

**(1994) 12 P&H CK 0004**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : L.P.A. No. 424 of 1986**

B.L. Bansal and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision :** 21-12-1994

**Acts Referred:**

All India Services (Amendment) Act, 1975 — Section 3  
Constitution of India, 1950 — Article 226, 309, 320(3)  
Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972 — Rule 4  
Indian Forest Service (Regulation of Seniority) Rules, 1968 — Rule 3(2), 7A  
Police Service (Recruitment) Rules, 1954 — Rule 7A  
Punjab Service of Engineers (Class II) Public Works Department (Buildings and Roads Branch) Rules, 1965 — Rule 10A

**Citation :** (1995) 2 ILR (P&H) 328

**Hon'ble Judges :** Sat Pal, J; R.P. Sethi, J

**Bench :** Division Bench

**Advocate :** R.D. Bawa, for the Appellant; J.S. Chaudhry, Addl. AG, A.G. Masih, A.G. and P.S. Patwalia, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.P. Sethi, J.—The scope, object, ambit and extent of Rule 10-A of the Punjab Service of Engineers Class II, P.W.D. (B&R) Branch) Rules, 1965 (hereinafter to be called the "Rules") is required to be adjudicated in these Letters Patent Appeal Nos. 424, 425, 483 and 484 of 1986 and Civil Writ Petition Nos. 4958 and 5777 of 1985 and 2922 of 1986. For the purposes of this judgment, the facts have been taken from L.P.A. No. 424 of 1986.

2. The Petitioners in Civil Writ Petition in Nos. 772 of 1984 and 2804 of 1985 had prayed for the issuance of a direction to Respondent Nos. 1 and 2 therein for the grant of benefit under the aforesaid Rule for the purposes of seniority from the dates they got provisional Short Service Regular Commission and for a further direction to the Respondents to frame seniority of the members of the Punjab

Service of Engineers Class II in accordance with the Rules and give them consequent benefits of seniority in the Punjab Service of Engineers Class I. The learned Single Judge,--vide the judgment dated April 25, 1986, impugned in this appeal, directed the Respondents to give the benefit to the Petitioners in the aforesaid writ petitions for the purposes of seniority on the basis of Rule 10-A of the Rules, in accordance with the interpretation given by him from the dates they were granted Provisional Short Service Regular Commission in the Indian Army and to frame the seniority of Punjab Service of Engineers Class I (B&R) Branch accordingly by giving all consequential reliefs to the writ Petitioners.

3. The facts giving rise, to the filing of the present appeals and the writ petitions are that during the Indo-China conflict in the year 1962 and proclamation of National Emergency in the country, the Government of India finalised a Scheme for Selecting candidates for the grant of Short Service Regular Commission in the Indian Army in the corps of Engineers, Signals and Electrical and Mechanical Engineers from amongst the Final-year students studying in different institutions in the country. Technical Boards were constituted who visited the different institutions nominated in the list circulated by the Government of India. Ministry of Defence,--vide letter dated 21st March, 1963 (Annexure P/1). Amongst others, this letter was addressed to the Chief Secretary of the Punjab Government with a request for issuance of immediate necessary instructions to the heads of the Engineering Colleges/Institutions concerned to afford all necessary assistance to such Boards and to give the Scheme a wide publicity. The Chief Secretary,--vide his letter dated 27th March, 1963 (Annexure P/2) conveyed the message of Assistant Adjutant General, Army Headquarters, New Delhi, to the Secretary to Government Punjab, PWD (B&R, Public Health and Capital Branches), Chandigarh intimating that Technical Graduate Commission would visit the Punjab Engineering College, Chandigarh, Thapar Engineering College, Patiala and Guru Nanak Engineering College, Ludhiana between 27th March, 1963 to 6th April, 1963 and further it was mentioned that according to the information received from the Government of India, the defence forces had large requirement of Graduate Engineers for appointment as Commissioned Officers; 193 applications of Engineers were forwarded out of which 60 were interviewed and only 11 had been finally selected. The Ministry of Defence, Government of India, is stated to have, issued instructions regarding the grant of Short Service Regular Commission in the corps of Engineers, Signals and Electrical and Mechanical Engineers to the pre-final and final-year students of the Degree/Diploma Courses in Engineering. It was further stated that the question of providing incentives to such engineers who were willing to take Commission in the Army had been considered and it was felt that it was necessary to provide incentives to final year students of the Panjab Engineering College by first recruiting them as temporary Assistant Engineers and then retaining their lien against the posts specially created for the aforesaid purpose so that they could be absorbed in the State Civil Service after demobilisation and cessation of the emergency. As the recruitment to the post of Temporary Assistant Engineers as direct recruit was to

be made through the Public Service Commission from amongst such candidates who possess the minimum qualifications laid down in Appendix "B" to the Rules, it was felt necessary to relax the minimum qualification in favour of such candidates who opted to join the Short Service Commission. The Public Service Commission was requested by the State Government to convey its approval to the proposal of the Government who,--vide its letter dated 10th September, 1963 (Annexure P-4) conveyed that the Commission agreed to the proposal contained in para 3 of the aforesaid letter (Annexure P/3). The notification dated 27th May, 1964 Was issued by the Governor of Punjab in exercise of the powers vested in him under Article 320(3) of the Constitution of India for the purpose of making necessary regulations to amend the Punjab Public Service Commission (Limitation of Functions) Regulation, 1955 whereby Item No. 41 to Schedule "A" and Item No. 34 to Schedule "E" to the Said Regulations were incorporated mentioning:

Temporary Assistant Engineers against which pre-final and final year students of the Engineering Colleges in the State of Punjab are appointed on their being granted provisional Short Service Regular Commission.

Vide their letter dated 6th April, 1964 (Annexure P/5), the Government of Punjab conveyed the approval of encouraging the Students who volunteer for Short Service Regular Commission by deciding that pre-final and final year students of the Engineering Colleges in Punjab shall be appointed as temporary Assistant Engineers in the concerned Branches of the Public Works Department from the date of the grant of Provisional Short Service Regular Commission to them and they shall be deemed to have been seconded to military duty from the said dates. It was resolved that the special posts be created if sufficient vacancies were not available for the appointment of such persons as temporary Assistant Engineers. On their release from the military service, such Assistant Engineers were required to be absorbed on the posts to which they were" originally appointed and the officials temporarily appointed against those posts were liable to be reverted or discharged. It was further resolved that qualifications for appointment as Engineers Class II shall be deemed to have been relaxed in favour of the persons appointed as temporary Assistant Engineers on the grant of Provisional Short Service Regular Commission. In the meantime, the Punjab Re-organisation Act, 1966 came into force and according to proviso to Sub-section 6 of Section 82 of the Act, the conditions of, service applicable immediately before the appointed day were not to be varied to the disadvantage of the employees except with the previous approval of the Central Government. Keeping in view the interests of the writ Petitioners, a letter dated 19th March, 1971 (Annexure P/7) was addressed to the Secretary to Government of India, Department of Personel, Cabinet Secretariat, New Delhi, mentioning therein that the State of Punjab had announced concession to provide incentives to pre-final and final year Students of Engineering Colleges to volunteer themselves for Short Service Regular Commission in the Indian Army. Although preliminaries for the appointment of pre-final and final year students as temporary Assistant

Engineers in the relevant branches of Public Works Department and the creation of the special posts for them had not been completed prior to the Re-organisation of the State, yet the State Government acknowledge its obligation to one of the undertakings given to such persons. As the grant of concession would entitle the released Armed Personnel to seniority with effect from the dates of grant of Provisional Short Service Regular Commission in their favour, the same was likely to effect the conditions of service of other employees who had been appointed to the relevant branches of the Public Works Department of the Punjab Government prior to 31st October, 1966, it was considered appropriate to seek prior approval of the Central Government in terms of Section 82 of the Re-organisation Act before conferring such concession in a legal form. The Central Government is stated to have accorded the necessary approval and thereafter the Governor of Punjab in exercise of his powers under Article 309 made amendment by incorporating Rule 10-A in the Rules, which is the bone of contention between the parties and is required to be adjudicated in these appeals/writ petitions.

4. It was submitted that the writ Petitioners namely B.S. Bajwa and B.D. Gupta were studying in the final years of Engineering Courses in the Punjab Engineering College, Chandigarh and Thapar Engineering College, Patiala during the months of March and October, 1963 respectively. They claimed to have been persuaded to volunteer their services for the Indian Army in view of the exigencies of the Force arising out of the proclamation of National Emergency and were selected by the Mobile Selection Board to the Indian Army for Short Service Regular Commission under Special Army Instruction No. 4/5/1963. They further alleged that they were given provisional Short Service Regular Commission with effect from 30th March, 1963 and 30th October, 1963 respectively. While in the Army Service, the writ Petitioners were asked by the Army Head Quarters in the year 1965 to send their applications and willingness for absorption in the Civil Service after de-mobilisation from the Army. They gave their option and willingness to be absorbed in the Civil Service on de-mobilisation from the Army. They were released from the Army after the completion of their tenure as Short Service Regular Commission Officers on 4th May, 1971 (A.N.) and 12th May, 1972 (F.N.) respectively. Thereafter they were absorbed as S.D.Os. in the Punjab Service of Engineers Class II (B&R) Branch on 4th May, 1971 (A.N.) and 12th May, 1972 (F.N.) respectively. It was claimed by the writ Petitioners that the posts against which they were absorbed had already been taken out of the purview of the Public Service Commission and the requisite qualification of Bachelor of Engineering had been relaxed. At the time of their joining service in the Civil Service, Engineer in Class II on 12th May, 1975 with effect from 6th October, 1963 and Shri Gurdip Singh Petitioner with effect from 8th June, 1964 when they joined the Army. Rule 10-A cannot be given to the Petitioners who had admittedly joined the Army service before 6th April, 1964. It was contended that the gradation list relied upon by the writ Petitioners were only tentative. The Government was contemplating the amendment to Rule 10-A so as to make the

instructions dated 6th April, 1964 applicable to those Officers also who joined the Army prior to 6th April, 1964 in such a manner that benefits of the above instructions would be available to such officers with effect from the date of issue of instructions dated 6th April, 1964. The case of Gurdip Singh was stated to be covered under Rule 10-A because he joined the Army after 6th April, 1964 i.e. 8th June, 1964.

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8. In his written statement Shri G.R. Chaudhary, submitted that the writ petition filed against him was liable to be dismissed on account of un-explained delay and laches. The Petitioners having all along remained junior to him could not have challenged the position of seniority at a belated stage. He contended that the writ Petitioners had joined the service of P.W.D. (B&R) later than him and were rightly placed junior to him. The Petitioners were not entitled to any benefit of the instructions dated 6th April, 1964. The Rules applicable in the case did not confer any benefit upon the Petitioners to claim seniority above him. The amendment made in Rule 10-A of the Rules was prospective and could not be made applicable retrospectively.

9. In their reply/affidavit Shri D.P. Bajaj and Jagir Singh submitted that they were working as Executive Engineers and were senior to the writ Petitioners as was clear from the confirmation order issued by, the Government of Punjab in the year 1984 (Annexure R/1) in which they were shown at serial numbers 27 and 23 respectively whereas the writ Petitioners were shown at serial Nos. 28 and 29. The confirmation list had not been challenged by the writ Petitioners. It was contended that Annexures P/1 and P/2 relied upon by the Petitioners only postulates the decision of the Government of India to select some candidates for the grant of Short Service Regular Commission in the Army from amongst the final year students studying in various technical institutions and did not remotely postulate the grant of any benefit to them as claimed. The claim of the Petitioners that they started getting pay from the Army on the dates when they were taken in the Short Service Regular Commission has vehemently been denied. It is submitted that the Commission could only be granted to them after successful completion of the training and they had admittedly not undergone the training on the dates when they claimed to have joined the Army Service. It was further contended that the writ Petitioners could not be absorbed in the Civil Service merely on their release from the Army. They could be considered for appointment in accordance with the Rules prevalent at the relevant time and at best they can be deemed to have been recruited to ex-cadre posts in August, 1972. Rule 10-A of the Rules did not contemplate to give any benefit of seniority to the Petitioners retrospectively though it envisages the giving of some benefits to the de-mobilised army personnels. The gradation list published by the Government is claimed to be based, upon the seniority list of Class II Service. The other pleas raised by the State of Punjab were adopted with the submissions of the writ petition filed by the writ Petitioners being mis-conceived were liable to

be dismissed.

10. We have heard the learned Counsel for the parties and perused the record of the cases. We have also examined the judgements of the Hon"ble Supreme Court relied upon by both the parties.

11. Some of the admitted or proved facts of the case are that the Government of India, Ministry of Defence,--vide a letter dated 21st March, 1963 (Annexure P/I) addressed to the Chief Secretaries of various states in the country including the state of Punjab conveyed a Scheme of the Government of India of selecting candidates for the grant of Short Service Regular Commission in the Army in the corps of Engineers, Signals and Electrical and Mechanical Engineers from amongst the final year students studying in Technical Institutions in the country, for which Boards had been formed who were to visit the Institutions according to the programme annexured with the letter. It was further mentioned:

The Government of India will be grateful if immediate instructions are issued to the heads of Engineering Colleges/Institutions concerned to afford all necessary assistance to the Technical Board and to give this measure widest Publicity. The actual dates of visits of the Board will be intimated/direct to the institutions by Army Headquarters (E in "C"s Branch). The State Government/Local Administration may also kindly afford facilities for the medical examination of selected candidates by the Civil Surgeons without any charge.

The Chief Secretary to Government of Punjab,--vide letter dated 27th March, 1963 (Annexure P/2) intimated the Secretary to Government of Punjab, PWD (B&R/P&H Capital Branches), Chandigarh to the effect:

A message from Commander Manikketh K. Mason, Asstt. Adjutant General, Army Headquarters, New Delhi has been received through Col. S.R. Manchanda, Recruiting Officer, Ambala to the effect that the Technical Graduate Commission heads by Brg. Khurana will visit the following institutions on the date specified against each for the purpose of selecting final year engineering students for Short Service. Commission in the Army:

1. Punjab Engineering College, Chandigarh, 27th March to 30th March, 1963.
2. Thapar Engineering College, Patiala, 1st to 3rd April, 1963.
3. Gurunanak Engineering College, Ludhiana, 4th to 6th April, 1963.
4. Kindly issue necessary instructions to the Principals of the above mentioned Engineering Colleges to give full co-operation to the said team and to encourage the students to go in the Defence of the Country in as large number as possible. The number of students selected may also be intimated instruction wise before April 15, 1963.

Vide his letter dated 31st August, 1963 (Annexure P/3), the Chief Secretary to Government Punjab, requested the Punjab Public Service Commission, Patiala for relaxation of rules and take up the posts of temporary Assistant Engineers with

the assurance that only such students would be appointed against those who have been finally selected and deputed to Army Head Quarter for the purpose. It was further stated:

The question of provision of incentive of Engineers willing to take commission in the army has been considered and it has been felt that it is necessary to provide incentive to the final year students of the Punjab Engineering College by first recruiting them as Temporary Assistant Engineers and then retaining their liens against posts specially treated for this purpose so that they could be considered for absorption in the State Civil Service after their demobilisation. The overall view is that such an eventuality may never arise but at the same time, such an incentive will enable our young men to take commission in the Army.

The Punjab Public Service Commission,--vide letter dated 10th September, 1963 (Annexure P/4) intimated that they agreed to the proposal of the Chief Secretary contained in para 3 of his letter and stated, the commission presume that the decision of the Government in this matter will equally apply to students of other Engineering Colleges in the State.

12. The controversy between the contending parties has arisen on account of issuance of letter (Annexure P/5) on the subject, "Concessions to civilian employees and others who join military services during the emergency." The said letter was addressed to all heads of departments, Commissioners of Divisions, District and Sessions Judges, Deputy Commissioners and Sub Divisional Officers (Civil) in the State of Punjab intimating that with a view to encourage the students to volunteer for Short Service Regular Commission it was decided that pre-final and final year students of the Engineering Colleges in the Punjab should be appointed as temporary Assistant Engineers in the relevant branches of the State of Punjab Public Works Department from the date of the grant of provisional Short Service Regular Commission to them and they should be deemed to have seconded to military duty from the said dates. It was mentioned that special posts should be created for this purpose if sufficient vacancies were not available for the appointment of such persons as temporary Assistant Engineers with the sanctioned cadre of the various branches of the Department. Where such candidates had been appointed against the vacancies within the cadre, administrative department will be competent to create a comparable number of posts for making purely temporary appointments against them on their release from the military service and such persons shall be absorbed in the post on which they were originally appointed. It was further mentioned:

In case the Provisional Short Service Commission is terminated for reasons to (i) failure to qualify at the degree or diploma examination (ii) lack of medical fitness and (iii) failure to join the pre-commission training at the Indian Military or to complete it successfully, the appointment as Temporary Assistant Engineer will be liable to termination from the date of the termination of the Provisional Short Service Regular Commission and no benefit will be allowed for the period that their lien with the State Government was retained. Moreover, in the event of the

extension of the Provisional short Service Regular Commission for any period without pay the Civil rates of pay and allowances in the post of temporary Assistant Engineers will not be admissible.

13. According to the existing service rules of the C.S.I.E. Class II a candidate is eligible for appointment as Temporary Assistant Engineer only if he possesses a degree in Civil Mechanical or Electrical Engineering but this qualification will be deemed to have been relaxed in favour of persons appointed as temporary Assistant Engineers on the grant of Provisional Short Service Regular Commission. In order, however, to ensure that the persons who have already joined the armed forces in the corps of Engineers, signals and electrical and Mechanical Engineers after obtaining degrees from Engineering Colleges in the State are not placed at disadvantage vis-a-vis pre final and final year students, it has been decided that such persons, on their release vacancies in the Engineering Service in the relevant branches of the State Public Works Department and should have priority in absorption over the persons who joined while still pre-final and final year students...."

Vide Annexure P/6 addressed to the Petitioners and one Gurdip Singh ex-cadre posts of Sub Divisional Engineer in P.S.E. Class II in the Punjab PWD B&R Branch were offered on the condition that their seniority will be determined in accordance with the instructions contained in the Punjab Government letter dated 6th April, 1964 as soon as these instructions were given the shape of statutory rules under Article 309 of Constitution of India. After obtaining the approval of the Central Government, the following rule being Rule 10-A was incorporated in the Rules with effect from 5th January, 1973:

10-A. Notwithstanding anything contained in these Rules the recruitment of pre-final and final year students of Engineering Colleges to the Service, their deputation to the military duty, their absorption after release from military service, relaxation of qualifications and other concessions with retrospective effect, shall be regulated in the manner specified in the Punjab Government Circular Letter No. 3068-4-GSI-64/10930, dated 6th April, 1964.

14. The judgment of the learned Single Judge has mainly been assailed on the ground that as no assurance was given either by the Central Government or by the State Government at the time of their selection, the writ Petitioners were not entitled to claim their seniority with effect from 1963. The learned Single Judge proceeded on the assumption that, "....incentives were given to final and pre-final, students of the Engineering Colleges that if they volunteered themselves for being commissioned into the Army, the requirement of qualification of Degree in Engineering in their case would be relaxed, they would be deemed to have been appointed to the service in the State from the date of grant of Provisional Short Service Regular Commission to them and then seconded to the Army.. To give legal effect to these incentives, Rule 10-A was introduced with the previous approval of the Central Government." After referring to Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, , the

learned Single Judge held,--

that executive instructions can only be prospective in nature and no retrospective effect can be given to them.

but despite this it was held:

However, the Governor of Punjab in his legislative wisdom embodied in the instructions dated 6th April, 1984 (Annexure P/5) in Rule 10-A given them retrospective effect.

The learned Single referred to the judgment of the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, wherein the following observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 A.C. 109, were approved:

If, you are bidden to treat an imaginary State of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it... The Statute says that you must imagine a certain state of affairs, if does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that State of affairs.

Moved by the aforesaid observations the learned single judge held that the writ Petitioners were to be admitted to have been appointed to the service from the date they were granted Provisional Short Service Regular Commission and by refusing to give effect to such an assumed assurance, the Respondent-State was held to have allowed its imagination to boggle when it came to the inevitable corollaries of the State of Affairs thus coming into being. The learned Single Judge further held:

The language of Rule 10-A leaves no manner of doubt that it is to be given effect retrospectively and shall relate back to the dates when the Petitioners were granted Provisional Short Service Regular Commission in the Indian Army under the Scheme in question. As held by the final Court in *B.S. Vadera Vs. Union of India (UOI) and Others*, the clear and unambiguous expressions of the statute must be given their full and unrestricted meaning unless hedged in by any limitations. A rule framed under Article 309 of the Constitution in no doubt subject to its provisions but in the absence of any Act as envisaged by the main provision of Article 309 the rule is to have full effect both prospectively and retrospectively.

Relying upon *B.K. Bhalla v. State of Punjab* 1983 S.L.R. 636, the learned Single Judge held that the conventional way of interpreting the statutes is to see the intention of the Legislature and if the words of the statute are precise and unambiguous the intention of the legislature is gathered by expounding them in their natural and ordinary sense as they best declare the intent of the law given but where the import is doubtful the Court has to choose that interpretation

which represents the true intention of the Legislature. Finding that the words or the intention of Rule 10-A was not precise, the learned Single Judge chose the second alternative on the assumption of consistency and smoothworking of the statute.

15. It has not been disputed before us that the seniority is a term or the condition of service of a civil servant and cannot be altered to his disadvantage without adopting due course of law. The Supreme Court in *State of Madhya Pradesh and Others Vs. Shardul Singh*, and in *I.N. Subba Reddy Vs. Andhra University and Others*, , held that the expression, "condition of Service" means all those conditions which regulate the holding of post by a person right from the time of his appointment till his retirement and even beyond it, in the matters like pension etc.

16. In *State of Punjab v. Kailash Nath* 1989 (1) S.L.R. 12, the Apex Court held:

In the normal course what falls within the purview of the term "Conditions, of Service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale leave, provident fund, Gratuity, Confirmation, Promotion seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation deputation and disciplinary proceedings...

17. It is also established position of law that the Government has no power to alter or modify the conditions of service with retrospective effect to the prejudice of the government servant. In *N.C. Singhal's* case (Supra) it was held that, "conditions of service were not liable to be altered or modified to the prejudice of the Appellant therein by a subsequent administrative instruction which was sought to be given retrospective effect."

In *Ex Capt. K.C. Arora v. State of Haryana* 1984 (2) S.L.R. 97, the Supreme Court held:

It may be pointed out at the very outset that the Parliament as also the State Legislature have plenary powers to legislate within the field of legislation committed to them and subject to certain constitutional restrictions they can legislate prospectively as well as retrospectively. It is, however, a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. But the rule in general is applicable where the object of the statute is to effect the vested rights or to impose new burden or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to effect existing rights, it is deemed to be prospective only. Provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment....

After referring to the judgment delivered in *State of Gujarat v. Raman Lal Keshav Lal Soni* 1983 S.C.C. 33 and *B.S. Vadera Vs. Union of India (UOI) and Others*, , it

was held by the Supreme Court that, "the law appears to be well settled that the wrongs cannot take away the accrued right of the Petitioners and the Appellants by making amendment in the rules with retrospective effect."

19. In H.S. Atwal and others Vs. Union of India and others, a plea was raised by the Appellant therein that he was entitled to get the benefit of period of military service rendered by him for the purposes of his seniority irrespective of the fact that while in military service he did not get opportunity to enter the State Administrative Service which such a member had joined after demobilisation. The facts of the case were that the Appellant had joined the Army some time in the year 1963 and left it in the year 1968. He joined the Himachal Pradesh State Administrative Service in the year 1974 for which the first examination was conducted in the year 1973. The Appellant took the Stand, on the strength of Rule 4(i) of the Demobilised Indian Armed Forces Personnel (Reservation of vacancies). In the Himachal Pradesh Administrative Rules, 1974 that though the first opportunity which became available to him was in the year 1973 his period of military service, which was of about five years has been reckoned for the purposes of his seniority whereas he was taken to have entered the Administrative Service on 25th July. 1971 which was the date Himachal Pradesh got statehood. After noting the Rule, the Supreme Court held:

We may point out that when a fiction is created by a legal provision it cannot be carried beyond the purpose for which it has been created as pointed out by this Court in K.S. Dharmadatan Vs. Central Government and Others, . This view had been taken after noting some important Indian and English decisions to which reference was made in paragraphs 11 to 13.

20. As the benefit of the military service for the purpose of seniority has been hedged by a condition and as the condition got satisfied in the present case only in 1973, we cannot agree with Shri Sachhar that the period of military service between 1963 to 1968 was required to be reckoned to determine the seniority of Atwal, so too in case of other Appellants who are similarly situated. The purpose for which the sub-rule was made does not required giving of benefit in question even if the condition mentioned in the sub-rule is not satisfied. The condition imposed is reasonable and sufficiently compensates the members of the armed forces for the contribution made by them to protect the country during the year of 1962 external aggression.

21. The judgment impugned in these appeals which has also adversely affected the writ Petitioners before us is mainly based upon the assumption that the assurance was given to the writ Petitioners to treat them in service with effect from the date they were granted Provisional Short Service Regular Commission. This assumption is evident from the reliance placed by the learned Single Judge upon the observations of Lord Asquith in East End Dwellings Co. Ltd.'s Case (Supra) quoted herein above. The assumption of such a position and the conclusion arrived at by the learned Single Judge being not based upon any documentary evidence are liable to be set aside by accepting these appeals. The

admitted position is that the writ Petitioners had joined the service in the year 19583 on the dates mentioned herein above when admittedly no assurance with respect to giving benefit of seniority worth the name was given or could impliedly be inferred. Annexure P/1 only refers to the incentives provided to the final year students studying in technical institutions to be taken into Army Service at a time when they admittedly did not possess the requisite qualification. Such an incentive to encourage the students to come in the defence of the country are reiterated in Annexure P/2 as well. Annexure P/3 dated 31st August, 1963 on the Subject of incentives refers to the contemplated incentives and specifically illustrates them as:

The question of provision of incentive of Engineers willing to take commission in the army has been considered and it has been felt that it is necessary to provide incentive to the final year students of the Punjab Engineering College by first recruiting them as Temporary Assistant Engineers and then retaining their liens against posts specially created for this purpose so that they could be considered for absorption in the State Civil Service after their demobilisation. The overall view is that such an eventuality may never arise but at the same time, such an incentive will enable our young men to take up commission in the Army. Only such students will be appointed against such in the relaxation of minimum qualifications in their favour. Only such students will be appointed against such posts who have Recruitment to the post of Temporary Assistant Engineers as a direct recruit is made through the Punjab Public Service Commission. The candidates also required to possess the minimum qualifications, listed in Appendix "B" according to the draft service Rules for PSE Class II (Copy enclosed). This naturally involves two points i.e. taking out such posts out of the purview of the Commission and relaxation of minimum qualifications in their favour. Only such students will be appointed against such posts who have been finally selected by the selection teap deputed by the Army Headquarters for the purpose.

22. Even Annexure P/5 deals with concessions to civilian employees and others who joined the military service during the emergency, promises absorption, after demobilization and did not refer to providing incentives in the matter of seniority or other service benefits. Rule 10-A was incorporated in January, 1973 admittedly after about a decade of the writ Petitioners joining the Indian Army. It specifically mentions that recruitment of pre-final and final year students of Engineering Colleges, as the writ Petitioners were, their deputation to the military duty, their absorption after release from the military service, relaxation of qualifications and other concessions with retrospective effect shall be regulated in the manner specifically mentioned in the Punjab Government circular dated 6th April. 1964. The aforesaid letter has been dealt with here in earlier wherein it is specifically mentioned that, "it has been decided that pre-final and final year students of the Engineering Colleges in the State of Punjab should be appointed as temporary Assistant Engineers in the relevant Branches of the State of Punjab Public works Department from the date of the grant of

provisional Short Service Regular Commission to them and they should be deemed to have seconded to military duty from the said date....". This annexure does not refer to those who had been appointed to the posts prior to 6th April, 1964, it appears that after the writ Petitioners had joined the Army Service, the State felt the necessity of having some more Engineers in the military Service for which Annexure P/5 was issued with the promises detailed therein. All those persons who were persuaded to join the Army in pursuance of the letter dated 6th April, 1964 can prefer their claim for the grant of assumed concession even in the form of seniority or other service concession even in the form of seniority or other service benefits but the Petitioners who had admittedly joined the Armed Forces prior to 6th April, 1964 cannot prefer any such claim which if admitted would adversely affect the service conditions of those who were in service at the time when the writ Petitioners joined the Indian Army. The writ Petitioners were promised of concessions for the first time in the month of January, 1973 when Rule 10-A was incorporated and no document reflecting any type of assurance has been brought to our notice which could justify the claim of the writ Petitioners regarding the assurances allegedly given to them for the purposes of seniority with effect from 1963. Notwithstanding the fact that the Rules could not be altered to the detriment of those who were already in service, the writ Petitioners in effect and essence miserably failed to bring to our notice that any such incentive or assurance was given to them by the State Executive. The learned Single Judge proceeded on wrong assumptions and thus came to the conclusions which cannot be justified on the touchstone of legal pronouncements and settled position of law. It may not be out of place to mention that the writ Petitioners appear to have been offered the ex-cadre posts of S.D.E. in P.S.E. Class II in the Punjab Public Works Department (B&R) Branch in the month of August, 1972,--vide Annexure P/6 with the condition that their seniority will be determined in accordance with the instructions contained in Punjab Government Letter dated 6th April, 1964 as soon as these instructions are given the shape of Statutory rules under Article 309 of the constitution of India (emphasis supplied). It is also not disputed that in the confirmation list of P.W.D. (B&R) Branch published from time to time, the writ Petitioners were shown junior than the Appellants herein. No document has been produced on the record to show that they had ever objected to their position in the gradation list or prayed for the grant of the benefits claimed by them in the writ petitions filed in this Court.

23. Though it is an arguable point as to whether a direction can be given in exercise of the writ jurisdiction to the State for compliance of the alleged assurance which is likely to adversely effect the other employees in service yet to invoke such a jurisdiction a party approaching the Court has to positively establish that an assurance was given or promise made and in pursuance of that assurance or promise made he had done that what he would not have done in the absence of such assurance or promise. Unless the position is altered on the basis of the promises made or assurance given, no such relief can be prayed for. The writ Petitioners never pleaded nor proved the existence of these pre-

conditions before invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

24. It also cannot be denied that the acceptance of the writ petition would adversely effect the service conditions of the in service employees like the Appellants by altering their seniority and putting them to disadvantageous position. Administrative instructions or the Rules could not be altered to their disadvantage. The intention of the Rule making authority is not so clear as to unambiguously hold the intention for Conferment of the benefits in favour of the writ Petitioners.

25. The learned Counsel appearing for the writ Petitioners has placed reliance on Union of India v. Dr. S. Krishna Murthy and Ors. J.T. 1989 Suppl. S.C. 263. In that case, their Lordships relied upon A. Janardhana v. Union of India (1993) 2 S.C.R 986, but on facts found that the impugned rules therein did not effect the, vested right of the employees adversely. Rule 3(2) of the Indian Forest Service, (Regulation of Seniority) Rules 1968 dealt with the year of allotment to an officer, appointed to the Service in, accordance with the method prescribed, therein. Clause (d) of the aforesaid Rule provides as follows:

Where an officer is appointed to the Service in accordance with Rule 7-A of the Recruitment Rules, deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-composition training OR the date of the commission where there was only post commission training according as he qualified for appointment to the service in his first or second chance, as the case may be having been eligible under Regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967.

Explanation.--If an officer who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7-A of the Recruitment Rules and who have the same year of allotment.

The Rule specifically provided that till January 28, 1974, 20 per cent of the permanent vacancies in the Indian Forest Service to be filled up by direct recruitment in any year shall be reserved for being filled by ECOs and SSOs of the Armed Forces of the Union of India who were commissioned after November 1, 1962 and who have been released from the Armed Forces after a spell of service. Clause (c) and (d) of Sub-rule (3) of Indian Police Service (Regulation of Seniority) Rules, 1964 also dealt with the year of allotment of an Officer appointed to the Service in accordance with Rule 7-A of the Indian Police Service Recruitment Rules, 1954. Both the Rules had been framed under the All India Service Act 1954. After referring to the rules, the Court held "It is now well settled principle of law that if the statute under which the Rule is framed does

not confer on the authority concerned the power to make such a rule with retrospective effect, the authority will have no power to frame any rule with retrospective effect...." The Supreme Court also referred to All India Service (Amendment) Act 1975 by which a new Sub-section 1-A was inserted which provided:

(1-A). The power to make rules conferred by this Section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person to whom such rule may, be applicable.

The Supreme Court further held:

...It has been already noticed that the impugned Rule have been validated with retrospective effect by Section 3 of the Amendment Act which, invalidating rule made with retrospective effect u/s 3 of the Act, provides that no such rule shall be deemed to have been invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and, accordingly, every such rule and any action taken or thing done thereunder shall be as valid and effective as if the provisions of Section 3 of the Act (principal Act), as amended by the Amendment Act were in force at all material times when such rule was made or action or thing was taken or done. In view of Section 3, it has to be deemed that provisions of Section 3 as amended by the Amendment Act, were in force at all material times when such rule was made. In view of the provisions of Section 3 of the Amendment Act Sub-section (1-A) which has been inserted in Section 3 of the Act by way of amendment, must be deemed to be in force at the time of impugned rules were made. But the question is even though Sub-Section (1-A) is deemed to have been there at the time the impugned rules were framed with retrospective effect whether the impugned rules prejudicially affect the interest of the Respondents.

26. The Supreme Court in that case categorically held that the Service condition of the service had not at all been adversely affected which is not the position in the present case. The Court was also moved by the fact that the Government had adopted a policy to rehabilitate the ECOs and SSCOs in All Indian Service Central Services and State Services in order to ensure good response and to provide sufficient incentives for those who offered themselves for emergency commissions. These notings start from November 17, 1962. It is not necessary for us to make a particular reference to the notings in the government files. Suffice it to say that in view of the voluntary offer of services by the youngmen of our country to defend the country against foreign aggression the government adopted a very sympathetic view and took steps to compensate them after their discharge from the Emergency Commission Service, for the opportunity lost them in joining the All India Services. No such assurance or promise has been brought to our notice. The facts of the present case are distinct and the law laid down in Dr. S. Krishna Murthy's case (Supra) is not applicable. Otherwise also

the Supreme Court in K.C. Arora's case (Supra) dealt with the question of giving war service benefit to the ex-servicemen retrospectively which affected prejudicially the persons who had acquired the right relating to their seniority, increment and pension and came to the conclusion that such an amendment in the Rule was ultra vires of the Constitution, After testing the law laid down in Harbhajan Singh v. State of Punjab 1988 2 S.L.R. 190 , Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, , State of Mysore Vs. M.H. Krishna Murthy and Others, , Raj Kumar Vs. Union of India (UOI) and Others, , Wing Commander J. Kumar Vs. Union of India (UOI) and Others, , B.S. Vadera Vs. Union of India (UOI) and Others, and State of Gujarat v. Raman Lal Keshav Lal Soni (1983) S.C.C. 33 the Supreme Court held that the legislature was competent to legislate with retrospective effect to take away or impair any vested right under the existing laws provided no provision of the Constitution is violated. The law must satisfy the requirement of the Constitution of taking into account the accrued right or acquired right of the parties on the date when the legislation is made the constitutional obligations the constitutional rights and constitutional consequences cannot be tampered with by making the law retrospective in operation.

27. The law which if made today would be plainly, invalid as the offending constitutional provision in the context of the existing situation cannot become valid by being made retrospective. The Supreme Court then concluded:

In view of this latest pronouncement of the Constitution Bench of this Court the law appears to be well settled and the Haryana Government cannot take away the accrued rights of the Petitioners and the Appellants by making amendment of the rules with retrospective effect.

This judgment was delivered by a Bench consisting of three Judges whereas the judgment in Dr. S. Krishna Murthy's case (Supra) was delivered by a Bench consisting of two judges.

29. The Supreme Court in Union of India (UOI) and Another Vs. K.S. Subramanian, .

sepecially held that:

...The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by the larger Benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view.

We have specifically dealt with the points raised in this appeal and hold on facts that the law laid down in Dr. S. Krishna Murthy's case (Supra) was distinguishable having no application in the instant case. Otherwise also in view

of the judgment in K.C. Arora's case (Supra), no relief can be granted to the writ Petitioners on the basis of the observations made in Dr. S. Krishna Murthy's case (Supra).

29. In the instant case, the Respondent-State has specifically taken a plea that benefits as enumerated in the letter dated 6th April, 1964 (Annexure P/5) were to accrue to the Petitioners, as soon as the instructions contained therein were given the shape of statutory rules under Article 309 of the Constitution of India. It was decided by the Respondent-State that benefit of Rule 10-A could be given only to those who joined the military service after 6th April, 1964 and not prior to that. Arguing on behalf of the state, Mr. Jagmohan Singh Chaudhary, Addl. Advocate General, has conceded that the Petitioners would also be held entitled to the benefit of Rule 10-A with effect from 6th April, 1964 despite the fact that they had joined the Civil Service under the State much thereafter on account of demobilisation from the army service. In view of the concession of the Respondent-State, the writ Petitioners are held entitled to seniority with effect from the date of issue of Annexure P/5 i.e. 6th April, 1964.

30. The learned Single Judge appears to have ignored the important aspects of the matter, as dismissed herein above and passed the judgment impugned in the appeal more being influenced by the fact that the writ Petitioners had served the nation at the time of national emergency. The learned Single Judge ignored the fact that the writ Petitioners had been duly compensated for their participation in the Army Service as rules for their recruitment were relaxed and despite non-possession of the educational qualifications they were granted provisional Short Service Regular Commission after being appointed as Temporary Assistant Engineers when such posts of Engineers were specifically withdrawn from the purview of the Public Service Commission. The judgment of the learned Single Judge cannot be up held and is liable to be set aside.

31. No other point has been argued or urged before us.

32. Consequently, the appeal is accepted and the judgment, dated April 25, 1986, of the learned Single Judge impugned in this appeal is set aside. The writ Petitioners are, however, held entitled to seniority on the basis of Annexure P/5. The writ Petitioners shall be deemed to have joined the civil service of temporary Assistant Engineers under the State Government with effect from 6th April, 1964 and their seniority shall be determined accordingly.

33. In view of what is stated herein above, L.P.A. Nos. 424, 425, 483 and 484 of 1986 and Civil Writ Petition Nos. 4959 and 5777 of 1985 and 2922 of 1986 are allowed leaving the parties to bear their own costs.