

FULL BENCH

Before S. S. Sandhawalia, C.J., D. S. Tewatia and S. S. Kang, JJ.

RAJ KUMAR, A.S.I.,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 916 of 1980.

October 15, 1980.

Punjab Police Rules, 1934—Rules 13.1, 13.4, 13.9 and 13.18—Name of a Head Constable borne on List 'D'—Such Head Constable officiating against a permanent post of an Assistant Sub-Inspector—The Head Constable—Whether to be deemed on probation from the date of such officiation—Express order under rule 13.18—Whether necessary—Officiating service for more than three years—Whether results in automatic confirmation.

Held (per majority S. S. Sandhawalia, C.J. and S. S. Kang, J., D. S. Tewatia, J., contra), that in the Punjab Police Rules, 1934, the term 'officiation' and "being placed on probation" have been advisedly used as distinct and separate concepts. They cannot, therefore, be either treated or deemed to be synonymous. Consequently a mere officiation even against a permanent post of an Assistant Sub-Inspector of Police cannot be deemed to be one on probation against the said post. Rule 13.18 of the Rules envisages an express order for putting an officiating official on probation and vests a discretion in the authority to permit periods of officiating service to count towards the period of probation. Till such an order is passed the official continues only to officiate against such post. (Para 27).

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1974 (1) S.L.R. 733 DISSENTED FROM.

Held (per D. S. Tewatia, J. contra), that it would be a misnomer to call the service period of an eligible Head Constable regularly promoted as A.S.I. against a permanent vacancy as officiating period. The officiating period which rule 13.18 has in view is a service period rendered by a Head Constable when promoted to such a rank not by way of regular promotion. Need for officiating promotion can arise

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In variety of situations and in the nature of things it has to be of a short duration. In cases where there is a permanent post or permanent or regular vacancy available and a qualified person is promoted to fill in such a vacancy, then it is difficult to hold that such a promotee could be kept in officiating capacity in the said promoted post for more than the period mentioned in rule 13.18 during which his fitness and confirmation must be finally determined. It is difficult, to accept an interpretation of rule 13.18 which would permit the promotion of a senior official to be superseded and by-passed by a junior by keeping the senior in officiating capacity indefinitely. The requirement in rule 13.18 that on the conclusion of the initial probationary period or the conclusion of the extended probationary period the competent authority may either confirm the probationer or revert him leaves no scope for any doubt that the competent authority has to make up its mind on the conclusion of the probationary period whether to confirm him or to revert him. If no decision to revert him is taken within a reasonable period of the conclusion of the original period of probation and if the same by an express order had been extended, then after such extended period of probation, automatic confirmation would follow with effect from the date on which the original period or the extended period came to an end as the case may be.

(Paras 43, 44 and 55).

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—

- (i) *call for the records of the case and after its careful perusal ;*
- (ii) *issue a writ in the nature of Certiorari quashing the impugned orders annexures P-2 and P-3 to this petition.*
- (iii) *issue a writ in the nature of Mandamus directing the respondents 1 and 2 to consider the case of the petitioner for confirmation with effect from 14th June, 1974 and for sending him to the Upper School Course commencing with effect from 1st April, 1980 at Police Training College, Philltaur.*
- (iv) *any other relief which this Hon'ble Court may in the facts and circumstances of the case deem just and proper, be granted to the petitioner.*
- (v) *filing of certified copies of the annexures as required, under the High Court Rules & Orders may kindly be dispensed with, and*
- (vi) *the writ petition may be allowed with costs.*

It is further prayed that the respondents may be directed to send the petitioner for Upper School Course at Phillaur commencing from 1st April, 1980.

Case referred by Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. S. Kang on 14th May, 1980 to the Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice D. S. Tewatia, and Hon'ble Mr. Justice S. S. Kang, dated 15th October, 1980 for the decision of important question of law involved in this case.

Sarwan Singh, Advocate with Raj Kiran, Advocate, for the Petitioner.

Mohinderjit Singh Sethi, Additional A.G., for the Respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) I have the privilege of persuing the exhaustive judgment recorded by my learned brother Tewatia, J. With great deference, I would perhaps have not carried my doubts to the length of a dissent but for the fact that it appears to me that the view taken by him would render a substantial part of rule 13.18 of the Punjab Police Rules, 1934 otiose.

(2) The learned Judges of the Division Bench, in their brief order of reference to the Full Bench had indicated the question which fell for consideration. On the existing pleadings, however, the precise formulation may be as under :—

Whether a Head Constable, whose name is borne on list 'D', as prescribed by rule 13.9 of the Punjab Police Rules, 1934 when merely officiating against a permanent post of an Assistant Sub-Inspector of Police is deemed to be on probation from the date of such officiation, or an express order under rule 13.18 of the Punjab Police Rules, 1934 has to be passed for putting such an official on probation and till then he continues merely to officiate on that post ?

(3) It would be manifest that the key to the aforesaid question lies primarily in the true construction to be placed on rule 13.4 (2) and rule 13.18 of the Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules').

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(4) The facts are in a narrow compass. The petitioner holds the rank of a substantive Head Constable in the police force and his name is borne on list 'D' maintained under rule 13.9 of the Rules. On his express averments in para 3 of the writ petition, he was promoted as an officiating Assistant Sub-Inspector on June 14, 1972 in his parent district of Ludhiana. It is the common case that he continued to officiate as such till the preferring of the present petition. The primary grievance of the petitioner is directed against annexure P/2, which categorises the officials in three classes. Those in category No. 1 have been straightaway confirmed in the rank of Assistant Sub-Inspector with effect from July 15, 1979 after counting their officiating service towards probation under rule 13.18 of the Rules. Those in category No. 2 have been placed on six months' probation with effect from September 15, 1979 in the rank of Assistant Sub-Inspector after taking into consideration a period of $1\frac{1}{2}/2\frac{1}{2}$ years' officiating service towards probation under rule 13.18 of the Rules. The petitioner, however, falls in the third category and along with 38 others has been placed on two years' probation with effect from September 15, 1979 in the rank of Assistant Sub-Inspector after counting his one year's officiating service towards such probation. The basic grievance of the petitioner is that some of his colleagues who fall in categories Nos. 1 and 2 are junior to him in rank and he has, therefore, been discriminated against by the impugned order. In fact he rests his claim on the ground that having continuously officiated for seven years as an Assistant Sub-Inspector is nothing else but having served on probation against the said post and he is, therefore, entitled either to automatic confirmation or in any case to a presumption that he stands so confirmed on the expiry of the maximum period of three years prescribed by the Rules. On these premises, he also claims preference for being deputed to the Upper School Course in order of his seniority.

(5) On facts the firm stand of the respondent-State is that the petitioner was and must be deemed to be no more than officiating against the post of an Assistant Sub-Inspector till the impugned order annexure P/2 was passed, expressly placing him on probation as an Assistant Sub-Inspector for a reduced period of two years. The claim of consistent good record of the petitioner is categorically denied and in fact it is pointed out that for the year 1973-74 the petitioner had earned adverse confidential reports which clearly indicate that he carried a doubtful reputation for honesty and integrity. He was also

held up at the efficiency bar with effect from June 1, 1978 due to his unsatisfactory record of service. Consequently, when the issue of promotion and placing officials on probation was taken up,—vide annexure P/2 on the basis of the service records the same was based on the basic rationale that those who had the best service record were given the benefit of their officiating service and if the requisite time of three years had elapsed, they were straightaway confirmed as Assistant Sub-Inspectors. The next category of persons having a better record were not straightaway confirmed, but their period of officiation was taken into consideration and they were put as probationers, but the period thereof was reduced to six months' only. As regards the third category of average officers, in which the petitioner falls, and who were eligible for promotion, they have now been placed as probationers for a period of two years after counting their one year's officiating service towards the same under rule 13.18 of the Rules. Specifically, it is averred that the record of respondent No. 3 being excellent, he was confirmed straightaway whilst the record of respondents Nos. 4 to 11 being good, they were placed on a shorter period of probation. On the legal aspect, it is pointed out that the petitioner has wrongly relied on the unamended rule 13.18 which, in fact was amended with effect from April 12, 1966, which empowers the competent authority to extend the period of two years' probation by an added year. It is the stand that in the first instance all Head Constables are promoted in the officiating rank and only when substantive vacancies arise, then their names are considered for being placed on probation or confirmation under rule 13.18 of the Rules. This rule gives discretion to the competent authority to place the officer on probation or confirm him straightaway by taking into consideration his officiating service. In the passing of annexure P/2, the cases of all eligible persons were considered in this light.

(6) In order to appreciate the rival contentions, it first becomes necessary to view the broad scheme of the Rules in this context. What first calls for notice is the fact that the Punjab Police Rules, 1934 are an exhaustive Code prescribing substantially for the very peculiar needs of a large disciplined Force which is necessary and vital to an organized society. This was so broadly construed by the Full Bench in *Deputy Inspector-General of Police, Ambala Range, Ambala and another v. Shamsher Singh, constable* (1). Procedurally what calls for pointed notice here is the three-tier system envisaged

(1) 1977 S.L.R. 358.

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by the maintenance of lists 'D', 'E' and 'F' under the respective Rules. Under rule 13.9 of the Rules, list 'D' is maintained by the Superintendent of Police districtwise for that particular district. Therefore, normally the seniority and standing of a Head Constable is primarily relevant to his own particular district where he has been recruited. The next higher category is that of List 'E' of Assistant Sub-Inspectors of Police which is admittedly maintained rangewise by the Deputy Inspector-General of Police. There are three ranges in the whole of the State of Punjab comprising between 3 to 5 districts. Lastly, List 'F' pertaining to the Sub-Inspectors of Police shall be maintained in the office of the Inspector-General of Police for the whole of the State as such.

(7) In the light of the above, the admitted position that whilst seniority of a Head Constable is confined to his particular district, the substantive vacancies for the Assistant Sub-Inspectors of Police, on the other hand, arise not district-wise but range-wise which may well consist of 4 to 5 districts, deserves particular highlighting. It is this situation which explains the basic rationale of mere officiation against the post of an Assistant Sub-Inspector in contrast with a specific order placing a Head Constable on probation against such post. Rule 13.4(2) of the Rules expressly lays down that an officiating promotion to the rank of an Assistant Sub-Inspector of Police shall be made by the Superintendents of Police of the district whilst it is not in doubt that confirmation and placing expressly on probation against the said post has to be done by the Deputy Inspector-General of Police of the range as is the case in annexure P/2. Now the exigencies of service would require and the rule 13.4(2) of the Rules itself prescribes that the Superintendent of Police would himself make officiating promotion to the rank of Assistant Sub-Inspector of Police. It is evident, therefore, that such an officiation in the rank of Assistant Sub-Inspector is purely fortuitous and depends on the absolutely accidental chance of a vacancy accruing in the particular district for innumerable reasons. However, when the question of promotion to the substantive rank of Assistant Sub-Inspectors arises, then the matter has to be considered at the higher level of the range and all eligible persons from 4 to 5 districts comprised therein have to be considered and it is only then that a conscious order of putting a Head Constable on probation against the post which may lead to ultimate confirmation or of even confirming him straightaway, by giving him

the benefit of his officiating service would arise under rule 13.18 of the Rules. It appears to be plain, therefore, that the Rules clearly visualize three distinct categories of Assistant Sub-Inspectors, namely, those confirmed in the post, those placed on probation against the said post, and those merely officiating as such.

(8) Now apart from rationale and the relevant provisions of the Rules, it appears to me that the matter is virtually covered by way of analogy by a binding precedent. It is not in serious dispute that the procedure for promotion to the rank of Head Constables and to that of Assistant Sub-Inspectors is meticulously similar. Reference in this connection be made to the corresponding provisions of rule 13.8 and rule 13.9 of the Rules. The issue of deputing Head Constables and Assistant Sub-Inspectors to the Intermediate and the Upper School Courses at Phillaur came up before a Full Bench of this Court in *Sardul Singh, Head Constable v. Inspector-General of Police, Punjab and others* (2). After an exhaustive discussion of the rules, it was concluded as follows both with regard to the Head Constables and the Assistant Sub-Inspectors:—

“For the reasons given above, we are of the opinion that every Head Constable on list ‘C’ has the right to be sent for the Intermediate School Course in the order of his seniority determined in accordance with rule 13.8. While sending the Head Constables for the Intermediate School Course, the Deputy Inspector-General of Police shall first send the confirmed Head Constables and after their list is exhausted, the Head Constables on probation will be sent and last of all officiating Head Constables will be sent.”.

And again;

“..... In their cases also, the selection should be made in accordance with seniority unless any particular Assistant Sub-Inspector of Police is exempted from passing that course. While sending the Assistant Sub-Inspectors of Police for training for the Upper School Course, the confirmed Assistant Sub-Inspectors shall be considered first, thereafter the Assistant Sub-Inspectors on probation and last of all the officiating Assistant Sub-Inspectors.”

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It would be manifest from the above that the Full Bench has set its seal of approval on the three distinct categories of confirmed Assistant Sub-Inspectors and Assistant Sub-Inspectors on probation and lastly officiating Assistant Sub-Inspectors. The line betwixt all the three categories is clear and distinct and is not to be effaced. I would only notice that no challenge was posed to the correctness of the view in *Sardul Singh's case* (supra) and I see not the least reason to take a contrary view. Therefore, the question, in this Court, in a way is concluded by the binding precedent.

(9) Now the relevant rules which come in for consideration are rules 13.1, 13.4, 13.12 and 13.18 of the Rules. For facility of reference rules 13.4(2) and 13.18 of the Rules may first be set down:—

“13.4 (1) * * *;

(2) Officiating promotions to the rank of Sub-Inspector and Assistant Sub-Inspector shall be made by Superintendents of Police and Assistant Superintendent, Government Railway Police. If the flow of promotion is unevenly distributed among districts, the Deputy Inspector-General shall make suitable transfers of Assistant Sub-Inspectors and Head-Constables on the promotion lists from one district to another”.

13.18. All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him or, if it so thinks fit, extend the period of probation by one year in the aggregate and on the conclusion of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation. While on probation, officers may be reverted or their period of probation may be extended without departmental proceedings. Such reversion shall not be considered reduction in rank for the purposes of rule 16.4. This rule shall not apply to Constables and Sub-Inspectors, promoted to the selection grade, whose cases are governed by rule 13.5 and 13.14”.

At this very stage, it may be recalled that rule 13.18 was amended with effect from April 12, 1966. It appears to me that the crux of the matter herein is, whether the use of the word 'officiating' in rules 13.4(2) and 13.18 of the Rules has been used as an inter-changeable term for being placed on probation. In sum, the question is whether officiating in the post of an Assistant Sub-Inspector is synonymous with being promoted on probation to the said post? To my mind the answer must be obviously in the negative.

(10) Now the two arguments vociferously projected by Mr. Sarwan Singh, learned counsel for the petitioner were:—

- (i) that appointment against a permanent post of an Assistant Sub-Inspector, whether officiating in nature or otherwise, must necessarily be deemed as promotion on probation against the said post;
- (ii) that an express officiation against the post of an Assistant Sub-Inspector cannot be extended to a continuous period of seven years and must be deemed either as a probation for the said period or as automatic confirmation after the expiry of three years in view of rule 13.18 of the Rules.

(11) Now the basic reliance on behalf of the petitioner is on the Division Bench judgment of the Delhi High Court in *Sat Pal, A.S.I. and Ors. v. The Delhi Administration, Delhi through Lt. Governor, Delhi and Ors.* (3), and in particular observations in paras 9 and 10 of the report.

(12) It is evident that the whole submission and in substance the twin argument of the learned counsel for the petitioner stems from the judgment in *Sat Pal A.S.I. and Ors.'s case* (supra). It is, therefore, best to first consider its ratio and the extent of its applicability.

(13) Now a reference to the judgment aforesaid does undoubtedly indicate that the observations made therein would lend substantial support to the argument raised on behalf of the petitioner. However, what calls for pointed notice is the fact that their Lordships therein were construing the unamended rule 13.18 of the Punjab Police Rules as applicable to Delhi. This rule was later amended and

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significant changes were made therein. Indeed it would be meaningful to *juxta-ponere* the unamended and the amended provisions:—

R. 13.18

Unamended

All police officers promoted in rank shall be on probation for two years provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16.4.

This rule shall not apply to Constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules 13.5 and 13.14.

Amended

All police officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him or, if it so thinks fit, extend the period of probation by one year in the aggregate and on the conclusion of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation. While on probation, officers may be reverted or their period of probation may be extended without departmental proceedings. Such reversion shall not be considered reduction in rank for the purposes of rule 16.4.

This rule shall not apply to Constables and Sub-Inspectors, promoted to the selection grade, whose cases are governed by rules 13.5 and 13.14."

It will be plain from above that a significant content of the unamended rule was that in no case the period of probation could go beyond two years and virtually automatic confirmation or reversion

would follow thereafter. However, by the amendment the plain intent appears to be either to take away any automatic confirmation after a period of two years or in any case to extend the same up to three years. Such changes in language would inevitably call for notice the intention of the legislature in doing so and can inevitably lead to a different construction. In any case it would be a pit-fall to import the ratio of a judgment which pertains to a provision which is not in *pari materia* with what falls for construction before us.

(14) With great respect it seems to me that the judgment in *Sat Pal, A.S.I. and others vs. The Delhi Administration and others* (supra) did not adequately advert to and, therefore, failed to construe the true import of rule 13.4(2) and the earlier rule 13.9(2) which in express and distinct terms mention officiating promotion and substantive promotion to the rank of Assistant Sub-Inspectors. Not only that even the authority who was entitled to make officiating promotion was different from that entitled to make substantive promotion, the former being by the Superintendent of Police and the latter by the Deputy Inspector-General of Police. The criterion for making these promotions has been separately prescribed, one is to be made in accordance with the principles laid in rule 13.1 and the other in accordance with rule 13.4(2).

(15) Yet again if *Sat Pal's case* is to be viewed as an authority for the proposition that 'officiation' and 'being placed on probation' are synonymous terms then the same would come in direct conflict with the Full Bench judgment of this court in *Sardul Singh, Head Constable v. Inspector-General of Police* (supra), which has already been noticed in detail earlier. It is patent that this authority was not brought to the notice of the Delhi Bench but is inevitably binding on this Court and no challenge to its correctness was even remotely laid before us.

(16) Lastly the operative part of the judgment and the actual relief granted therein plainly and substantially whittle down completely the observations made in paragraphs 9 and 10 of the report and clearly militates against any concept of an automatic confirmation. On the facts it was the settled and admitted position that at least two of the petitioners had officiated continuously for a number of years against *ad hoc* vacancies on the posts of Assistant

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Sub-Inspectors. The Bench did not hold that by virtue of that officiation they must be deemed to be on probation and would, therefore, stand confirmed which would have been the inevitable result if there was any automatic confirmation under the unamended rule 13.18. In fact the relief granted virtually admitted the theory of officiation by merely directing the respondent-State to consider them at all stages when they could have become probationers or could have been substantively promoted.

(17) For the aforesaid reasons *Sat Pal's case* (supra) appears to me as plainly distinguishable but in case it is to be deemed as an authority for the proposition being canvassed on behalf of the petitioners then I would even respectfully dissent from the same.

(18) Once the aforesaid judgment is out of the way the issue appears to be rather plain both on principle and the existing statutory provisions. Perhaps the rationale for the three-tier system of officiation, being placed on probation and substantive promotion is to be found in both the quantity and the quality of the Police Force. The disciplined nature of this body and the necessity of ensuring both efficiency and integrity in the large number which constitutes its ranks necessitates the vesting of authority in the senior officials so as to chisel the subordinates till they are finally polished to be fit for confirmation. Therefore, the distinction and necessity of three concepts or steps, namely, the initial officiation, being placed on probation and the final substantive promotion as against the usual twin ones of probation and confirmation in the other Civil services.

(19) Emphasis has then been rightly placed on rule 13.4(2) of the Rules by the respondent-State to highlight the fact that this provision in no uncertain terms mentions officiating promotion to the rank of the Assistant Sub-Inspectors and expressly the authority competent to do so, namely, the Superintendent of Police. This may well envisage even a regular order to the effect that the official concerned has been promoted in an officiating capacity. By way of analogy, reference is also called for to rule 13.4(1) of the Rules which again in identical terms talks of officiating promotions to the rank of the Inspectors of Police. The rule, therefore, in no uncertain terms envisages a mere officiation against the post of an Assistant Sub-Inspector in contra-distinction to the other modes of promotion to the same rank.

(20) Coming next to rule 13.18 of the Rules itself, it may be noticed at the very outset that there was not the least challenge to the constitutionality or the vires thereof. Only rival interpretations thereof were sought on either side. Now the provisions of this rule are plainly indicative of the fact that officiating service and probation are distinct and separate terms. In terms, it warrants that only in specific cases the period of officiating service may be counted for the express purpose of reducing the statutory period of probations for two years which is now extendable to three years. If it were to be said that officiation and probation are identical, then the opening part of the rule providing for the conversion of the officiating period to reduce the period of probation would lose all meaning and content. To what purpose and effect is the officiating period to be counted for the reduction of the probationary period if the officiation is to be itself considered as synonymous with probation ?

(21) Reading the two rules—13.4 and 13.18 of the Rules, together, it appears to me that the terminology of officiation is used in contradistinction to and distinctly separate from being placed on probation. Officiation is placed at a lower level than probation and only as a discretionary power, it is possible for the authorities to utilize it for the purpose of the reduction of the prescribed periods of probation. The two concepts appear to be sharply divided and distinctly well understood. To my mind it would not be possible to efface this distinction and to attempt to use them as inter-changeable or synonymous terms. The well settled canon of construction is that every word used in a statute must be given a meaning and nothing is to be construed as otiose or, without purpose. With great respect treating officiation and placed on probation which have been separately and advisedly used by the law makers as synonymous would, in my humble opinion, result in the infraction of the aforementioned twin rule.

(22) Again I take the view that the learned counsel for the respondent-State was right in his stand that the nature of officiation does not either change or vary by the nature of the post against which a person officiates. The statutory rules do not merely contemplate 'officiating' against a temporary vacancy only. To hold so, by a process of interpretation would, in my view, be unsupportable. The language in the statute is unlimited in its sweep. Therefore, officiation may well be against a wholly temporary vacancy as also against a regular or permanent vacancy. The framers had envisaged

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'officiation' against all kinds of vacancies. In my view permanent vacancies cannot possibly be excluded from the concept of an officiation against them.

(23) Yet again the stand that 'officiation' must necessarily be of a fleeting or a very short duration is unsupported by principle or authority. Admittedly, there is no rule or statutory instruction which prescribes that officiation must be for a short period or that it cannot continue beyond a specific time. Indeed the firm stand of Mr. Sethi, learned counsel for the respondent-State is that officiation may be against a permanent vacancy and the exigency of service so requiring it may be of considerable length. Reliance in this context was placed on *Sukhbans Singh v. State of Punjab* (4).

(23) In *Sukhbans Singh's case* (supra) the appellant had been directly recruited as a Tehsildar and was appointed as an Extra-Assistant Commissioner on probation in the year 1945. He continued to officiate as such for seven years when he was reverted on the 20th of May, 1952. He claimed to have been automatically confirmed in the higher rank. Negating such a claim and reversing the view of the High Court, their Lordships observed as follows:—

“* * *. If the learned Judge meant by all this that a probationer must be deemed to have been confirmed in his post by sheer lapse of time we think, with respect, that he was in error. A probationer cannot, as rightly pointed out by the Division Bench, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. The rules governing the Provincial Civil Services of Punjab do not contain any provision whereby a probationer at the end of the probationary period is automatically absorbed as a permanent member of the Civil Service”.

and again—

“This argument assumes that a probationer who continues to be such without being reverted after the expiry of the period of probation has a legal right to be confirmed or

(4) A.I.R. 1962 S.C. 1711.

to be treated as if he were confirmed. The rule in question says no more than this that at the end of the probationary period the probationer, unless reverted or absorbed in a substantive post will be eligible for being made permanent. In other words it means that he will continue to be a probationer unless he is reverted or absorbed in a permanent post. But the very fact that a person is a probationer implies that he has to prove his worth, his suitability for the higher post in which he is officiating. If his work is not found to be satisfactory he will be liable to be reverted to his original post even without assigning any reason. It would, therefore, not be correct to say that a probationer has any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in no better position".

It would be manifest from the aforesaid enunciation of the law that the mere efflux of time cannot by itself lead to any automatic confirmation.

(24) If in essence 'officiation' and 'being placed on probation' are distinct and separate terms then the mere length of time of officiating cannot convert it into a deemed probation. On principle such an interpretation does not commend itself to me and as would appear hereafter precedent is equally to the same effect.

(25) In *Union of India v. Prem Parkash Midha*, (5), a similar question arose—whether a long continued temporary service would convert into one of quasi-permanent nature. Reversing the view of the District Judge on this point their Lordships observed as follows:—

"In our judgment the District Judge was in error in so holding. It is common ground that no order confirming the respondent as a quasi-permanent servant was passed. This Court has held in *Champaklal v. Union of India*, (6), that a public servant in temporary employment, by mere length of service cannot claim the status of a 'quasi-permanent' employee; he may acquire that status only by an express declaration".

(5) 1969 S.L.R. 655.

(6) (1964) S.C.R. 190.

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Yet again it appears to me that any deemed probation cannot ripen into an automatic confirmation on the very day of the expiry of the period of probation. Reference on this point has already been made in detail in *Sukhbans Singh's case* (supra). It is unnecessary to dilate on this issue because it appears to be now equally well-settled by the recent Full Bench decision of this Court in *Baldev Singh v. State of Punjab* (7). Therein after referring to *Shri Kedar Nath Bahl v. The State of Punjab and others* (8); *Hari Singh Mann v. The State of Punjab and others* (9), and *The State of Punjab v. Dharam Singh* (10), it was concluded as follows:—

“It appears to me that both on principle and precedent any theory of automatic confirmation cannot now be easily supported”.

(26) Now the case primarily covering the point is *Baij Nath v. State of Punjab* (11). Therein an identical point arose with regard to the construction of rule 13.18 of the Punjab Police Rules, R. N. Mittal J., concluded as follows:—

“From a reading of the rule, it is evident that unless an officer is put on probation, the said rule does not come into operation. The words ‘permit periods of officiating services to count towards the period of probation’ are important. From the aforesaid words, it is evident that the aforesaid rule will be applicable only if an officer is put on probation and not if he is officiating in a higher post”.

I entirely concur with the aforesaid enunciation of the law and would wish to reiterate that before us no challenge to the constitutionality of rule 13.18 of the Rules was even remotely raised on behalf of the writ-petitioner.

(27) I would conclude, therefore, that in the relevant rules the terms ‘officiation’ and being placed on probation have been advisedly used as distinct and separate concepts. They cannot, therefore, be

(7) C.W. 2850/78, decided on 11th September, 1980.

(8) 1972 S.L.R. 320.

(9) A.I.R. 1974 S.C. 2263.

(10) 1968 S.L.R. 247.

(11) C.W. 2648/71, decided on 7th March, 1980.

either treated or deemed to be synonymous. Consequently a mere officiation even against a permanent post of an Assistant Sub-Inspector of Police cannot be deemed to be one on probation against the said post. Rule 13.18 of the Rules in my view envisages an express order for putting an officiating official on probation and vests a discretion in the authority to permit periods of officiating service to count towards the period of probation. Till such an order is passed the official continues only to officiate against such post. The answer to the question formulated in the opening part of the judgment is rendered as above.

(28) Applying the above it would be manifest that the impugned order giving some benefit of the period of officiation to the petitioner and expressly placing him on probation under rule 13.18 is unimpeachable. That being so, the further relief claimed by him to be sent to the Upper School Training Course forthwith has to be necessarily declined. The writ petition is without merit and has to be dismissed. I would, however, leave the parties to bear their own costs.

Sukhdev Singh Kang, J.—I agree with my lord the Chief Justice.

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(29) Whether a Head Constable, whose name is borne on List 'D', as envisaged by rule 13.9 of the Punjab Police Rules, 1934, hereinafter referred to as the Rules, when promoted to the next rank of Assistant Sub-Inspector of Police, hereinafter referred to as the 'A.S.I.', in a regular vacancy against a permanent post, is deemed to be on probation from the date of such promotion or an express order has to be passed for putting such an official on probation and till such time that is done, he continues to officiate on that post, is the legal question of some significance that falls for determination in this writ petition.

(30) This petition in the first instance came up for hearing before the Division Bench comprised of my learned brother S. S. Kang, J. and myself. We referred the matter for the decision of the larger Bench by formulating the aforesaid question for the opinion of the larger Bench, that is how this matter is before the larger Bench.

(31) The material facts bearing upon the determination of the question aforesaid, and the relief that has been sought by the petitioner, and which are not in dispute, can be stated thus:

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(32) The petitioner was confirmed as Head Constable on 1st April, 1968, successfully qualified in February, 1972, the Intermediate School Course for promotion to the rank of A.S.I. brought on List 'D' on 1st April, 1972, and was promoted as Officiating A.S.I. on 14th June, 1972. Respondents 3 to 11 being junior to the petitioner were promoted as A.S.I's. after the promotion of the petitioner. Respondent No. 3, although promoted about one year after the petitioner, was confirmed by the impugned order, dated 26th September, 1979, annexure P. 2, with effect from 15th September, 1979, after adjusting his two years' officiating period towards probation. Respondents 4 to 11 were put on probation for one year with effect from 15th September, 1979 after adjusting one year of their officiating service towards probation, while the petitioner was put on probation for full two years with effect from 15th September, 1979.

(33) The petitioner's specific allegation in para 6 of the petition that he was promoted as A.S.I. on 14th June, 1974 against a substantive post too has not been denied.

(34) What proved the proverbial 'last straw' that impelled the petitioner to approach this Court was the decision of respondent No. 2 to detail some of the respondents for the Upper School Training Course starting from 1st April, 1980, while ignoring the claim of the petitioner in this regard.

(35) The stand taken on behalf of respondents 1 and 2, who alone have filed the written statement, is that an official promoted to the next rank is to function on that post in an officiating capacity till such time he is put on probation by an express order of the competent authority; that if the official concerned gives a good account of himself during the officiating period, then the whole or any portion of his officiating period can be adjusted towards the period of probation; that since the petitioner's record during his roughly over 7 years' officiating period was just average, so he was put on probation for full two years, that the record of respondent No. 3 during his officiating period was excellent, he was, therefore, confirmed straightaway; and the record of the officiating period of the other respondents was only good which warranted adjustment towards probation for one year only, so they were put on probation for one year, as mentioned in the impugned order, dated 26th September, 1979.

(36) Regarding the fact as to why the petitioner was not detailed for Upper School Training Course, the stand taken is that the ratio of this Court's Full Bench decision in *Sardul Singh, Head Constable v. Inspector-General of Police, Punjab and others*, (12), was kept in view, in which it was held that Head Constables and A.S.Is. were to be deputed to the Intermediate/Upper School Courses in order of their seniority, the confirmed had to be deputed first, then the officials on probation and last of all the officials functioning in officiating capacity.

(37) The petitioner has claimed that he being promoted to the rank of A.S.I. prior to the said respondents was, in view of rule 13.18 of the Rules, to be treated as being confirmed on the successful conclusion of the two year's period of probation, as provided in the said rule. Such a confirmation, in point of time, being prior to the date of similar automatic confirmation of respondents 3 to 11, he has to be treated as senior to them and was, therefore, to be considered for being sent to the Upper School Training Course and that it was not open to the authorities to put the petitioner on probation with effect from 15th September, 1979 for two years.

(38) Before analysing the validity of the petitioner's claim, relevant rules bearing on the same deserve notice. Rules 13.1, 13.4, 13.9 and 13.18 of the Rules are reproduced below:

"13.1(1) Promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not effect increments within a time-scale.

Provided that five per cent of such promotion may be made from amongst the members of the Police Force, who achieve outstanding distinction in sports field at All-India level or International level if they are otherwise eligible for promotion but for seniority.

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- (2) Under the present constitution of the police force no lower subordinate will ordinarily be entrusted with the independent conduct of investigations or the independent charge of a police station or similar unit. It is necessary, therefore, that well-educated constables having the attributes necessary for bearing the responsibilities of upper subordinate rank, should receive accelerated promotion so as to reach that rank as soon as they have passed the courses prescribed for, and been tested and given practical training in the ranks of Constable and head constable.
- (3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists—A, B, C, D, E and F, will be maintained.

Lists A, B, C and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of constables and to the ranks of head constables and Assistant Sub-Inspectors. List E shall be maintained in the office of Deputy Inspectors-General as prescribed in sub-rule 13.10(1) and will regulate promotion to the rank of Sub-Inspector. List F shall be maintained in the office of the Inspector-General as prescribed in sub-rule 13.15(1) and will regulate promotion to the rank of Inspector.

Entry in or removal from A, B, C, D or E lists shall be recorded in the order book and in the character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorised. No actual selection shall be made without careful examination of character rolls.

* * * * *

- 13.4. (1) Officiating promotions to the rank of Inspector shall be made by Deputy Inspectors-General of ranges and the Assistant Inspector-General, Government Railway Police. If the flow of promotion is unevenly distributed amongst ranges, the Inspector-General of Police shall make suitable

transfers of Sub-Inspectors on the promotion list from one range to another.

- (2) Officiating promotions to the rank of Sub-Inspector, Assistant Sub-Inspector and Head Constable shall be made by Superintendents of Police and Assistant Superintendent, Government Railway Police. If the flow of promotion is unevenly distribute amongst districts, the Deputy Inspector-General shall make suitable transfers of Assistant Sub-Inspectors, Head Constables and Constables on the promotion lists from one district to another.
- (3) All promotion concerning Inspectors, Sub-Inspectors, Assistant Sub-Inspectors and Head Constables made under this rule shall be published in the Police Gazette and notifications by Superintendents shall be sent in through the Deputy Inspectors-General, who shall have the power to revise such orders on recording reasons in each case. If any Superintendent has not enough men on lists D and E in his district to fill temporary appointments in either rank, which he is required to make, he shall apply to the Deputy Inspector-General for a man from another district.

* * * * *

13.9. (1) List 'D' shall be maintained in two parts for Head Constables in Card Index Form No. 13.9 in each district. Selection for admission to the promotion Course for Head Constable at the Police Training College, will be made from amongst all the confirmed Head Constables. No Head Constable shall be eligible for admission to the promotion course for Head Constable at the Police Training College, unless

- (1) He has passed Middle Standard Examination.
- (2) He is below the age of forty years on the day of commencement of the next course.
- (2) The names of the Head Constables who qualify at Police Training College, in the Promotion Course for Head Constables will be entered in part I of List 'D' as soon

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as they qualify the same. While entering the names in this part they will maintain their seniority *inter se*. The names of the outstanding Head Constables, who have not passed the Promotion Course for Head Constables at Police Training College due to being overage but otherwise are of exceptional merit and are considered suitable may, with the approval of Inspector-General of Police, be entered in part II of List 'D'. No more than 10 per cent of the posts of Assistant Sub-Inspectors both permanent and temporary will be filled from the names in Part II of List 'D'. This part will not at any time contain names more than two per cent of the cadre strength of Assistant Sub-Inspectors in a range, both temporary and permanent.

- (3) Annual Confidential Reports of all the Head Constables in Parts I and II of List 'D' shall be furnished to the Deputy Inspector-General of Police by the 15th day of April, each year in Form No. 13.9(3).
- (4) Promotion to the rank of Assistant Sub-Inspector shall be made in accordance with the seniority of the Head Constables on List 'D' which may be ignored by the Superintendent of Police in exceptional circumstances only for reasons to be recorded in writing with the approval of the Deputy Inspector-General of Police.

* * * * *

- 13.18. All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him or, if it so thinks fit, extend the period of probation by one year in the aggregate and on the conclusion of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation. While on probation officers may be reverted or their period of probation may be extended without departmental proceedings. Such reversion

shall not be considered reduction in rank for the purposes of rule 16.4. This rule shall not apply to Constables and Sub-Inspectors, promoted to the selection grade, whose cases are governed by rules 13.5 and 13.14”.

A perusal of rule 13.1 would reveal that it envisages selection tempered by seniority as the criterion for promotion of an official from one rank to the other and where qualification being equal the senior to be preferred; that for purposes of regular promotion amongst enrolled police officers six promotion lists A, B, C, D, E and F were to be maintained; and, *inter alia*, list 'D' was to regulate promotion of Head Constables to the rank of A.S.I.

(39) Rule 13.4, *inter alia*, empowered the Superintendents of Police and the Assistant Superintendent of Police, Government Railway Police to effect officiating promotions to the rank of A.S.I.

(40) Rule 13.9 envisages the maintenance of List 'D' on which the name *inter alia* of a Head Constable, who had successfully qualified the Intermediate School Training Course, had to be entered; and that promotion to the rank of A.S.I. is to be made in accordance with seniority of the Head Constables on List 'D'. Deviation therefrom permitted only with the prior approval of the Deputy Inspector-General of Police and for reasons recorded in writing.

(41) A perusal of rule 13.10 would show that a police officer promoted in rank has to be put on probation for two years. On the conclusion of the said period, the competent authority has to decide as to whether the probationary period had been satisfactory or not. In case the competent authority finds the probationary period as satisfactory, then the probationer has to be confirmed. If the probationary period had not been satisfactory, it could either extend the said probationary period or revert the probationer to his substantive rank. In the event of a decision to extend the probationary period, it is open to extend the probationary period piecemeal or in one-go for a year. Such extensions, whether piecemeal or otherwise, could not extend in aggregate beyond a period of one year. After the conclusion of the extended period whatever, the competent authority has to do the same exercise as it had done at the conclusion of the original period of probation; with one difference that if in its opinion the probationary period was not satisfactory, then the said period could not further be extended and the official had to be

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reverted to his substantive rank. If the period was found to be satisfactory, then he had to be confirmed in the promoted rank.

(42) Rule 13.18 also invests the competent authority with the power to adjust the 'officiating period' against the probationary period and thus lessen the extent of the probationary period. The question that arises for consideration is as to which is the 'officiating period' that is envisaged to be taken into consideration under rule 13.18 for the purpose of reducing the probationary period. It appears that the departmental authorities have read this portion of rule 13.18 to mean that it confers a power on the competent authority to keep a promotee on the promoted rank on officiating basis for an undefined period and to put such an officer on probation in the promoted rank at any time after his promotion to the said rank, and it is at the time when the competent authority decides to put the promoted official on probation that it considers as to whether whole or any part of the period for which the official had been officiating on the promoted rank is or is not to be adjusted towards the probationary period provided in rule 13.18 in order to lessen the length of the probationary period.

(43) In my opinion it would be a misnomer to call the service period of an eligible Head Constable regularly promoted as A.S.I. against a permanent vacancy as officiating period. The officiating period which rule 13.18 has in view is a service period rendered by a Head Constable when promoted to such a rank not by way of regular promotion. Need for officiating promotion can arise in variety of situations, for instance, to name only a few, when the incumbent of the higher rank happens to go on leave of such a duration that administrative exigency necessitates alternative arrangement or where such an incumbent of the higher rank is detailed for training which in police department are galore and can be of up to duration of six months or more such a contingency in the nature of things would certainly call for alternative arrangement to carry on the work or when an eligible Head Constable is not available for regular promotion then a Head Constable who otherwise may not be eligible for regular promotion, in the interest of administration, has to be drafted to discharge the functions of an A.S.I. Such a promotion in the very nature of things has to be officiating or the vacancy in the higher rank occurs in a district where either senior-most eligible

Head Constable for regular promotion in the said district is not the senior-most eligible Head Constable in the Range who is due for regular promotion or it is likely to take some time for the D.I.G. Range to effect regular promotion of the senior-most eligible Head Constable whether available in the district in which the vacancy has fallen or in some other district then till such time local arrangement shall have to be made for carrying on the administration by the Superintendent of Police of the concerned district. Such a promotion too in the nature of things would be of officiating promotion. In course of time an eligible Head Constable who thus gets chances to officiate in the next higher rank accumulates to his credit the period of officiating service short or long in the next higher rank. It is this officiating period that rule 13.18 envisages for being taken into consideration for reducing the period of probation, if the record of the concerned official during the officiating period had been of such a nature as to warrant the afore-mentioned course. That officiating promotion is intended to fill temporary appointments in a given district appears to be clearly established from rule 13.4 clause (3) thereof (being the only rule in which there is reference to the officiating promotion) when it provides:

“If any Superintendent has not enough men on lists D and E in his district to fill temporary appointments in either rank, which he is required to make, he shall apply to the Deputy Inspector-General for a man from another district.”

(44) The matter is not *res integra*. An identical dispute was brought before the Delhi High Court when the concerned police authorities of the Delhi Administration, Delhi, assuming rule 13.18 (Punjab Police Rules in question being adopted by the Delhi Administration) to mean that when a Head Constable is promoted to the next rank of A.S.I. in a regular vacancy, it is open to the Department to keep him on that vacancy on an officiating basis for any length of time and he is not to be treated on probation until such time a specific order to that effect is made, kept the petitioner in that case (a Head Constable promoted as A.S.I. as in the case before us) on an officiating basis for a considerable time along with other such promoted A.S.I.'s and thereafter in regard to the starting of the probationary period and its extent he was similarly discriminated against as in the present case the petitioner before us has alleged. Misra, J. who formulated the opinion for the Bench in *Sat Pal A.S.I.*

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and others v. The Delhi Administration, and others, (supra) held that officiating appointments envisaged in rule 13.4 are appointments against temporary posts or against temporary vacancies in permanent posts, both must in the nature of things be of short duration, but in cases where there is a permanent post or permanent or regular vacancy available and a qualified person is promoted to fill in such a vacancy, then it is difficult to hold that such a promotee could be kept in officiating capacity in the said promoted post for more than two years which being the period mentioned in rule 13.18 during which his fitness and confirmation must finally be determined. Misra, J. considered it difficult to accept an interpretation of rule 13.18, which would permit the promotion of a senior official to be superseded and by-passed by a junior by keeping the senior in officiating capacity indefinitely.

(45) With respect, I entirely concur in the aforesaid view propounded by Misra, J.

(46) Mr. M. S. Sethi, Additional Advocate General, Punjab, however, canvassed that apart from the fact that respondent himself has termed in the petition his promotion to the rank of A.S.I. as officiating promotion, we have it authoritatively handed down to us by a Full Bench of this Court in *Sardul Singh, Head Constable v. Inspector General of Police, Punjab and others*, (supra) that there exist well recognised three categories in a given rank that of officiating, probationer and confirmed hand. Pointed attention was drawn by the learned counsel to the following observation occurring in paragraph 17 at page 519 of the judgment:

“While sending the Assistant Sub-Inspectors of Police for training for the Upper School Course, the confirmed Assistant Sub-Inspectors shall be considered first, thereafter the Assistant Sub-Inspectors on probation and last of all the officiating Assistant Sub-Inspectors.”

(47) I do not think the formulation extracted above from the judgment helps establish the proposition that an eligible Head Constable when regularly promoted as A.S.I. against a permanent vacancy he functions in officiating capacity till such time the competent authority decides to put him on probation.

(48) In *Sardul Singh's case* (supra) the Bench considered cases of three sets of petitioners. One set of petitioners pertained to the claim of confirmed Head Constables whose claim for being sent to Intermediate Training Course, Phillaur were ignored while the Head Constables junior to them were detailed for the said course. The second batch of petitioners pertained to the claim of Assistant Sub-Inspectors of Police who claim the right to be sent for Upper School Course at the Police Training College, Phillaur not as a result of any selection but in accordance with seniority. The third batch of petitioners were of those Head Constables who without passing the Intermediate School Course had been promoted as officiating A.S.I.'s of Police and were ordered to be reverted to their substantive posts of Head Constables on the ground that they were untrained persons while trained persons had become available. It does not require emphasising that rule 13.18 did not come up for consideration by the Bench nor in the entire judgment there is any discussion of the officiating nature of appointment in relation to rule 13.18 or even otherwise. The Bench was mainly concerned in the first two batch of petitioners with the determining of the question as to whether an eligible Head Constable or A.S.I. is entitled, as a matter of right, to be detailed for relevant course in accordance with their respective seniority or they had to undergo a process of selection even for being sent to the relevant course. The Bench held after due consideration of the relevant rules that an eligible Head Constable and an A.S.I. is entitled as a matter of right to be sent to undergo training in the Police Training College, Phillaur, for the relevant course in accordance with his seniority and that there is no power with the competent authority to pick and choose and thus ignore the claim of a senior eligible official. It is when so holding that the Bench observed that first the confirmed hand in accordance with their *inter se* seniority and thereafter the probationers in accordance with their seniority and last of all persons officiating in accordance with their seniority have to be detailed for undergoing the relevant Course. One can imagine a situation when neither the confirmed hand nor the probationers are available in sufficient number for being sent to undergo the training Course for which quota of seat is fixed then in such a case need may arise to give chance to those officials who had functioned in the promotional rank in question in officiating capacity or happened to be so functioning of course keeping in view the seniority amongst the

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officiating persons, for instance, in a given case an official had already to his credit say about one year's officiating service but at that time he may not be actually officiating in the promoted rank, the person who is functioning in officiating capacity in the promoted rank may have put in just few days or few months. In *Sardul Singh's case* (supra), this Court while mentioning "Officiating" did not literally mean the persons actually officiating. Because officiating positions are accorded in rotation in order to enable the eligible officers for next promotion to gain experience of the higher rank before their actual turn for regular promotion comes, for instance, petitioners of the third batch of petitions in *Sardul Singh's case*, before the Full Bench, were Head Constables who had not even passed Intermediate School Course and were thus not eligible for regular promotion and yet they were promoted on officiating basis as A.S.Is. and due to lack of trained eligible Head Constables they continued to hold the officiating post of A.S.I. for four to five years. Their reversion to the substantive rank of Head Constable was held valid by the Bench. If any of these Head Constables is regularly promoted against a permanent vacancy afterwards then his officiating service as A.S.I. which though could not save him from reversion, is found to have been satisfactory, would be taken into consideration for reducing the period of probation in terms of rule 13.18.

(49) Mr. Sethi, after laying stress on the fact that lists A to D are kept district-wise, lists E and F kept range-wise and list G is for the whole State, that is, that the seniority of persons of lists A to D are maintained district-wise and seniority of persons of lists E and F is maintained range-wise and of officials of list G is maintained for the State as a whole, urged that the seniority of A.S.Is. being range-wise and vacancy in this rank being required to be filled by a senior-most eligible Head Constable in the range but the vacancy of an A.S.I. may not fall in a district where the senior-most Head Constable happened to be posted and the D.I.G. who has to effect regular promotion of the eligible Head Constable to the post of A.S.I. may take time to effect the regular promotion then even against a permanent vacancy of an A.S.I. the Superintendent of Police of the district where the vacancy had fallen may have to effect promotion on officiating basis of an eligible Head Constable posted already in that district and, therefore, the assertion on the part of the petitioner in the writ petition that he had been promoted against a permanent vacancy is

of no significance. Moreso, when regard is had to the fact that he himself alleged in the petition that he was promoted as officiating A.S.I.

(50) I am afraid, the contention advanced by Mr. Sethi cannot help to advance the stand taken by the respondent-State. The promotion of the petitioner was effected admittedly by the D.I.G. of the range concerned and not by the Superintendent of Police of the district where the permanent vacancy of A.S.I. had fallen vacant. In the nature of things, the regular promotion which is effected only by the D.I.G. of the range concerned, would not become an officiating promotion of the kind suggested by Mr. Sethi merely for the reason that the petitioner had so described it.

(51) Mr. Sethi then pressed for our consideration a Single Bench unreported decision of this Court in *Baij Nath, Head Constable v. State of Punjab and others* (supra) in support of their stand. The petitioner in that case alleged that he was promoted as a Head Constable on 1st March, 1955 and had been working as such till the date of filing of writ petition. The petitioner had claimed that in accordance with rule 13.18, he must be treated as having automatically become confirmed after the expiry of two years from the date of his officiation as Head Constable. R. N. Mittal, J. held that rule 13.18 would not come into operation in regard to an official functioning in his officiating capacity unless the concerned official is put on probation in the promoted rank.

(52) With respect, I find myself unable to subscribe to the construction that Mittal, J. has sought to put on rule 13.18. In the judgment, there is no analysis of the fact as to what is meant by officiating period and whether a person promoted in a regular vacancy can be kept in officiating capacity for any length of period according to the sweet will of the competent authority. If a construction favoured by Mittal, J. is to be adopted, then the said rule would suffer from the vice of conferring unreasonable, arbitrary and uncontrolled discretion on the concerned authority in the exercise of power in regard to putting on probation the officials in the promoted rank.

(53) It appears to me that the police authorities have designedly adopted the procedure of keeping a regularly promoted officials

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against permanent vacancy on probation for a period longer than the one envisaged under rule 13.18 and avoid confirmation or reversion after the conclusion of the period of reversion mentioned in rule 13.18 depending upon the satisfactory or unsatisfactory nature of the record of performance during the said period, by wrongly interpreting rule 13.18 as warranting of keeping a regularly promoted official against a permanent vacancy on officiating basis in that rank for an unspecified and unlimited period.

(54) In view of the above, I hold that the petitioner, who admittedly was promoted against a permanent vacancy was to continue on probation on the said post only for a period of two years starting from the date of his appointment, unless the said period in terms of rule 13.18 had been expressly extended by the competent authority.

(55) Mr. Sethi, however, argued that rule 13.18 in its amended form is qualitatively different from the existing rule 13.18, the amended rule would not warrant maintains Mr. Sethi, automatic confirmation either after the conclusion of the initial period of two years or after the conclusion of the extended period, if the probationer in question is not reverted to his substantive rank. According to Mr. Sethi, the probationer in question would continue to remain on probation till such time an express order confirming him is passed by the competent authority and that ratio of *Dharm Singh's* case is not attracted to the present case. Before dealing with the contention advanced by Mr. Sethi, let us have a look on the unamended rule, which is in the following terms :—

“13.18 All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permits periods of officiating service to count towards the period of probation. On the conclusion of the probationary period of a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer

should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16.4.

This rule shall not apply to constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules 13.5 and 13.14".

(56) A comparison of the amended and unamended rule would show that in substance they differ only in one regard, i.e., while unamended rule made no provision for extension of the original period of probation of two years the amended rules have provided for the extension of original period of probation by one year. Mr. Sethi laid stress on the fact that since in the amended rule the emphatic expression occurring in unamended rule "in no case the period of probation be extended beyond two years" has been omitted, so it should be taken that the amended rule did not envisage automatic confirmation after the conclusion either of the initial or the extended period of probation. In the first flush the contention advanced by Mr. Sethi, no doubt, appeared to be attractive but a closer look at the amended rule renders it rather specious. The use of expression "the competent authority may———extend the period of probation by one year in the aggregate" in the amended rule leaves no manner of doubt that the rule-making authority limited the right to extend the period of probation to one year. As already observed it leaves a discretion to the competent authority whether to extend the period of probation by one year in one go or piece-meal. The requirement in the rule that on the conclusion of the initial probationary period or the conclusion of the extended probationary period the competent authority may either confirm the probationer or revert him leaves no scope for any doubt that the competent authority has to make up its mind on the conclusion of the probationary period whether to confirm him or to revert him. If no decision to revert him is taken within a reasonable period of the conclusion of the original period of probation and if the same by an express order, had been extended, then after such extended period of probation, automatic confirmation would follow with effect from the date on which the original period or the extended period came to an end as the case may be.

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(57) Since it is not the case of the respondent-State that the competent authority which had to take a decision in terms of rule 13.18 had, at any stage, passed any order extending the period of probation, so it has to be taken that the petitioner's probationary period came to an end on 13th June, 1974 and since on the conclusion of the said period admittedly no decision had been taken to revert the petitioner to his substantive rank, it has to be taken that his probationary period had been satisfactory. Rule 13.18 impliedly being categorical that the original probationary period could not be extended beyond one year in the aggregate, an irresistible conclusion that follows from it is that an official, after successful conclusion of the probationary period, has to be deemed to be confirmed and his confirmation would not be dependent on an express order to that effect, for, to such a case the ratio of the *State of Punjab v. Dharam Singh*, (13), would be clearly attracted. Such being the position, the petitioner, who had been promoted as an A.S.I. against a permanent vacancy earlier than respondents 3 to 11 would thus stand confirmed earlier to respondents 3 to 11 and would, consequently, rank senior to them. In this view of the matter, he would have a prior claim than respondents 3 to 11 for being considered to be sent for the Upper School Training Course.

(58) For the reasons afore-mentioned, the writ petition is allowed and it is directed that respondents 1 and 2 shall treat the petitioner as confirmed A.S.I. with effect from 14th June, 1974 and on that assumption consider his claim for being sent to the Upper School Training Course forthwith—the course having already started from 1st April, 1980. There is, however, no order as to costs.

N.K.S.

(13) A.I.R. 1968 S.C. 1210.