(14) Mr. Jindal has then relied upon the decision in *Baij Nath* v. *State of Punjab* (3). In this case, their Lordiships of the Supreme Court were concerned with the question of the admissiblility of a lecturers scale to master who had acquired a Post Graduate Degree. Reliance had been placed on circulars of July 23, 1957 and those issued subsequently. It was on a consideration of the various circulars and in particulars the letter dated September 20, 1979 that it was held that a master who acquired a post Graduate Degree was entitled to the lecturer's scale. Herein, we are concerned only with the circular of July 23, 1957. It does not talk of a lecturer's scale. Even the respondent has no claim to such a scale. Consequently, the decision in Baij Nath's case is of no assistance to the respondent.

(15) No other point has been raised.

(16) In view of the above, the question posed at the outset is answered in the negative. It is held that in terms of the circular of July 23, 1957, a teacher becomes entitled to a higher scale of pay when he/she acquires a higher qualification in the subject which is assigned to him/her. In other words, a Domestic Science Teacher cannot claim the scale of pay sanctioned for the Classical and Vernacular teachers on acquiring the qualification of Giani.

(17) As a result, the appeal is allowed. The judgment of the learned Single Judge is set aside the writ petition is dismissed. However, there will be no order as to costs.

J.S.T.

Before Arun B. Saharya, C.J. & Swatanter Kumar, J

STATE OF PUNJAB & ANOTHER,—*Appellants*

versus

DR. KARTAR SINGH RAI,—Respondent

L.P.A. 362 of 1992

17th July, 1998

Punjab Civil Service Rules, Volume II-Rl. 4.6.-A- War service benefit-Employee joining service in 1949-Appointed to vacancy that

(3) 1996 (3) S.C.T. 420

arose before 1st January, 1948-Rules subsequently amended-Employee retiring after amendment of Rules- Applicability of rules.

Held that nothing is stated expresly or by implication suggesting repeal of the pre-existing rules given in the 1960 Edition or retrospective operation of amendment of the rules subsequently published in the 1969 (Revised) Edition or even in the 1977 Edition. It is, thus clear that Rule 4.6-A (1960 Edition) was the existing rule in force at the time when the respondent joined civil service. Moreover, he was appointed in the civil service to the vacancy that arose before 1st January, 1948 which is not a fact in dispute. His claim for counting war service for the purpoes of civil pension, which is a condition of service, would be governed by this rule. It does not require refund of the Military gratuity nor does it require any separate order to be made by the Government for condonation of the break in Military/war service and the civil service for counting his war service for the grant of civil pension.

(Paras 24 & 25)

Gurminder Singh, Assistan Advocate General, Punjab for the Appellants

R.S. Mittal, Sr. Advocate with Mr. Sudhir Mittal, Advocate for the Respondent.

JUDGMENT

Arun B. Saharya, CJ.

(1) In this Letters Patent Appeal, the appellants have challenged the judgnent dated 14th February, 1991 of the learned Single Judge, allowing the writ petition of the respondent (petitioner in the writ petition) and directing the appellants, namely, the State of Punjab and the Accountant General, Punjab (respondents No. 1 and 2 respectively in the writ petition) to count 'War Service rendered by the respondent from 20th July, 1944 to 31st March, 1946 and 'Military Service' from 1st April, 1946 to 22nd March, 1947 for computation of his civil service pension, and further directing them to refund the amount of Rs. 1,749,77 paisas out of the military service gratuity deposited by the respondent for getting the said benefit.

(2) The respondent had served as an Emergency Commissioned Officer in the Indian Army Medical Corps from 20th July, 1944 to 22nd March, 1947. Out of this period upto 31st March, 1946 had

recognised as 'War Service' by the Government of India *vide* certificate dated 26th August, 1949 (Annexure P4). Thereafter, he was recruited to the Punjab Civil Medical Services (for short referred to as PCMS) in the year 1948. He joined on 15th February, 1949, and retired from the said Civil service on 31st July, 1980.

(3) The Health Department of the Government of Punjab had taken up the case of the respondent for computation of civil pension just before his retirement. The Accountant General issued the certificate dated 11th June, 1980 (Annexure P5) about the admissibility of pension etc. He certified that qualifying civil service of the respondent had been duly proved and accordingly, sanctioned payment of pension and other retiral benefits. With regard to 'War Service' from 20th July, 1944 to 31st March, 1946, the Health Department was asked to furnish a certificate duly counter-signed by the CDA, Allahabad, and sanction of the Government for counting the said period for computation of his civil pension. A copy of the Accountant General's letter dated 11th June, 1980 (Annexure P5) was also forwarded to the respondent for information. Consequently, the respondent requested the Military authorities *vide* letter 9th September, 1980 (Annexure P6) to issue the required certificate regarding his Millitary/War Service duly counter-signed by the CDA.

(4) In reply, the office of the CDA informed the petitioner *vide* letter dated 5th November, 1980 (Annexure P7) that the original copy of the certificate of verification of military service received from the Medical Directorate had been forwarded to the Accountant General under letter dated 13th October, 1980. However, to facilitate the necessary action, another copy thereof was forwarded to the petitioner. Copy of this letter also was endorsed to the Accountant General with the request to count the military service for civil pension of the respondent with the proviso that the amount of Rs. 1,749.77 paisa paid towards military service gratuity was refunded in accordance with the pension rules. A copy of the certificate that was issued by the Military authorities is Annexure P8. It records, *inter alia*, that the military service rendered by the respondent was non pensionable, and that the length of his war service was from 20th July, 1944 to 31.3.1946 It was countersigned by the Controller of Defence Accounts (CDA) with a 'Note' in the following terms :—.

> "if the officer desires to count his military Service for civil pension a sum of Rs. 1749.77 (difference between service

Gratuity Rs. 2216 (Minus) Rs.466.67 as war gratuity is refundable to the Defence Service Estimates".

(5) The petitioner, at this stage, informed the Accountant General by his letterdated 31st October, 1980 (Annexure P9) that he was claiming the benefit of only 'War Service' from 20th July, 1944 to 31st March, 1946 towards civil pension permissible under rule 4.6-A of the Punjab Civil Service Rules, Volume II, and that he did not intend to claim the benefit of remaining military service from 1st April, 1946 to 22nd March 1947. Hence, the Punjab Government's sanction was not required . But, the office of the Accountant General, by letter dated 21st November, 1980 (Annexure P10), referred to sub rule (iv) of Rule 4.6-A of CSR Volume II and called upon the respondent to deposit a sum of Rs. 1749.77 paise in the Defence Service Estimates to enable it to consider his claim for the grant of benefit of war service from 20th July, 1944 to 31st March, 1946. Once again, by letter dated 11th March, 1981 (Annexure P11), the respondent reiterated his request for counting the period of 'War Service' for purposes of civil pension as the same was duly entered in his service book, without refunding any portion of the gratuity paid by the Defence Department.

(6) When, the office of the Accountant General, *vide* letter dated 14th May, 1981 (Annexure P12) insisted upon deposit of the sum of Rs. 1749.77 paisas with the defence services estimates, the respondent yielded and deposited the said amount with the Military authorities, who confirmed receipt thereof by letter dated 16th June, 1982 (Annexure P13) addressed to the Accountant General, Thus, the respondent fulfilled the only condition that being insisted upon by the Accountant General for counting his war service for the purpose of computation of civil pension, and he called upon the Accountant General by letter dated 29th July, 1982 (Annexure P14) to refix his pension accordingly.

(7) Thereafter, the Accountant General raised another objection *vide* letter dated 31st July, 1982 (Annexure P15) in respect of the period of break in service between military and civil service exceeding one year and called upon the respondent to get it condoned from the Punjab Government under rule 4.6-A(v) of C.S.R. Volume II. Consequently, the respondent requested the Government by

letter dated 22nd October, 1982. (Annexure P16) to condone the break between Army Service and Civil service from 23rd March, 1947 to 14th February, 1949. Among other grounds, he pleaded in paragraph (III)as follows :—

> "I got releasd from Army Service on 23rd March, 1947. Partition of the country took place on August 1947. The offices of Punjab Government and population of west Punjab got displaced. I was selected for Punjab Civil Medical Service (PCMS) by Punjab Public Service Commission, at its first post partition recruitment in 1948, and joined civil service on 15th February, 1949. The break between Military and Civil Service was due to extra-ordinary and exceptional circumstances arising out of the upheaval of partition of the Country".

This request of the respondent was rejected by the Government by letter dated 22nd February, 1983 (Annexure P17) on the sole ground that it was "time -barred".

(8) Therefore, the respondent filed the writ petition in this Court to redress his grievance, which was allowed by the learned Single Judge by the impugned judgement dated 14th February, 1991.

(9) Before the learned Single Judge, the respondent (petitioner in the writ petition) contended that his claim for counting war service towards civil pension was governed by rule 4.6-A of the Punjab Civil Service Rule, Volume II (1960 Edition), Which did not require refund of military gratuity nor condonation of the period of break between Military service and the Civil Service and, In any event, his claim for condonation of break in service could not be ousted on the ground that it was time barred. On the other hand, the Punjab Government and the Accountant General (respondent Nos. 1 and 2 respectively in the writ petition) invoked the provisions made in rule 4.6-A of the Punjab Civil Service Rules, Volume II (1969 Edition), which stipulates fulfilment of certain condition i.e., refund of military gratuity under clause (iv), and special orders of the Government for condonation of break between Military/War Service and the Civil Service exceeding one year under clause (v). On the basis of this rule, refusal of the claim of the petitioner for condonation of the break in service and to count his war service for the purpose of civil pension was sought to be justified. In view of the rival stand take by the parties, the learned Single Judge

proceeded to concentrate on the main point of controversy between the patries as to whether the case was governed by the old rule 4.6-A contained in 1960 Edition or by the new rule contained in 1969 Edition of Volume II of Punjab Civil Services Rules.

(10) The learned Single Judge held that at the relevant time, when the petitioner had joined PCMS, the old rules were in exixtence and as such, his claim was governed by the rules contained in the 1960 Edition and not by the new rules contained in the 1969 Edition and that in the old rule 4.6-A, there was no requirement for refund of gratuity or for condonation of break between Military/War Service and the Civil Service. Further, it was held that the amendment in service rules would operate prospectively and the same would not affect the existing employees unless the amendment was made applicable with retrospective effect under proviso to Article 309 of the Constitution of India, and that, in the instant case, no retrospective operation of the new rules had brought on the record. Further more, the learned Single Judge found that the petitioner (respondent herein) had rendered long spell of service with the State of Punjab, besides having served the Indian Army in the pre-partition era, that he was not at fault at all, that it was incumbent on the part of the Government to have condoned the break between Military/War Service and the Civil Service, and that his claim should not have been thrown out only on the hyper-technical ground of delay, long after his retirement form service. Therefore, the learned Single Judge allowed the writ petition.

(11) The appellants have challanged the impugned judgment on four grounds. Firstly, that claim to pension is regulated by the rule in force at the time when a government servant retires and not by the rules in force at the time of his joining service. Secondly, the petitioner (respondent herein) had given up his claim for counting military service *vide* Annexure P9 dated 31st October, 1980 for the period from 1st April, 1946 to 20th March, 1947. Thirdly, on the ground that the appellants could not be directed to refund the amount of Rs.1749.77 paisas as the same had been deposited by the respondent (petitioner in the writ petition) with the Military Authorities and the Union of India had not been joined as respondent in the writ petition. Lastly, that the rejection of the claim of the respondent for condonation of break in service and for counting period of his war service for the purpose of civil pension was justified.

(12) Mr. Mittal, learned Senior counsel appearing for the

respondent has supported the impugned judgment in respect of the claim for counting the period of war service only for grant of civil pension. He has reiterated the stand taken before the learned Single Judge, on the basis of the rule 4.6-A, which was in force at the time when the respondent joined civil service, contained in Volume II of the Punjab Civil Services Rules, (1960 Edition). In the alternative, he has contended that the claim of the respondent for counting war service was admissible and should have been allowed even according to the later rules published in the 1969 Edition. In any event, rejection of his claim by the Government is unreasonable, unfair and unjust. He has fairly concerned that the respondent was not claiming the benefit of remaining military service from 1st April, 1946 to 22nd March, 1947 for the computation of civil pension, that the appellants could not be directed to refund the sum of Rs. 749.77 paisas as the same was deposited by the respondent with the Military Authorities and the Union of India had not been joined as a party and that in respect of these two directions, the impugned judgment may be modified.

(13) The rules relating to pension are laid down in Part I, Volume II of the Punjab Civil Services Rules. Learned counsel for the parties have brought to our notice 3 sets of these rules. They are; firstly, the rules contained in the 1960 Edition; secondly, the revised 1969 Edition corrected up to 31st July, 1969; and thirdly 1977 Edition corrected up to 15th May, 1977.

(14) In the 1960 Edition, it is stated in paragraphs 4 and 5 of the preface as follows :—

> "4. The rules in this Volume are based mainly on the existing rules and orders contained in "Civil Services Rules (Punjab), Volume II, First Edition, 1940", modified in the background of the changes resulting from the partition of the Punjab and constitutional requirements.....
>
> 5. Correction slip and amendments issued to the various rules up to the 15th September, 1953, have been included in 1960 Edition—
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> ---
>
> ---.

The above statement shows that the existing rules and orders and the correction slips and amendments issued to the various rules up to the 15th September, 1953, were complied and published in the

1960 Edition, and that the amendments notified subsequently were incorporated in the later 1969 (Revised) Edition and the latest 1977 Edition.

(15) There are material changes made in the terms and conditions of rule 4.6. and rule 4.6-A, in each of these three editions. For facility of reference, the same are reproduced below :—

A. 1960 Edition

4.6. Civil Employees who, prior to their civil employment have rendered satisfactory paid service between the 4th August, 1914 and the 31st August , 1921, in Military, Navel or Air Forces, which do not earn a service pension under the Military, Navel, or Air Force Rules shall be allowed to count such military service, including all kinds of leave on full rates of pay and sick leave taken during such service, for the purpose of civil pension, subject to the observance of the following general principles :—

(1) Completed years of military service shall be allowed to count up to a maximum of four years.

(2) In the case of services in which a minimum age is fixed for recruitment, no military service rendered below that age shall be allowed to count for pension.

(3) The addition of War (Great War) service shall not be included in total service under Rule 4.8. for the purpose of counting leave as service for pension, nor allowed in addition to the concession in Rule 4.2. but any Government servant who may be entitled to the concessions adimissible under the later rule and to the concession in this rule, will be allowed to select whichever is more favourable.

(4) British and Indian Military Service shall be allowed to count alike for pension and no contribution towards or share of a pension earned as a result of this concession shall be claimed from Home Department.

(5) No. refund of military bonus or gratuity shall be demanded from the employee.

4.6-A. Persons who have rendered "War Service" (World War II) as members of His Magesty's Forces and have appointed or are deemed to have been

appointed permanently to War-reserved vacancies or to other vacancies which arose before the Ist January, 1948, shall subject to the general principles laid down in Rule 4.6. be allowed to count the completed years of their satisfactory whole time service in His Megesty's Forces rendered between the 3rd September, 1939 (or the date of their attaining the minimum age of entry into the service or post to which they are appointed on a permanent basis, whichever is later) and the Ist April, 1946 for the purposes of civil pension up to a maximum of five years.

(B) 1969 Edition

4.6. Persons who retire on or after 5th January 1961, and who have rendered "War Service" (World War II) as members of His Magesty's Forces and have been appointed or are deemed to have been appointed permanently to War-reserved vacancies or to other vacancies which arose before the Ist January, 1948, shall subject to the following general principle, be allowed to count the completed years of their satisfactory whole time service in His Magesty's Forces rendered between the 3rd September, 1939 (or the date of their attaining the minimum age of entry into the service or post to which they are appointed on a permanent basis, whichever is later) and the Ist April, 1946, for the purposes of Civil Pension :—

(1) In the case of services in which a minimum age is fixed for recruitment, no military service rendered below that age shall be allowed to count for pension.

(2) The addition of war Service shall not be allowed in addition to the concession in rule 4.2., but any Government employee, who may be entitled to the concessions admissible under rule 4.2 and this rule, will, be allowed to select whichever is more favourable. In the case of those Government employees who retire between the period commencing from the 1st day of January, 1961, and ending with the

31st day of March , 1963 (both days inclusive), the addition of war service shall not be included in rule 4.8. for the purpose of counting leave as service for pension.

(3) British and Indian Military Service shall be allowed to count alike for pension and no contribution towards or share of pension earned as a result of this concession shall be claimed for Home Department.

4.6-A. Permanent appointments against "War Reserved Vacancies" or other vacancies which arose on or after Ist January,1948.

In the case of War Service candidates appointed permanently to civil posts against vacancies arising after 31st December, 1947, the War Service rendered during Great War II by itself or in conjunction with other military service may be allowed to count towards civil pension to the extent of one-half.

If, however, the whole or any portion of such services satisfied the conditions of rule 4.3, that portion of service may be allowed to count in full towards civil pension subject to the following conditions, namely :—

(i) the officer concerned should not have earned a pension under the military rules in respect of the service in question;

(ii) in the case of services or posts in respect of which a minimum age is fixed for recruitment, no military or war service rendered below that age shall be allowed to count for pension ;

(iii) 'War Service' rendered in the Armed Forces of India and rendered in similar force of a Commonwealth Country shall be allowed to count alike for pension and no contribution towards or share of, a pension earned as a result of this

concession shall be claimed from the foreign government concerned;

(iv) no refund of bonus or gratuity paid in respect of this 'War Service' shall be demanded from the officer concerned. If, however, the officer has been granted any retirement gratuity for service covering both the war and post-war period such gratuity shall be refundable. Also if any portion of service is allowed to count towards civil pension under rules 4.3. *ibid,* the instructions contained in Note 2 below Rule 4.6 of Punjab Civil Services Rules, Volume II, in regard to refund of gratuity shall mutatis mutandis apply; and

(v) break between military/warservice and the civil service shall be treated as automatically condoned, provided the period of the break does not exceed one year.

Breaks exceeding one year but not exeeding three years may also be condoned in exceptional case, under special orders of Government.

C.1977 Edotion

(4.6). Omitted-----

4.6-A. War service rendered by itself or in conjunction with other military service shall count in full towards civil pension subject to the conditions, namely :—

(i) the officer concerned should not have earned a pension under the military rules in respect of the service in question;

(ii) in the case of service or posts in respect of which a minimum age is fixed for recruitment to military or war service rendered below that age shall be allowed to count for pension;

(iii) 'War Service' rendered in the Armed Forces of

India and rendered in similar forces of a Commonwealth Country shall be allowed to count alike for pension and no contribution towards or share of a pension earned as a result of this concession shall be claimed from the foreign Government concern;

(iv) no refund of bonus or gratuity paid in respect of this 'War Service shall be demanded from the officer concerned. If, however, the officer has been granted any retirement gratuity for service covering both the war and post war period, such gratuity shall be refundable. Also if any portion of service is allowed to count towards civil pension under rule 4.3. *ibid,* the instructions contained in note 1 below, in regard to refund of gratuity shall mutatis mutandis apply; and

(v) break between military/war service and the civil service shall be treated as automatically condoned ; provided the period of the break does not exceed one year.

Break exceeding one year but not exceeding three years may also be condoned in exceptional cases, under special orders of Government."

(16) Before we proceed to discuss the applicability, scope and effect of the above mentioned rules, pleadings of the parties in respect thereof, may be noted. In paragraphs 6,15 and 16 of the writ petition, it is claimed that rule 4.6-A contained in the 1960 Edition was applicable at the time when the petitioner joined civil service ; that the claim of the petitioner (respondent herein) for the benefit of war service only (not for the remaining military service) was permissible and sanction of the Punjab Government was not required under this rule; and that the requirement of the deposit of a sum of Rs. 1749.77 paid as under sub rule (iv) of Rule 4.6.-A (1969 Edition) *vide* letter dated 21st November, 1980(Annexure P10) was not applicable to the case of the petitioner.

(17) Written statement was file only on behalf of the Government (respondent No. 1 in the writ petition.). No written statement was filed on behalf of the Accountant General (respondent No. 2 in the writ petition). In this written statement, averments

made in the writ petition in respect of the Accountant General were left out to be replied by the Accountant General, Punjab. In paragraph Nos. 6,15 and 18 of the written statement, it was pleaded that the claim had to be considered under the latest rules and not under the rules prevailing in 1952, that sanction of the Government for counting war service was rejected, and that break between war service and civil service for more than one year could be condoned in exceptional cases under special orders of the Government. Obviously, the case pleaded on behalf of the Government was based upon the terms and conditions stipulated under Rule 4.6-A in the 1969 Edition and/or 1977 Edition, which were not there in Rule 4.6-A in the 1960 Edition.

(18) There are two other material aspects of the case, which would have considerable bearing upon the applcability of rule 4.6, or rule 4.6-A in each of the three Editions of 1960, 1969 and 1977. First, recruitment of the petitioner (respondent herein) to the PCMS in the end of the year 1948 to vacancies which arose before 1.1.1948. Second, verification and acceptance of his war service and consequent grant of the benefit of advance increments to him in the civil service. On these material facts, the petitioner (respondent herein) has pleaded his case in paragraphs 2,3,4, and 5 of the writ petition, which are reproduced below :—

> 2. That due to wide-spread disturbances at the time of partition of the country, the Punjab Public Service Commission did not make regular recruitment to the Punjab Civil Medical Service till the end of 1948 nor vacancies that had arisen before the Ist of January, 1948 were filled. At the first selection after partition of the country, made by the Punjab Public Service Commission, the petitioner competed successfully and was recruited to the Punjab Civil Medical Service (for short referred to as P.C.M.S.) in 1948 and joined that service on the 15th of February, 1949.
>
> 3. That on the 19th of April 1949, the Director, Health Services (Medical), East Punjab, sent a circular letter No. 2582-2600-5 to all the Civil Surgeons in East Punjab, requiring them to ask all Assistant Surgeons working under them to intimate immediately whether the War Service rendered by them during the second Great War has been counted towards increment and seniority and if not, to supply particulars mentioned in the letter in respect

of each Assistant Surgeon. A copy of this letter is attached herewith as Annexure P1.

4. That the petitioner supplied the requisite information along with the War Service Certificate issued by the Ministry of Defence, Government of India, On the 26th of August, 1949.

5. That as a result of the above, the Petitioner's War Service from the 20th of July, 1944 to the 31st of March, 1946 was entered in the service record maintained by the General Establishment Branch, Punjab Civil Secretariat and the petitioner was given advance increments as a result of the recognition of the Petitioner's War Service. A copy of the Petitioner's Service Record as maintained by the General Establishment Branch is attached herewith as Annexure P2".

(19) In the written statement filed on behalf of the Government, these material facts are not traversed, rather the same are specifically admitted in the corresponding para Nos. 2, 3, 4 and 5, which are reproduced below :—

"2. He joined Government service as Assistant Surgeon on 15th February, 1949.

3. & 4. No comments as no such record is available in this office. It is, however, submitted that there is entry in the history of service of Dr. K. S. Rai that he rendered war service from 20th July, 1940 to 31st March, 1946.

5. Admitted"

(20) Thus, we have got three material facts that stand admitted. They are: (i) recruitment of the petitioner to PCMS had taken place sometime in the year 1948, albeit he was actually appointed on 15th February, 1949 : (2) the vacancy/vacancies filled up by the said recruitment arose before Ist January, 1948 : and (3) War Service rendered by the petitioner from 20th July, 1944 to 31st March, 1946 was duly verified, recognised and accepted by he Government; entry to this effect was duly made in his service book (Annexure P2); and on this basis he was given the benefit of advance increments in the civil service (PCMS).

(21) Now, coming back to the pension rules, it is pertinent to

note that in the 1960 Edition, rule 4.6 would apply to employees who had rendered military service only during the World War I, which is not the case in hand. The respondent before us had rendered War Service in World War II, which would be governed by rule 4.6-A. Moreover, he was appointed in the civil service to the vacancy that arose before 1st January, 1948, which is not a fact in dispute. Therefore, rule 4.6-A would squarely apply to his case. In these rules, there is no condition prescribed for refund of military gratuity or for condonation of break between military/War Service and the Civil Service.

(22) Next, coming to the 1969 (Revised) Edition, Rule 4.6 would apply to persons who have rendered war service in World War II and have been appointed to vacancies which arose before 1st January 1948 (as is the case in hand). Here, clause (iv) stipulates in clear and absolute terms that no refund of military gratuity shall be demanded. It is also pertinent to note that this rule 4.6 does not even postulate condonation of any break between military/war service and the civil service. In contrast, rule 4.6-A would apply in the case of war service candidates appointed to civil posts against the vacancies that had arisen after 31st December, 1947. Under this rule also, clause (iv) clearly stipulates in the first part that no refund of gratuity shall be demanded in respect of war service alone. It is only in the second part that provision is made for refund of gratuity in respect of service covering both the War and the Post-War period. Even at the cost of repetition, it may be noted that the petitioner is seeking benefit of war service alone and not that of both the war and post-war period of Military service. So, refund of gratuity demanded from him,—*vide* Annexure P10 dated 21st November, 1980 was not at all justified. So far as the break in service is concerned, Rule 4.6-A, first part of clause (v) stipulates that break, not exceeding one year between military/war service and the civil service, shall be treated as automatically condoned; and the second part of this clause enables the Government to condone even break exceeding one year, but not exceeding 3 years. Recruitment to PCMS had taken place sometime in the year 1948. Even, the break exceeding one year, taking it with reference to the date of his actually joining the civil service, being less than 3 years, may also be condoned and the same cannot be said to be absolutely "time barred".

(23) Lastly, in the 1977 Edition, rule 4.6 is 'Omitted' and a composite provision is made to count all kinds of war service in full

towards civil pension, irrespective of the appointment to civil service to vacancies arising at any point of time. Intention of the rules is clear to liberalise reckoning of war service for civil pension. The conditions regarding refund of gratuity and break in service stipulated under clauses (iv) and (v) in this rule, are similar to those prescribed in rule 4.6-A in the 1969 Edition; and, therefore, what has been said earlier, would hold good in respect of the 1977 Edition also.

(24) On general principles, regarding applicability of the relevant rule, learned counsel for the appellants made his submissions in 3 parts. Firstly, on the basis of the decision in *State of Madhya Pardesh* vs. *Shardul Singh*(1), that matters like pension are included in the conditions of service that may be prescribed by rules under Articles 309 of the constitution of India; secondly, relying upon the decision of the Supreme Court in *Salabuddin Mohamed Yunus* vs. *State of Andhra Pradesh*(2) and decision of the Central Administrative Tribunal *U.A. Menon* vs. *Secretary, Ministry of Home Department of Pension, New Delhi and others*(3), he contended that right of a Government servant to receive pension would be regulated according to rules in force on the date of his retirement; thirdly, he cited the Full Bench decision of this Court in *Dei Chand Phaugat* vs. *State of Haryana* and others in CWP No. 231 of 1979 decided on 18th March, 1980 and urged that the grant of the benefit of military service for computation of civil pension is a concession and it is permissible to take it away by retrospective operation of the rules. Mr. R.S. Mittal, learned Senior Counsel appearing on behalf of the respondents supported the first proposition by citing another decision of the Supreme Court in *State of Punjab* vs. *Kailash Nath*(4), where it was observed that pension in normal course would fall within the purview of the term "conditions of service". Indeed, there can be no doubt on this proposition. He refuted the second proposition and placed strong reliance upon a Division Bench Judgment of this Court in *B.L. Bansal* vs. *State of Punjab and others*(5) to contend that the claim of the respondent is governed by the rules in existence at the time of his appointment in the civil service, and that the decisions cited by the opposite party are clearly distinguishable. We find

(1) 1970 (3) S.C.R. 362
(2) 1984 (3) S.L.R. 119
(3) 1990 (3) S.L.R. 659
(4) A.I.R. 1989 S.C. 558
(5) 1995 (1) R.S.J. 736

considerable force in the arguments of Mr. Mittal. In the case of *Salabuddin Mohamed Yunus* (supra), express provision was made in regulation 6 of the pension Regulation stipulating that claim to pension was to be regulated by the rules in force at the time when the government servant retires from service. Similarly, in the case of *U.A. Menon* (supra), rule 5(1) clearly stipulates, "any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be". In the present case, there is no such provision made in the pension rules. The decision in *Dei Chand Phaugat's case* (supra) also does not help the appellants. The benefit of military service was described in the title of the rule as a 'concession'. Besides, the rule in that case was retrospectively amended to take away the claimed right. In the present case, we find nothing stated expressly or by implication suggesting repeal of the pre-existing rules given in the 1960 Edition, or retrospective operation of amendment of the rules subsequently published in the 1969 (Revised) Edition or even in the 1977 Edition of Vol. II of the Punjab Civil Service Rules. Therefore, the three decisions cited by the learned counsel for the appellants, are of no help.

(25) The above discussion shows that Rule 4.6-A(1960 Edition) was the existing rule in force at the time when the respondent joined civil service. His claim for counting war service for the purpose of civil pension, which is a condition of service, would be governed by this rule. It does not require refund of the Military gratuity nor does it require any separate order to be made by the Government for condonation of the break in Military War Service and the Civil Service for counting his war service for the grant of civil pension. Therefore, the findings of the learned Single Judge on this score are upheld.

(26) The alternative plea raised by Mr. Mittal that the respondent's claim for counting war service for the grant of civil pension would be admissible on merits, even under the rules contained in 1969 (Revised) Edition as well as rule 4.6-A contained in 1977 Edition, stands on equally strong foundation. In the 1969 (Revised) Edition as already noticed above, rule 4.6 clause (iv) in absolute terms forbids refund of military gratuity and no provision has been made in this rule requiring condonation of any break between Military/War Service and the Civil Service. Even under rule 4.6-A, should it be taken that he was appointed in the civil

service against the vacancies which arose on or after 1st January, 1948, the respondent would be entitled to count towards civil pension to the extent of 1/2 of his war service without any further conditions; and to the full extent without refund of gratuity in respect of war service alone under clause (iv) thereof. In that case, even for purpose of condonation of break in service exceeding one year, but not exceeding 3 years, Clause (v) is an enabling provision. It is not a bar. Same is the position under rule 4.6-A of the 1977 Edition.

(27) In any event, on merits, we find no justification for rejection of the respondent's claim,—*vide* Annexure P17 dated 22nd February, 1983. The recruitment to civil service was made in the year 1948. For no fault of the respondent, he was appointed later on 15th February, 1949. Even if the period of break in service be counted from the date when he actually joined the civil service, it would be exceeding one year and is less than 2 years and certainly much less than 3 years. The rules, even if we apply 1969 or 1977 Edition, postulate condonation of such a break. Admissibility of his war service for the purpose of civil pension, was never in dispute. Indeed, his war service was verified, recognised and accepted by the Government right at the time when he joined PCMS. Entry to this effect was duly made in his service book (Annexure P2) and on the basis of War Service he was given the benefit of advance increments in the civil service. It was not open to the Government to approbate and retrobate on this subject. The requirement of condonation of the break for reckoning of service for pension, in these facts and circumstances, was wholly mis-conceived and unwarranted.

(28) There is another way of testing the fairness of the stand taken by the Government in Annexure P17, rejecting the respondent's claim as "time barred". Earlier, as is evident from the series of documents spread over a long period of two years from 11th June, 1980 up to 16th June, 1982 namely; Annexure P5,) P6, P7, P8, P9, P10, P11, P12 and P13, deposit of Rs. 1749.77 paisas towards military gratuity was the only condition that was required to be fulfilled for accepting the respondent's claim. Although refund of gratuity for claiming War Service alone was not required under the rules, yet, willy nilly, he deposited that amount. It was only thereafter by letter dated 31st July, 1982 (Annexure P15) that the office of the Accountant General raised a new objection and required the petitioner to get the said break in service condoned. Immediately, the petitioner applied for it,—*vide* letter dated 22nd October, 1982

(Annexure P16). He gave reasons and set out the circumstances which forced upon him the break in service. The Government did not question the sufficiency or validity of those reasons and grounds. The genuineness of the claim was not even doubted. But, it was rejected by a non speaking order on the spacious plea that the claim was "time barred". Since the respondent was asked to get the break condoned by the letter dated 31st July, 1982 (Annexure P15), and he applied for it on 22nd October, 1982 (Annexure P16); surely, it cannot be said that there was delay or laches or any other fault attributable to the respondent in perusing his legitimate claim in accordance with the rules. In any event, the pension rules do not prescribe any time limit for condonation of such break in service. In these circumstances, we find the stand taken on behalf of the Government wholly unreasonable, unfair and unjust.

(29) Therefore, we up-hold the directions given to the appellants to count the War Service rendered by the respondent from 20th July, 1994 to 31st March, 1946 for computation of his civil pension and release the consequential benefits. We direct the appellants to do the needful now within one month. The other directions, for counting military service from 1st April, 1946 to 22nd March, 1947 towards civil pension and for refund of the amount of Rs. 1,749.77 paisas, given in the impugned judgment are set aside. Accordingly, the impugned judgment dated 14th February, 1991 is modified and the appeal is partly allowed. Parties are left to bear their own costs.

S.C.K.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

PAWAN KUMAR—*Appellant*

versus

CHANCHAL KUMARI—*Respondent*

L.P.A. 536 of 1996

27th October, 1998

Hindu Marriage Act, 1955—S. 13—Decree for divorce—Marriage irretrievably broken—Grant of divorce in such a situation.