v. The State of Punjab and others*, (10), to support his above contention is clearly misplaced. All these authorities are distinguishable both on points of fact and law. On all fairness to the learned counsel for the respondents, I find it necessary to discuss these authorities. In *Jagan Nath Sharma's case* (supra), the Internal Committee, which was appointed under executive instructions was required to select the candidates for appointment to the posts of Excise and Taxation Inspectors. The functions of the Internal Committee were thus held by the Division Bench as not merely advisory. These indeed virtually vested this Internal Committee with the power of appointment of Inspectors, which otherwise under the relevant rules lay in the hands of the Commissioner. That is certainly not the position here. The Supervisors as per para 6.6 *ibid* were to submit their recommendations to the appointing authority, i.e. the Chief Engineer. In fact, the Chief Engineer is not supposed to be himself the examiner, conduct the examination personally and give awards on the answer books. All these functions according to the instructions have rightly been given to the supervisors. Their recommendations no doubt are subject to the final scrutiny and decision of the Chief Engineer who is to declare the results. In *Shri Ravinder Kumar's case* (supra), the Superintending Engineer of the Circle was the appointing authority. He was to make promotions from the posts of Clerks to the posts of Sub Divisional Clerks in accordance with the rules. The Chief Engineer, however, set up an Advisory Board consisting of a number of Superintending Engineers of different Circles which was to scrutinise the service record of the Clerks and then to find out whether a Clerk was fit for promotion. On the basis of the list of the selected candidates so prepared by this Advisory Board the respective Superintending Engineers of the Circles were to pass orders for promotion. This was correctly held not to be a merely advisory function. It was in fact meant to create fetters in the discretion of the Superintending Engineers concerned. This judgment has no applicability to the facts of the case in hand. In *Palwinder Singh's case* (supra) again, the appointing authority in the case of the Masters, according to the statutory rules, was the Director of Public Instruction. The Government, however, appointed a Selection Committee for recommending the

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(9) 1983(1) S.L.R. 271.

(10) 1984(1) S.L.R. 597.

appointees. This was rightly held to be taking away the power of the appointing authority. In *Shri Dharam Pal Singh's case* (supra), the appointing authority in the case of Assistants, according to the statutory rules, was the Chief Engineer. Instructions were, however, issued by the Chief Secretary to the Government for making selection for appointment to the posts of Assistants by a Committee headed by a Deputy Secretary to Government, Punjab. The Chief Engineer was required to make appointments in accordance with the recommendations of this Committee. This was rightly held to be taking away the authority of the Chief Engineer as the appointing authority. In the present case, as already observed above, the Chief Engineer in his discretion appointed the Supervisors to conduct the examination in accordance with para 6.6 *ibid.* The Supervisors were to forward their recommendations based on the result of the examinations to the Chief Engineer. These Supervisors were subordinate to the Chief Engineer and he was the ultimate and the final authority whether to accept or to turn down these recommendations.

(28) The next contention of the learned counsel for the respondents is that writ petitions have been filed by as many as 45 candidates who appeared in the *viva voce* test and ultimately filed therein. According to him, these petitioners having opted to take the *viva voce* test cannot question the constitution of the committee consisting of the Chief Engineer and the two Superintending Engineers, which conducted the *viva voce* test. They cannot contend that according to the instructions contained in para 6.6 of the Manual of Administration a Deputy Collector was required to assist the committee which conducted the *viva voce* test and his non-association is *ultra vires* the said instructions. This contention is, however, refuted by the learned counsel for the petitioners on the ground that when these petitioners appeared for the *viva voce* test they did not know who were the gentlemen constituting the committee, much less whether or not a Deputy Collector had been associated with the committee. Reliance has been placed on behalf of the respondents on *Dr. G. Sarana v. University of Lucknow and others*, (11) *Swaran Lata v. Union of India and others*, (12) and *Dr. P. Goverdhan Reddy and others v. B. Laxman and others*,

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(11) AIR 1976 S.C. 2428

(12) 1979 (I) S.I.R. 710

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(13) In *Dr. G. Sarana's case* (supra), the final Court observed thus :—

“We do not, however, consider it necessary in the present case to go into the question of reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it.”

It could not be pointed out by the respondents that any communication before hand was sent to the petitioners indicating the persons with their designations who constituted the committee for the *viva voce* test. In fact, the respondents could not satisfy me that the petitioners had any knowledge before hand about the constitution of the committee conducting the *viva voce* test. Therefore, the rule laid down in the case of *Dr. G. Sarana's* has no applicability to the facts of the case in hand. Again, in *Swaran Lata's case* (supra), it was found that the appellant therein was trying to approbate and reprobate. She had willingly, of her own accord, and without any persuasion by anyone, applied for the post, in response to the advertisement issued by the Union Public Service Commission for direct recruitment. She, therefore, took her chance and simply because the Selection Committee did not find her suitable for appointment, it was observed that she could not be heard to say that the selection of respondent No. 6 by direct recruitment through the Commission was invalid as being contrary to the directions issued by the Central Government or the Commission had exceeded its powers, usurping the functions of the Chandigarh Administration, in relaxing the essential qualifications of the candidates called for interview. She fully knew that under the terms of advertisement, the Commission had reserved to itself the power to relax any of the essential qualifications. With this full knowledge she applied for the post and she appeared at the interview. Their Lordships, therefore, held that the appellant was precluded from urging these grounds. The ratio in *Swaran Lata's case* (supra) again on facts does not apply to the present case. In *Dr. P. Goverdhan Reddy's case* (supra), the petitioner had challenged the method of



selection by oral test in the shape of interview. A Division Bench of the Andhra Pradesh High Court held that when the attack is on the ground that the method of selection by oral test in the shape of interview is itself had, the petitioner having appeared for such an oral test knowing full well that was the method adopted, ought to have questioned it before the selections were held. I am clearly of the view that the facts of the case of *Dr. P. Goverdhan Reddy* (supra), are again distinguishable. Since there is no material to counter the assertion on behalf of the petitioners that they had no knowledge about the persons with their designations who constituted the committee for the *viva voce* test, it cannot be said that some of them who had appeared for the said test waived their right to challenge the constitution of this committee on the ground that a Deputy Collector did not assist the committee and was in fact not associated with the committee for the *viva voce* test.

(29) Lastly, it is submitted by the learned counsel for the respondents that those candidates who had obtained less than 164 marks in the three written papers were rightly not called for the *viva voce* test. He submits that the method of short listing is well recognised and has been approved in *K. Rama Reddy and others v. Mysore Public Service Commission*, (14) and *V. Srikantha Excise Inspector and others v. The State of Mysore*, (15). The learned counsel for the petitioners, on the other hand, submits that there was no occasion for short-listing. In fact, *viva voce* test was one of the subjects of examination out of the four prescribed subjects. The result of all the four subjects was then to be declared and thus who had passed in all the subjects with the prescribed percentage and further obtained the prescribed percentage in the aggregate were to be declared successful. To allow time for ascertaining the result of the three written papers and after knowing the result thereof to call the candidates for the *viva voce* test was clearly meant to work in justice and there were chances of indulging in favouritism. He further submits that all the candidates had been initially selected by the Subordinate Services Selection Board. They had been duly appointed as candidate Zilladars. They had undergone the requisite training and had passed the Patwar examination and had later held independent charge of Patwar Halqas. They were limited in number. It was not a case of competition open to the candidates from the public. There

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(14) 1969 S.L.R. 703.

(15) 1970 S.L.R. 437.

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was, therefore, no question of short-listing. This, according to him, has worked injustice to the petitioners.

(30) Reference to *K. Rama Reddy's* case (supra), relied on by the respondents, shows that rule 5 of the Mysore State Civil Services (Direct Recruitment by Selection) Rules, which was the relevant statutory rule, itself laid down that for the purposes of selection of candidates for interview the Selecting Authority shall prepare a list of candidates on the basis of the percentage of total marks secured in the qualifying examination in order of merit. From amongst the candidates included in such list, as far as may be such member of candidates as is equal to four times the number of vacancies notified, selected in order of merit, shall be eligible for the interview. In *V. Srikantha's* case (supra), also the same rule was the subject-matter of consideration. Therefore, none of these two authorities has any application to the present case as in those cases the statutory rule itself provide for short-listing.

(31) The Chief Engineer respondent No. 2 of his own could not curtail the right of the candidate Zilladars to appear for the *viva voce* test. In fact, the scheme of the Rules read with Appendix B thereto and supplemented by Government instruction contained in para 6.6 *ibid* makes it clear that the examination consists of four tests, i.e. written examination in Khataunis, Canal Act and Revenue Manual, and *viva voce*. All these four tests have been allotted 100 marks each. Had there been an intention to limit the *viva voce* test only to those candidates who passed the written test in the three preceding subjects, a definite provision to that effect would have been made. The intention of the rule appears to be that the committee before which the candidates appear for the *viva voce* test is not only to judge their personality but also to test the working knowledge gained by them during the course of the training and holding of independent charge of a Patwar Halqa. They should have gained enough insight and practical experience for being appointed as Zilladars. That is why para 6.6 *ibid* provides that a Deputy Collector shall assist the committee conducting the *viva voce* test. Zilladars work directly under the control of the Deputy Collectors. He has a thorough theoretical and practical knowledge of Canal Act, Revenue Manual and preparation of Khataunis. In fact the members of the committee including the Deputy Collector are not supposed to know how the candidates appearing for the *viva voce* test have faired in the three preceding tests. That is why the *viva voce* test is fixed on the date following

the written test in the three subject and it is for this precise reason that equal maximum marks are assigned to the three subjects of the written test and the *viva voce* test. In fact, in the second examination held for the failed candidates,—*vide* Annexure P.2 in C.W.P. No. 3794 of 1984 the *viva voce* test has been conducted on the date following the written test in the three papers and the instructions contained in para 6.6 *ibid* have been followed in letter and spirit. I, therefore, agree with the learned counsel for the petitioners that by short-listing the candidates who according to the Chief Engineer could not make their grade in the written test and limiting the *viva voce* test to the top candidates respondent No. 2 violated the spirit of the Rules and the instructions which cannot be sustained.

(32) It was not disputed before me that supplementary instructions in the nature of para 6.6 *ibid* can be issued by the State Government which is competent to make the Rules provided they are not inconsistent with the Rules already framed. As I have already demonstrated above, the instructions contained in para 6.6 of the Manual of Administration simply provide the infrastructure for holding the Zilladari examination, which a candidate is required to qualify in accordance with Appendix B to the Rules. Since these administrative instructions have been flagrantly violated in the first Zilladari examination impugned in C.W.Ps Nos. 4903 of 1983, 730 and 746 of 1984 by postponing the *viva voce* test, by first securing the result of the three written tests and then holding the *viva voce* test, by not calling for *viva voce* test all the candidates of the Zilladari examination, and by not associating a Deputy Collector for assistance in the *viva voce* test in the sub-committee which held the said test, the result of the said examination declared,—*vide* office order dated 28th September, 1983 Annexure P.2 is void and, is therefore, quashed.

(33) Another interesting aspect which came to my notice is that according to Annexure P. 2 the examination is purported to have been held as prescribed in para (d) of Appendix E referred to in rule 9(d) of the Haryana Irrigation Department Zilladars (State Service Group C) Rules, 1979. A categorical challenge has been made in C.W.P. No. 3794 of 1984 to the existence of any such rules. The respondents have admitted in their written statement that the reference to the so called 1979 Rules had been wrongly made. This shows that the Chief Engineer respondent No. 2 was being wrongly guided by some draft rules which have not been notified so far and have not attained the force of law.

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(34) Now, I would take up C.W.P. Nos. 3794 and 4047 of 1984. A number of candidates who had failed in the first Zilladari examination had challenged the result of the said examination in this Court by way of civil writ petitions dealt with earlier. The Chief Engineer respondent No. 2 had stopped payment of stipend/fixed salary to them,—*vide* order dated 26th December, 1983 Annexure P. 1. The operation of this order was stayed by a Division Bench of this Court. The Chief Engineer,—*vide* letter dated 16th July, 1984 Annexure P. 2 issued a fresh date-sheet for holding a second examination in which all the candidates who had failed in the first examination were allowed to appear. The petitioners agree that Annexure P. 2 conforms to the provisions of the Rules, Appendix B thereto and para 6.6 *ibid*. It provides for written examination in Khataunis, Canal Act and Revenue Manual on 11th, 12th and 13th of September, 1984, and *viva voce* test on 14th September, 1984. It also provides that the Supervisor of the examination shall be assisted by the Deputy Collector of the Circle for conducting the *viva voce* test. They have, however, challenged the requirement contained therein that the failed candidates shall have to furnish an affidavit to the effect that they shall not claim any stipend/fixed salary from the date of declaration of the result of the previous examination held in June, 1983 in which they had failed, and that they shall not claim as a matter of right appointment in Government service in the event of their passing the examination/completing the civil training after the second examination. They contend that this condition had been illegally imposed and is not warranted by the Rules.

(35) The plea of the respondents, on the other hand, is that the failed candidates were allowed to appear in the examination by the relaxation of the Rules under rule 20 of the Rules. An order to this effect was passed by the Government,—*vide* letter dated 25th June, 1984 Annexures R. II/R. IV. It specifically lays down that all the failed candidates who could not pass the first examination will not be allowed any stipend from the date of the declaration of the result of the first examination. Such failed candidates were allowed one more chance to pass the examination but they were required to submit an affidavit before they were allowed to sit in the examination that they will not claim any stipend and after passing the examination in the second chance/completion of civil training they shall not claim entitlement for appointment. It is contended that the condition so imposed on the candidates for the

second examination is a valid one. Reference to the Rules, however, shows that such a condition could not be imposed. Clause (d) of Appendix B, *inter alia*, provides that no candidate shall be allowed to appear more than once for the examination except for special reasons in the absence of which the names of those that fail will be removed from the list of selected candidates. This means that so long as the name of a selected candidate is not removed from the list he is entitled to payment of stipend/fixed salary as laid down in Appendix A to the Rules. He shall continue as a member of the Service holding a post of a Zilladar candidate as laid down by rule 14 of the Rules. In fact, the Rules do not contemplate that a Zilladar candidate can be allowed to appear in the Zilladari examination once more if his name is removed from the list of the selected candidates. On removal of his name such a person no longer holds a post of a Zilladar candidates as provided by Appendix A. It is, therefore, clear that when respondents Nos. 1 and 2 allowed all the failed candidates to appear in the examination once again they treated all these persons as Zilladar candidates. They were very much members of the Service and their stipend/fixed salary as provided by Appendix A to the Rules could not be denied to them.

(36) Further, yet another condition to which the candidates were required to agree that they shall not claim as a matter of right appointment in Government service in the event of their passing the examination/completing civil training after the examination was also illegal. Appendix B to the Rules clearly provides that if finally accepted as candidates Zilladars after passing the examination and successful completion of the training *they shall be appointed* as officiating Zilladars on probation or additional Revenue Clerks in the Circles to which they are attached. The Rules thus contemplate that out of the Zilladar, candidates who are successful in the examination and the training those who make the higher grading shall be appointed as officiating Zilladars on probation if vacancies are available. Otherwise, such successful Zilladar candidates shall be appointed as additional Revenue Clerks in the Circles to which they are attached. The condition to which the petitioners were required to subscribe in their affidavits that they shall not claim appointment to a post is a complete negation of the above provision in the Rules. The petitioners were not selected by the Subordinate Services Selection Board and appointed as Zilladar candidates to be later rendered unemployed in spite of their being successful in the Zilladari examination and despite having successfully completed training.

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(37) It is not disputed before me that because of imposition of the above two illegal conditions many of those who had failed in the first examination did not appear in the second examination. Furthermore, I have already held above that the first examination held in the year 1983, the result of which was impugned in the earlier writ petition, was not held in accordance with law and I have quashed the result of that examination Annexure P-2 in C.W.P. No. 746 of 1984. None of the candidates who were declared successful in this result had the opportunity to appear in the second examination. Therefore, equal opportunity to all the Zilladar candidates to appear in this examination was not provided. Consequently, I hold that the result of the second examination declared by respondent No. 2,—*vide* office order dated 17th September, 1984 Annexure P. 4 to C.W.P. No. 3794 of 1984 is *ultra vires* the Rules and is, therefore, void.

(38) C.W.Ps. Nos. 5646 of 1985 and 1421 of 1986 challenge the validity of the first as well as the second Zilladari examination impugned in the earlier writ petitions. I have already held that the result of both these examinations is *ultra vires* the Rules and is, therefore, void.

(39) In C.W.Ps. Nos. 4594 of 1985 and 677 of 1986 the contention is that the question paper for Khataunis in the second Zilladari examination was full of howlers. A prayer is also made in the latter writ petition that he has been wrongly disallowed subsistence allowance. It has already been held above that the second Zilladari examination was illegal and its result has also been declared void. Since the petitioner in C.W.P. No. 677 of 1986 continued on the list of selected candidates and was in the service as a Zilladar candidate, in spite of the fact that he furnished the affidavit sought for by respondents Nos. 1 and 2, he is entitled to payment of stipend/fixed salary of Rs. 550 per month.

(40) C.W.P. No. 129 of 1987 has been filed by a successful candidate in the second examination praying for a direction to the respondents to pay him the subsistence allowance/stipend/fixed salary. For the reasons already stated above, he is entitled to the said allowance. However, as a result of the success of the earlier writ petitions the result of the second Zilladari examination held in 1984 in which he was successful shall be treated as void.

(41) It may be noted here that in C.W.P. No. 730 of 1984 there was an additional contention raised by the petitioners that as many as 40 candidates out of 61 who had passed the first Zilladari examination had been granted grace marks and that there is no provision for the grant of grace marks in the Rules. On the other hand, the stand of the respondents is that the grace marks were allowed in relaxation of the Rules by the Government by virtue of the powers vested in it under rule 20 of the Rules. In view of the fact that I have held the result of the first examination to be *ultra vires* the Rules and void, I do not consider it necessary to go into this question. Likewise, there is no need to dilate on an additional prayer made in C.W.P. No. 4594 of 1985 that in the Khataunis paper the petitioner ought to be allowed five grace marks so that he is declared successful in this paper in view of the fact that I have held the result of the second Zilladari examination to be *ultra vires* the Rules and void.

(42) As a consequence of the above discussion, I allow all these writ petitions with costs and hold that—

- (1) the result of the first Zilladari examination declared,—*vide* office order dated 28th September, 1983 Annexure P. 2 in C.W.P. No. 746 of 1984 is *ultra vires* the Rules and hence void;
- (2) the result of the second Zilladari examination declared,—*vide* office order dated 17th September, 1984 Annexure P. 4 in C.W.P. No. 3794 of 1984 is *ultra vires* the Rules and hence void; and
- (3) all the Zilladar candidates who are the petitioners in these writ petitions and respondents to some of these writ petitions continue in service as Zilladar candidates and are borne on the list of selected candidates and as such are entitled to payment of stipend/fixed salary/subsistence allowance at the rate of Rs. 550 per month all through.

I also direct the respondents to hold the Zilladari examination in accordance with the provisions of Appendix B to the Rules read with the Government instructions contained in para 6.6 of the Manual of Administration within three months from today and declare the result within two months thereafter. Till the declaration of the result all these Zilladar candidates shall be entitled to the stipend/fixed pay/subsistence allowance at the rate of Rs. 550 per month.

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After the result is declared the successful candidates shall undergo training under the Quanungos in the Land Revenue Department as provided by Appendix B to the Rules and if finally accepted as candidate Zilladars they shall be appointed as officiating Zilladars on probation or additional Revenue Clerks in the Circles to which they are attached. The names of the Zilladar candidates who fail in the examination shall be removed from the list of selected candidates from the date of declaration of the result of the examination.

(43) The costs in each petition are assessed at Rs. 500 which shall be paid by respondents Nos. 1 and 2.

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R.N.R.

FULL BENCH

Before V. Ramaswami, C.J., Ujagar Singh and G. R. Majithia, JJ.

JAGDISH LAL and others,—Petitioners.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 3310 of 1986.

May 24, 1988.

*Constitution of India, 1950—Art. 226—Regularisation of services of ad hoc temporary Class III teachers—Eligibility—Instructions making minimum one year continuous service ending April 1, 1985 a condition precedent—Break of more than 30 days during financial year on account of summer-vacation made ground for non-regularisation—Condition for regularisation i.e. one year service as on April 1, 1985—Whether should be interpreted as service of one year immediately preceding said date.*

*Held*, that there is no warrant for the assumption that the reference to completion of minimum of one year service on April 1, 1985, is a reference only to continuous employment of one year immediately preceding April 1, 1985. If the very object of regularising the services of ad hoc employees who acquire necessary experience after considerable period of service is to avoid hardship to employees as a whole and not to accentuate the problem of unemployment, we are unable to find any reason as to why we should take that the continuous service of one year immediately preceding April 1, 1985 was