Apparently, the respondent himself adopted the mode presbribed by Section 140(c) for preferring the claim under Section 78B. On these considerations, it is not possible to hold that Section 142 has no application to a claim under Section 78B."

The above observations provide a complete answer to the argument raised on behalf of the respondent and in agreement with the above I hold that there is no merit in the contention that sections 140 and 142 of the Act do not apply to the preferring of a claim under section 77. It may be added that no other provision has been pointed out in the Act which provides the mode in which the claim under section 77 has to be preferred. Moreover, even if the claim under section 77 may not be considered as a notice but it would certainly fall within the expression "document" used in sections 140 and 142 of the Act.

(9) For the reasons stated above, I hold that the claim sent by the respondents was not sent within six months as prescribed by section 77 of the Act and was, therefore, barred. Findings on issue No. 2 are set aside and this issue is found against the plaintiff-respondent. No other point having been raised before us, this appeal is allowed and the plaintiff's suit is dismissed. Having regard to the circumstances of the case, the parties will bear their costs throughout.

Tewatia, J.—I agree.

N. K. S.

CIVIL REFERENCE

Before D. K. Mahajan and C. G. Suri, JJ

DURGA PARSHAD SODHI,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.—*Respondents.*

Civil Reference No. 6 of 1970

September 11, 1973.

Indian Pensions Act (XXIII of 1871)—Section 4—Punjab Civil Services Rules, Volume II—Rule 6.4—Constitution of India (1950)—Article 19(1)(f)—Right to pension—Whether 'property' and enforceable in a civil court—Section 4 creating bar to such enforcement—Whether ultra vires *Article 19(1)(f)—Rule 6.4—Whether also void.*

Held, that right to pension is property and this right is guaranteed by Article 19(1) (f) of the Constitution of India. The right is enforceable both under Articles 32 and 226 of the Constitution. There is no reason why it cannot be enforced by a regular suit. The bar in section 4 of the Indian Pensions Act, 1871 to the enforcement of this right in the ordinary civil courts was created at a time when this right was considered merely as a bounty and not as a right to or in property. In view of the changed concept about the nature of this right, the bar created by section 4 of the Act no longer holds good; and hence this section is *ultra vires* Article 19(1) (f) of the Constitution. On a parity of reasoning, rule 6.4 of the Punjab Civil Services Rules, Volume II is also void.

Case referred by Hon'ble Mr. Justice C. G. Suri,—vide *order dated 15th December,* 1971, *to a larger Bench for deciding an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice C. G. Suri finally decided the case on 11th September,* 1973.

Reference under section 113 *C.P.C. made by Shri M. M. Malik, Senior Sub-Judge, Ambala to this Hon'ble Court,*—vide *its order dated* 31*st August,* 1970, *for opinion on the following question of law.*

> "*Whether the provisions of Section* 4 *of the Indian Pension Act and* (*or*) *rule* 6.4 *of the Punjab Civil Services Rules are illegal, void, unconstitutional and ultra vires for the grounds mentioned in para* 5 *of the plaint*?

S. K. Jain, and N. K. Sodhi, Advocates, *for the petitioner.*

J. S. Bindra, Advocate, *for the respondents.*

JUDGMENT

D. K. MAHAJAN, J.—This case has been referred under section 113 of the Code of Civil Procedure by the Senior Subordinate Judge, Ambala. This reference came before my learned brother earlier. My learned brother, by his order dated December 15, 1971, directed that it be set down for hearing before a larger Bench. That is how the matter has been placed before us.

(2) The facts giving rise to this reference are as follows:—

The plaintiff, who was at the relevant time a member of the P.C.S. (Judicial) retired on 6th February, 1958. He had put in by then 26 years of service. According to the rules relating to pension, he was entitled to Rs. 345 per mensem as pension and a sum of Rs. 11,092.50 as gratuity. As an interim measure, the plaintiff was

granted an anticipatory pension of Rs. 300 per mensem and an amount of Rs. 8,000 on account of gratuity by the Accountant-General, Punjab. While deciding the pension case of the petitioner, the State Government imposed a cut of Rs. 172.48 per mensem in pension and Rs. 5546.25 in death-cum-retirement gratuity. The plaintiff filed a memorial to the Governor of Punjab and ultimately the matter was considered by the State Establishment Board. The result was that a cut of Rs. 45 per mensem was made in pension as against the earlier cut of Rs. 172.48 per mensem, and the cut in gratuity was reduced from Rs. 5546.25 to Rs. 1,500. The plaintiff was dissatisfied. He filed a suit in the Court of the Senior Subordinate Judge, Ambala, impugning the order imposing the cut as illegal, *ultra vires*, unconstitutional and *mala fide*. During the course of the suit, the State Government took the plea that the suit was not competent in view of section 4 of the Indian Pensions Act read with rule 6.4 of the Punjab Civil Services Rules, Volume II. When this matter came up before the Senior Subordinate Judge, on consideration of a number of authorities, the learned Judge tentatively was of the view that the provisions of section 4 of the Indian Pensions Act and rule 6.4 of the Punjab Civil Services Rules, Volume II, appear to be *prima facie* invalid. The Senior Subordinate Judge, Ambala, who was seized of the suit filed by the plaintiff-petitioner, referred the following question for decision of this Court under section 113 of the Code of Civil Procedure:—

> "Whether the provisions of section 4 of the Indian Pensions Act and (or) Rule 6.4 of the Punjab Civil Services Rules are illegal, void, unconstitutional and *ultra vires* for the grounds mentioned in para 5 of the plaint ?"

(3) The contention of Mr. S. K. Jain, learned counsel for the petitioner, is that section 4 of the Pensions Act (hereinafter referred to as the Act) is hit by Articles 13 and 19 of the Constitution of India. It is urged that at the time when it was enacted, pension was not considered property but a mere bounty as was the case with regard to the salary of a Government servant. Before the Constitution of India was promulgated, in a number of decisions it was held that a Government servant had no right to bring a suit to recover the arrears of his salary. It is true that in the case of salary there was no explicit statutory bar to a suit. But section 4 of the Act created an express bar so far as the enforcement of a claim to recover pension in the ordinary civil Courts is concerned. The argument proceeds

that the promulgation of the Constitution has altered the situation. Now, arrears of salary can be recovered by suit and on the parity of reasoning it is urged that though there is a specific bar to the suit in section 4 of the Act so far as pension is concerned this provision has become void by reason of Articles 13 and 19 of the Constitution of India. Attention is drawn to the decision of this Court in *K. R. Erry* v. *The State of Punjab* (1) wherein in proceedings under Article 226 of the Constitution it was held that right to pension is property and a writ petition to enforce that right is competent. This decision was affirmed by the Supreme Court in *State of Punjab* v. *K. R. Erry* (2). It is stressed that it is now a settled proposition of law that right to pension is property, and if it is so, the right can be enforced in the civil courts because for enforcement of every civil right, proper remedy lies in the ordinary courts of the land, and it cannot be said that the remedy available under Articles 32 and 226 of the Constitution of India is an adequate remedy because the grant of relief under these Articles depends on the discretion of the Supreme Court or the High Court. The main burden of the argument is that the bar of section 4, in view of the altered situation, is void in view of the constitutional provisions embodied in Articles 13 and 19 of the Constitution of India.

(4) Thus, the short question that requires determination is whether section 4 of the Act is void, and if section 4 is void, it is conceded at both hands, the remedy by way of suit would be available to the plaintiff.

(5) Before I proceed to deal with this question, it will be proper to refer to the Act. This Act was enacted in the year 1871 and was adapted by Adaptation of Laws Order, 1950. At the time when the Act was enacted, the right to pension was not considered as property. It was merely considered as a bounty or as a matter of grace by the State to the servant.

(6) Section 4 of the Act is in the following terms :—

"4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the Government or by any former Government whatever may have been the

(1) I.L.R. 1967(1) Pb. & Hr. 278.
(2) A.I.R. 1973 S.C. 334.

consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted."

Section 5 provides that any claim relating to pension or grant may be preferred to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf and the said officer shall dispose of such claim in accordance with the rules prescribed from time to time. Section 6 empowers a Civil Court to try such a claim upon receiving a certificate from the authorities mentioned in section 5, but bars it to pass a decree by which the liability of the Government to pay such pension or grant is affected directly or indirectly.

(7) Section 9 of the Code of Civil Procedure is in the following terms :—

"9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."

(8) Basing himself on section 9 of the Code of Civil Procedure, the State counsel urges that the right to sue is expressly barred under section 4 and it can be so barred and, therefore, section 4 cannot be said to be *ultra vires* Article 13 or Article 19 of the Constitution of India. He highlights the fact that the right to property, the adjudication of which is barred by the Civil Courts, can be enforced by recourse to Articles 32 and 226 of the Constitution of India and according to him, these Articles provide the alternative remedy and, therefore, it cannot be said that by reason of section 4 the plaintiff has no remedy.

(9) Articles 32 and 226 of the Constitution of India are in the following terms :—

"32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by

this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) .....

(4) .....

226. (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(IA) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(2) The power conferred on a High Court by clause (1) or clause (1A) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

(10) So far as Article 32 of the Constitution of India is concerned, it merely guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement or rights conferred by Part III, i.e., the Fundamental Rights. This Article further gives power to the Supreme Court to issue directions or orders or writs for the enforcement of the rights conferred by Part III. Article 226 confers power on the High Court to issue the writs specified in Article 32 for the enforcement of any of the rights conferred by Part III, and in addition thereto, for any other purpose.

(11) Thus, it will appear that for the enforcement of Fundamental Rights the Constitution itself makes a provision. The Fundamental Rights are the creation of the Constitution and as already said, for their enforcement a machinery exists in the Constitution.

(12) It is in the background of the aforesaid provisions that the contention of Mr. Jain solely based on the following decisions of the Supreme Court has to be examined :—

1. *Firm of Illuri Subbayya Chetty and Sons* v. *State of Andhra Pradesh* (3).

2. *M/s. Kamala Mills Ltd.* v. *State of Bombay* (4).

3. *State of Kerala* v. *M/s. N. Ramaswami Iyer and Sons* (5).

4. *Kantilal Babulal and Bros.*, v. *H. C. Patel and others* (6), and

(13) To put briefly, his contention is that the law which takes away the right of suit must provide an alternative remedy for the enforcement of that right, and it would not be legitimate to go outside that law to find that there is an alternative remedy elsewhere. He maintains that if the law provides an alternative and adequate remedy, the Courts will uphold the exclusion of the jurisdiction of the civil courts if it is either expressly barred or by necessary implication it can be held to be so barred.

(14) I now propose to examine the *ratio* of these decisions. The basic decisions which have been considered in the aforesaid decisions are of the Privy Council in *Secretary of State* v. *Mask & Co.* (7) and *Raleigh Investment Co. Ltd.*, v. *The Governor-General in Council* (8).

(15) In *Secretary of State* v. *Mask & Co.*, the Privy Council was dealing with the effect of the provisions contained in section 188 of

(3) A.I.R. 1964 S.C. 322.
(4) A.I.R. 1965 S.C. 1942.
(5) A.I.R. 1966 S.C. 1738.
(6) A.I.R. 1968 S.C. 445.
(7) A.I.R. 1940 P.C. 105.
(8) A.I.R. 1947 P.C. 78.

Sea Customs Act (Act 8 of 1878). This provision, so far as it is relevant was that "every order passed in appeal under this section shall, subject to the power of revision conferred by section 191 be final". While dealing with the question about the effect of this provision, the Privy Council observed that:—

> "It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicity expressed or clearly implied."

However, it was observed that where an Act of Legislature creates an obligation and provides an exclusive Code for its determination, *the right to enforce that obligation by suit could be taken away.* The words underlined are mine, and I have arrived at this deduction in view of the following passage in Lord Thankerton's opinion:—

> "It was submitted on behalf of the respondents that an exclusion of the subject's right of resort to the Civil Courts would be *ultra vires* of the Indian Legislature in view of the provisions of section 32, Government of India Act, 1915, which re-enacted section 65, Government of India Act of 1858, and reference was made to *Secretary of State* v. *Moment, J.* (9), which was a case of tortious trespass on land. But, in their Lordships opinion, neither section 32 nor the principle involved in the decision in 40 I.A. 48, affect the validity of an Act of the Indian Legislature which creates an obligation and provides an exclusive Code for its determination; such an obligation is not covered by sub-section (2) of section 32."

(16) In *Raleigh Investment Co. Ltd.* v. *Governor-General in Council* (8), the question that arose for determination was whether a suit against the Governor-General in Council claiming repayment of tax under an assessment was competent in the civil Courts in view of the provisions of section 67 of the Income-tax Act, 1922. That section runs as follows :—

> "No suit shall be brought in any civil Court to set aside or modify any assessment made under this Act and no

(9) 40 I.A. 48.

prosecution, suit or other proceeding shall lie against any officer of the Crown for anything in good faith done, or intended to be done, under the Act."

The assessee's contention before the Privy Council was that the assessment under which the tax had been recovered was not an assessment made under the Act and, therefore, the civil suit was competent. While repelling this contention, it was observed as follows :—

"In their Lordships' view it is clear that the Income-tax Act, 1922, as it stood at the relevant date, did give the assessee the right effectively to raise in relation to an assessment made upon him the question whether or not a provision in the Act was *ultra vires*. Under section 30, an assessee whose only ground of complaint was that effect had been given in the assessment to a provision which he contended was *ultra vires* might appeal against the assessment. If he were dissatisfied with the decision on appeal—the details relating to the procedure are immaterial—the assessee could ask for a case to be stated on any question of law for the opinion of the High Court and, if his request were refused, he might apply to the High Court for an order requiring a case to be stated and to be referred to the High Court (*see* section 30 and *Secretary of State* v. *Meyappa Chettiar* (10). It cannot be doubted that included in the questions of law which might be raised by a case stated is any question as to the validity of any taxing provision in the Income-tax Act to which effect has been given in the assessment under review. Any decision of the High Court upon that question of law can be reviewed on appeal. Effective and appropriate machinery is therefore provided by the Act itself for the review on grounds of law of any assessment. It is in that setting that section 67 has to be construed.

In their Lordships' view the construction of the section is clear. Under the Act the Income-tax officer is charged with the duty of assessing the total income of the assessee. The obvious meaning, and in their Lordships' opinion the correct meaning, of the phrase 'assessment made under the

(10) 4 I.T.R. 341=I.L.R. 1937 Mad. 211.

> Act' is an assessment finding its origin in an activity of the assessing officer acting as such. The circumstance that the assessing officer has taken into account an *ultra vires* provision of the Act is in this view immaterial in determining whether the assessment is 'made under the Act'. The phrase describes the provenance of the assessment: it does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test."

(17) In *Firm of Illuri Subbayya Chetty and Sons* v. *State of Andhra Pradesh*, (3), the short question that arose for determination was whether the suit instituted by the appellant to recover sales-tax on the ground that it has been illegally recovered from it, was barred by the provisions of section 18A of the Madras General Sales Tax Act (9 of 1939). This section reads thus :—

> "No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any Court to set aside or modify any assessment made under this Act.

After referring to the two Privy Council decisions, to which I have already made a reference, it was observed :—

> "But the presence of the alternative machinery by way of appeals which a particular statute provides to a party aggrieved by the assessment order on the merits, is a relevant consideration and that consideration is satisfied by the Act with which we are concerned in the present appeal."

(18) In *M/s. Kamala Mills Ltd.* v. *State of Bombay* (4), the learned Chief Justice, who spoke for the Court, after noticing the decisions I have already referred to, observed :—

> "In every case, the question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose.....
>
> There is one more aspect of the matter which must be considered before we finally determine the question as to whether section 20 excludes the jurisdiction of the civil court

in entertaining the present suit. Whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the civil courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.....

If we are satisfied that the Act provides for no remedy to make a claim for the recovery of illegally collected tax and yet section 20 prohibits such a claim being made before an ordinary civil court, the Court may hesitate to construe section 20 as creating an absolute bar, or if such a construction is not reasonably possible, the Court may seriously examine the question about the constitutionality of such express exclusion of the civil court's jurisdiction having regard to the provisions of Articles 19 and 31 of the Constitution. It is with this two-fold object that this aspect of the matter must now be examined.....

If a citizen is deprived of his property illegally by recovering from him unauthorisedly an amount of tax where no such tax is recoverable from him, he ought to have a proper and appropriate remedy to ventilate his grievance against the State. Normally, such a remedy would be in the form of a suit brought before an ordinary civil court; it may even be a proceeding before a specially appointed

tribunal under the provisions of a tax statute, and it can also be an appropriate proceeding either under Article 226, or under Article 32 of the Constitution.....

The bar created by section 20 cannot obviously be pleaded where the validity of section 20 itself is challenged. That can of course be done by a separate suit. In terms, section 20 is confined to cases where the validity of assessment orders made under the Act is challenged. The said provision cannot take in a challenge to the validity of section 20 itself, and so, we must hold that technically, the appellant's suit is competent in so far as it seeks to challenge the validity of section 20".

(19) In *State of Kerala* v. *M/s. N. Ramaswami Iyer and Sons* (5), section 23-A of the Travancore-Cochin General Sales Tax Act (II of 1125 M.E.) fell for consideration. It is in the following terms:—

"No suit or other civil proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act."

On a proper construction of the above provision, it was held in this case that the suit for recovery of tax paid in excess of the amount due was barred by necessary implication. Besides the other decisions, the decisions I have already referred to were relied upon. The only additional observation made is :—

"It is true that even if the jurisdiction of the civil court is excluded, where the provisions of the statute have not been complied with or the statutory tribunals has not acted in conformity with the fundamental principles of judicial procedure, the civil courts have jurisdiction to examine those cases."

(20) In *Kantilal Babulal and Bros.*, v. *H. C. Patel* (6) the question that fell for determination was, whether section 12A of the Bombay Sales Tax Act (5 of 1946) infringed Article 19(1)(f) of the Constitution of India? On this matter, Hedge J., observed as follows:—

"On a reasonable interpretation of the impugned provision, we have no doubt that the power conferred under section 12A

(4) is unguided, uncanalised and uncontrolled. It is an arbitrary power. As held by this Court in *Dr. N. B. Khare* v. *State of Delhi* (11), whether the restrictions imposed by a legislative enactment upon a fundamental right guaranteed by Article 19(1) are reasonable within the meaning of Article 19(5) would depend as much on the procedural portion of the law as the substantive part of it. That view was reiterated by this Court in *State of Madras* v. *V. G. Rao,* (12) wherein it was observed that in considering the reasonableness of laws imposing restrictions on fundamental rights both the substantive and procedural aspects of the impugned law should be examined from the point of view of reasonableness. This Court has taken view consistently. A provision like the one with which we are concerned in this case can hardly be considered reasonable."

(21) To sum up the position appears to be this. Right to pension is property. This right is guaranteed by Article 19(1)(f) of the Constitution of India. The Constitution itself provides a constitutional remedy for its enforcement (see Article 32 of the Constitution). This right can also be enforced under Article 226 of the Constitution of India. I see no logic why this right cannot be enforced in the ordinary civil courts of the land. The only bar to it is in section 4 of the Act. That was a bar created at a time when the right to pension was considered merely as a bounty and not as a right to or in property. That concept no longer holds good. The Pensions Act does not provide adequate remedy for the enforcement of that right. By the very nature of things, it could not do so. A pensioner was at the mercy of the State. He had no enforceable right. Thus what was barred by section 4 of the Act was not a civil right as there was no such right. Even if section 4 had not been enacted the position would have been the same as was the case with the Government servant's right to recover arrears of salary. Section 4 was thus enacted by way of mere abundant caution. This aspect of the matter cannot be overlooked. Therefore, it appears to me that the contention of Mr. Jain that section 4 is *ultra vires* Article 19(1)(f) of the Constitution of India has force. It would be another matter if section 4 had provided an adequate remedy for the enforcement of the right and then a bar had been created by the Pensions

(11) A.I.R. 1950 S.C. 211=1950 S.C.R. 519.

(12) A.I.R. 1952 S.C. 196=1952 S.C.R. 597.

Act to the enforcement of the right by a regular suit. In that contingency, the rule laid down by the Privy Council in *Mask & Company's case* (7) (supra) would have applied. The view I have taken of the matter finds ample support from the ratio of the decision in *Kamala Mills' case* (4) (supra). It must, therefore, be held that section 4 of the Pensions Act is hit by Article 19 of the Constitution of India, and on the parity of reasoning rule 6.4 of the Punjab Civil Services Rules would also be void.

(22) For the reasons recorded above, the answer to the question referred under section 113 of the Code of Civil Procedure would be in the affirmative. The costs will abide the event.

Suri, J.—I agree.

B. S. G.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and P. C. Jain, JJ.

GURCHARAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

C.W. No. 3143 of 1969.

September 13, 1973.

Punjab Police Rules (1934)—*Rules* 13.12(1) *and* 13.16(2)—*Promotion of temporary vacancies of Sub-Inspectors and Inspectors—Whether governed and controlled by consideration of seniority—Reversion of an officiating Inspector while junior officers continue to officiate as Inspectors—Whether valid.*

Held, that Rule 13.16 (2) of Punjab Police Rules, 1934 provides for promotion to the temporary vacancies arising in the rank of Inspector, and such officiating promotions are to be made in accordance with the principle laid down in sub-rule 13.12 (1). The plain language of this rule shows that seniority is indeed an insignificant, if not, an irrelevant consideration for filling of temporary vacancies in the rank of Sub-Inspector. That applies *mutatis mutandis* to the case of officiating Inspectors as well, by virtue of rule 13.16(2). The primary and the declared objective for filling these temporary vacancies is manifestly to afford an opportunity for testing all eligible