

(1969) 07 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1164 of 1964

Sunder Lal and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-07-1969

Acts Referred:

Government of India Act, 1935 — Section 241, 311
Punjab Government Services (War) Amendment Rules, 1943 — Rule 3, 4, 5, 6, 7

Citation : AIR 1970 P&H 241 : (1970) 1 ILR (P&H) 429

Hon'ble Judges : P.C. Pandit, J;H.R. Sodhi, J;Gurdev Singh, J

Bench : Full Bench

Advocate : Abnasha Singh and R.N. Mittal, for the Appellant; M.S. Punnu, General, H.L. Sarin, Senior Advocate and V.P. Sarda, D.N. Awasthy and A.L. Bahal, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This order will dispose of two connected writ petitions Nos. 1164 and 1481 of 1964. Counsel for the parties are agreed that the decision in the former petition will govern the other as well. I will, therefore, refer to the facts in Civil Writ 1164 of 1964.

2. Hardial Malik, Sunder Lal & Kahan Chand, all employees of Irrigation Branch in the Public Works Department, Punjab Government, filed a petition under Articles 226 and 227 of the Constitution against the State of Punjab and the Chief Engineer, Irrigation Branch (South) Punjab, Respondents Nos. 1 and 2. Subsequently, about 200 persons, whose seniority would be affected if the writ petition was allowed, were also impleaded as respondents. The petitioners were appointed as Assistant Clerks in the said department on 25th September, 1946, 17th February 1947 and 9th June, 1947, respectively. They had been working as civilian clerks in the Armed Forces during the Second World War and it was after their release from the Armed Forces that they joined the Irrigation Department as Assistant Clerks in a temporary capacity. Later, by an order dated 29th

October, 1956, they were confirmed as Assistant Clerks with effect from 1st February, 1949. Subsequently, they were promoted as Sub-Divisional Clerks, then as Accounts Clerks and thereafter as Head Clerks. According to them, they were entitled to the benefit of the Punjab Government Services (War) Amendment Rules, 1943 (hereinafter called the Rules) which were promulgated by the Home Department of the Punjab Government by Notification No. 5011-G-43/59012 dated 18th September, 1943 and were published in the Punjab Government Gazette dated 24th September, 1943, at Lahore. In 1960, they received notices from Respondent No. 2, asking them to show cause why the war service benefits, which had been erroneously given to them, be not withdrawn and they be not de-confirmed.

In reply to the show cause notices, they submitted their representations, but the same were rejected on 29th February, 1964. They were informed that the benefit of war service, which was wrongly allowed to them, had been withdrawn forthwith as regards seniority. As a result, respondent No. 2 then passed orders changing the dates of confirmation of the petitioners as Assistant Clerks to their disadvantage and showing the respondents, other than respondents Nos. 1 and 2, as senior to them. The case of the petitioners was that this was against Rules and would adversely affect them so far as their confirmation, promotion, seniority and pension etc., were concerned. That led to the filing of the present writ petition in June, 1964.

3. In the return filed by respondent No. 2, it was stated that in accordance with the provisions of the Rules and subsequent clarifications given by the Government from time to time, the concession of war service was available only to those candidates who were initially appointed against permanent posts in the cadre of the service. It was not admissible in the case of those officials, who were appointed on temporary basis against temporary posts. All the petitioners were initially appointed as temporary hands against temporary posts. The vacancies for war service candidates had already been filled in the Joint Punjab before partition and no such vacancy was passed on to the share of the East Punjab Government at the time of partition. It was admitted that the petitioners were confirmed as Assistant Clerks by the order dated 29th October 1956, but that was done erroneously by the Chief Engineer on account of the wrong interpretation of the Rules and the instructions of the Punjab Government in that behalf. The mistake was, subsequently, corrected by de-confirming the petitioners by the order passed by respondent No. 2 on 5th June, 1964.

4. The other respondents also took up the same position as respondent No. 2. In addition, they took certain preliminary objections to the maintainability of the writ petition, but only one of them was pressed before us namely, that the rules being violative of Articles 14 and 16 of the Constitution had become void and inoperative on the enforcement of the Constitution and thus could not be given effect to.

5. These writ petitions, in the first instance, came UD for hearing before Section

B. Capoor and Gurdev Singh, JJ. on 21st December, 1966. They however, referred them to a larger Bench, because, according to them, these petitions raised legal questions which were likely to affect a large number of Government servants. That is how the matter has been placed before us.

6. It is common ground that the respondents had been appointed earlier than the petitioners in the Irrigation Department and if benefit of Rule 6 of the Rules was not given to the latter, they would undoubtedly become junior to the former. The main question for determination in these petitions would be about the scope and interpretation of the Rules.

7. For the proper appreciation of the various contentions of the parties, it would be necessary to set out the Rules--

"No. 5011-G-43/59012-- In exercise of the power conferred by Clause (b) of Sub-section (1) and Clause (b) of Sub-section (2) of Section 241 of the Government of India Act, 1935, the Governor of Punjab is pleased to make the following rules:--

1. (a) These rules may be cited as the Punjab Government Services (War) Amendment Rules, 1943.

(b) They shall apply to all services under the rule-making control of the Punjab Government and shall come into force at once.

2. For the purposes of these rules "war service" should be interpreted as follows:

(a) service of any kind out of India with a mobilized unit or with such unit in India in an area declared by the Provincial Government to be an area in which active operations have occurred

(b) service in India in (sic) or formation (including service under military ammunitions or stores authorities) with a liability to serve overseas,

(c) a continuing liability for service overseas as a result of training with a military unit or formation,

(d) all other service involving subjection to naval, military or air force law.

(e) whole-time service in any civil defence organisation specified in this behalf by the Central or the Provincial Government, and

(f) such other service as may hereafter be declared a war service for the purpose of this definition.

Note-- In making selections for Government appointments after the war to posts reserved in any service or department for candidates with war service the order of preference will be as shown above. Only category (a) above will count as combatant service.

3. From the date of the publication of these rules and for such period, as may be

prescribed, direct recruitment on a substantive basis shall not be made to any service of the Punjab Government except with the sanction of Government and for special reasons to be stated by the Administrative Department concerned. Recruitment to vacancies by promotion, confirmation of candidates accepted for permanent employment before the 1st of April, 1940, and actually taken into the service before the issue of these rules with a view to permanent employment in due course of transfer from another Government Department wherever such recruitment is authorised by the existing rules will continue as usual. Where in the interest of the Public Service, it is necessary to fill vacancies which under the existing rules are filled by direct recruitment, such vacancies in the absence of special Government sanction will be filled so long as these rules remain in force on a temporary basis. Each Head of Department will maintain a list of vacancies left unfilled or filled on a temporary basis, for recruitment from among persons with war service to their credit and submit to the Punjab Government and to the Public Service Commission, not later than the 15th May, of each year, a statement giving details of such appointments. This statement shall include vacancies which have been left unfilled or filled on a temporary basis before these rules came into force.

4. Vacancies in all Punjab Government Services left unfilled or filled on a temporary basis under Rule 3 will be thrown open after the war for recruitment from among persons with war service to their credit and in making such recruitment special importance will be attached to the order in which categories of war service are set forth in the definition in Rule 2 preference being given to those in the higher categories.

5. In the case of a person who has rendered war service his period of war service shall be excluded in computing his age for appointment. Such person shall, if invalided from war service, be entitled further to deduct from his age the period from the time when he was invalided up to the date of his application for appointment or until the end of the war whichever is earlier.

6. Every candidate with war service who is appointed to a Punjab Government Service, shall be assigned a place in the cadre of such services, which shall be fixed with due regard to his age and the period allowed to be deducted under Rule 5, and shall, as nearly as may be, correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way. The seniority inter se of all candidates so appointed to a cadre shall be determined by their ages irrespective of the class of war service rendered by each of them.

7. A candidate who has rendered war service shall not be ineligible for selection to a service, class or category merely because he does not possess the educational or other qualifications prescribed in the special rules for such service, class or category provided that the appointing authority can certify, in the case of selection for technical services or posts that the candidate is in possession of technical Qualifications equivalent to those prescribed in the said special rules

and in the case of selection for non-technical services or posts that the candidate has acquired by experience or otherwise qualifications equivalent to those prescribed in the said special rules.

8. When selection for a service, class or category is made on the basis of a competitive examination comprising a written test or a written test and an oral test in the shape of interview conducted by the Punjab and North-West Frontier Province Joint Public Service Commission or by another authority, a candidate who has rendered war service shall not be required to appear for the written test, provided the Commission or the appointing authority, as the case may be, is satisfied that the candidate has sufficient knowledge to carry on the duties of his office efficiently."

8. These Rules were framed on 18th September, 1943, and were published in the Punjab Government Gazette on 24th September, 1943. They were framed by the Governor of the Punjab in exercise of the powers conferred on him by Section 241 (1) (b) and (2) (b) of the Government of India Act, 1935 and had to apply to all the services under the rule-making control of the Punjab Government. They came into force at once.

9. For the purpose of the Rules, "war service" was defined in Rule 2. By virtue of Rule 3, no direct recruitment on a substantive basis could be made to any service of the Punjab Government except with the sanction of the Government and for special reasons to be stated by the Administrative Department concerned. This, however, was not to affect the recruitment to vacancies by promotion or confirmation of candidates accepted for permanent employment before 1st April, 1940, and actually taken into service before the issue of the Rules. If, however, it was necessary in the interest of public service to fill some vacancies, which under the existing rules had to be filled by direct recruitment, those, in the absence of special Government sanction, could be filled on a temporary basis. A direction was given to each Head of the Department to maintain a list of vacancies left unfilled or filled on a temporary basis and submit the same to the Punjab Government and to the Public Service Commission not later than 15th May each year. These vacancies were reserved for recruitment from among persons with war service to their credit. This statement had also to include vacancies which had been unfilled or filled on a temporary basis before these rules came into force.

The vacancies in all the Punjab Government services, which were left unfilled or filled on a temporary basis under Rule 3, were to be thrown open after the war for recruitment from among persons with war service to their credit under Rule 4. Rule 5 provided for computing the age at the time of appointment of a person with war service. Then comes Rule 6, according to which every candidate with war service, who was appointed to a Punjab Government service, had to be assigned a place in the cadre of such service, and that had to be done with due regard to his age and the period allowed to be deducted under Rule 5. The place which was to be assigned in the cadre had, as nearly as might be, to correspond

with the place which he would have had, if the war had not intervened and he had qualified in the ordinary way. According to Rule 7, a war service candidate was made eligible for selection to a service even though he did not possess educational or other qualifications for the purpose, provided the appointing authority could certify, in the case of selection for technical service, that the said candidate did possess the technical qualifications which were equivalent to those prescribed for the purpose, and in the case of nontechnical service, the candidate had acquired by experience the requisite qualifications. Under Rule 8, when selection for a service involved a competitive examination including a written test, the candidate with war service was not required to appear for that test, provided the appointing authority was satisfied that he had sufficient knowledge to carry on the duties of that office efficiently.

10. It is undisputed that the war started on 3rd September, 1939, and ended on 15th August, 1945, though officially on 1st April, 1946. The main purpose why these Rules were promulgated was not mentioned in the said Rules. It appears, however, that the Government wanted to induce young persons to join the war and in order to safeguard their interests the said Rules were framed. A direction was given that no vacancy was to be filled and if there was some great urgency in certain cases, those could be filled only on a temporary basis, except the ones which could be filled with the sanction of Government and for special reasons to be stated by the Administrative Department concerned. That meant that ordinarily no vacancies were to be filled. All these vacancies, whether unfilled or filled on a temporary basis, had to be thrown open only to persons with war service to their credit after the war was over. In order to fill up those vacancies, instructions were given in Rules 5, 7 and 8. These rules contained the concessions which were given to the war service candidates in the matter of relaxation of age and qualifications. When the recruitment to those vacancies had been made and the candidates had been appointed to those posts, they had to be fixed in the cadre of various services and assigned a place there. For that, it was mentioned in Rule 6 that the Government would give due regard to their ages and the period allowed to be deducted under Rule 5. The places that would be assigned to them in the cadre would, as nearly as might be, correspond with the place which they would have had, if there was no war and they had qualified in the normal way.

It appears that the idea of Government was that during the continuance of the war persons, who had gone there, should not suffer in any way and no vacancies occurring in their absence during that period should be filled by persons other than those with war service to their credit, the reason being that persons who had gone there could not obviously apply and compete with those who remained behind. They were thus working under a handicap which in a way had been removed. These concessions had to be given also to encourage young persons to join the war and ensure their prospects, so that they might not suffer by their absence as they were sacrificing their prospects of getting service on the civil side. Civil jobs were made unavailable, because recruitment to them had been

stopped, except of course in exceptional cases. This was also done to give impetus to youngmen to join the war. The idea was to give concessions to war service candidates and during the period commencing from 24th September, 1943. and ending with 1st January, 1946, all the vacancies in the services of the Punjab Government be reserved for them and on the expiry of war those vacancies should be thrown open to persons with war service to their credit. Further, the concessions in regard to age and educational qualifications were given to them and their seniority in the cadre of the service was to be fixed at a place which they would have normally got, had the war not intervened. All the vacancies in the Punjab Government services, which were left unfilled or filled on a temporary basis under Rule 3, were then to be given to persons with war service.

11. It is common ground that the operation of Rule 3 was terminated with effect from 1st January, 1946, the war having ended on 15th August, 1945. The result was that thereafter no vacancy was to be left unfilled or filled on a temporary basis, of which persons with war service could take advantage. All such persons could henceforward apply and compete for getting those posts.

12. It was contended on behalf of the petitioners that if the benefit of Rules 5 to 8 could be taken only by the persons appointed to war reserved vacancies under Rule 3, it would seem to follow that as soon as those vacancies were filled, the entire set of rules had exhausted itself and ceased to be operative. But it would be seen that it was only Rule 3 which ceased to operate with effect from 1st of January, 1946, and all the remaining rules remained in force till 21st of January, 1953, when they were abrogated. This showed that the intention of the rule-makers was to extend the concessions granted to candidates with war service to their credit not only in the matter of recruitment to war reserved posts under Rule 3, but also to other vacancies which occurred while the Rules remained in force, i.e., up to 21st of January. 1953, thus giving sufficient time to the war service candidates to obtain employment in civil posts under the Punjab Government.

13. There is no substance in this contention, because after the termination of the operation of Rule 3, the other rules, in the very nature of things, had to remain in force, because the vacancies that had been reserved under Rule 3 had to be filled and the appointees had to be assigned places in the cadre. Those rules merely contained the instructions, in the form of concessions in the matter of relaxation of age, educational qualifications and in fixing of seniority. They could not by their own force offer recruitment to. vacancies occurring after 31st December, 1945. It was on 21st January, 1953, that all the Rules were abrogated, because it was assumed that by that time all the reserved posts had been filled up and the officials had been given their due places in the cadre.

14. All these Rules had to be read as a whole and one of them, namely Rule 6, could not be torn out of the context and be availed of by the petitioners. It formed an integral part of the entire set of Rules and could not be singly taken

out and made use of. Its benefit could not be claimed by a Government employee with war service to his credit, who had not been appointed against a vacancy re-, served under Rule 3. After the operation of Rule 3 had been terminated on 1st January, 1946, no vacancy was to be reserved for the war service candidates and persons with war service had to compete with others for all the posts.

15. An argument was raised by the learned counsel for the petitioners that by adopting this interpretation of the Rules, there was likelihood that war service candidates, who were not released by the army soon after the termination of the war due to one reason or the other, might suffer for no fault of theirs, because by the time they came, the war reserved vacancies might have been filled by those who had been released earlier.

16. There is no merit in this contention, because all the persons who had joined the army had not been guaranteed posts on the civil side after they were released by the army. The posts on the civil side, in the very nature of things, were only limited and, consequently, a specified number of persons released from the army could be accommodated. Whatever criterion might have been adopted for filling up those numbered posts, it would have resulted in depriving at least some of the persons with war service to their credit of getting those posts, unless of course the number of reserved posts happened to be larger than the number of persons released by the army. But that, by any chance, could not be said to have caused any injustice to them. Moreover, there might be some war service candidates, who were released by the army after 21st January, 1953, when all the rules were admittedly abrogated. Even if the interpretation of the rules. suggested by the learned counsel for the petitioners, was accepted, those persons were bound to suffer for no fault of theirs. Even this difficulty was tried to be solved by the Punjab Government by issuing executive instructions directing that certain percentage of vacancies occurring after 21st December. 1945, be reserved for war service candidates for some period thereafter. Further, there was an indication in Rule 5, that the date of the application for appointment or the end of the war, whichever was earlier, and not the date of release of the war service candidate by the army, was to be taken into consideration for computing the age for appointment to the service.

17. A bare reading of Rules 4 to 8 would show that they concerned appointment against permanent vacancies, because all the vacancies left unfilled or filled on a temporary basis under Rule 3 were to be thrown open after the war for recruitment from among persons with war service to their credit. No one appointed in a temporary capacity against a temporary post was covered by these rules. Under Rule 6, the candidates with war service to their credit, who were appointed to the Punjab Government services, had to be assigned places in the cadres of such vacancies. Ordinarily only those candidates, who were appointed in a substantive capacity against permanent posts could be assigned places in the cadres and their places had to be fixed under this rule with due

regard to their ages and the period allowed to be deducted under Rule 5. Their places in the cadres had to correspond with these which they would have had, if the war had not intervened and they had qualified in the normal way.

18. It was also submitted by the learned counsel for the petitioners that if the intention was to confine the applicability of the Rules only to the vacancies reserved under Rule 3, it would have been clearly so stated in Rule G, In the absence of any such limitation, there was no justification for confining the benefit of Rules 5 to 8 only to the candidates appointed against permanent vacancies reserved under Rule 3.

19. There is no point in this argument as well. There was no necessity of specifically mentioning in the rules that the benefit of Rules 5 to 8 would be given only to the war re-served vacancies under Rule 3. As I have already mentioned above, all the rules were an integrated whole and on reading them together there is no escape from the conclusion that the benefits or the concessions referred to in Rules 5 to 8 had to be given to the war service candidates who were going to be appointed against the vacancies reserved under Rule 3 only. Under Rule 3, a direction was given to the various Heads of Departments not to fill any vacancies, and if some of them had to be filled in the interest of public service, that could be done on a temporary basis. Under Rule 4, all such vacancies, which were unfilled or filled in a temporary capacity, had to be thrown open after the war for recruitment from amongst persons with war service to their credit. In Rules 5, 7 and 8, directions had been given as to how that recruitment was to take place. Under Rule 6, after the candidates had been recruited and appointed to the Punjab Government services, they were to be assigned places in the cadres.

20. It was also argued on behalf of the petitioners that the provisions of Rules 5 to 8, regarding the relaxation of age, educational qualifications etc., were wide enough to cover the candidates with war service, even though they might not have been appointed in vacancies reserved under Rule 3.

21. This contention again is without any merit. As I have already said, this set of rules had to be read together and one or more rules could not be taken out of their context and availed of by persons with war service to their credit. They had to be read along with the rules that preceded them and it was only then that one could find out what their real meaning was and to whom they applied. The well-recognised canon of construction of any statute or statutory rules was that they had to be read as a whole and not out of their proper context. Divorced from their context, they were likely to be misinterpreted and misconstrued.

22. During the course of arguments, another contention was raised by the petitioners that if these Rules were only intended for war reserved vacancies under Rule 3. as contended by the respondents, then this would very adversely affect the persons who were invalided during the progress of the war and were released on that account. After their release, they would not be able to get civil

employment till Rule 4 came into operation and all the vacancies in the Puniab Government services left unfilled or filled on a temporary basis under Rule 3 would be thrown open after the war for recruitment from among persons with service to their credit. The invalided war service candidates would have to wait for getting an employment till the war was over. Even if it could be said that under the latter part of Rule 3. he could have been given a job on a temporary basis in the interest, of the public service, which itself was doubtful, that would not have benefited him very much, because after the war was over, that vacancy, which had been filled on a temporary basis, would have been thrown open under Rule 4 to all the persons with service to their credit and he would have had to stand in a queue along with others for Retting that post.

23. This contention Ignores the provisions of Rule 3, where under the earlier part of the rule, power had been given to the Government to give sanction for special reasons to be stated by the Administrative Department concerned to recruit a person directly on a substantive basis to any service of the Punjab Government. A special case could have been made by the Government for accommodating such a person.

24. I would like to make it clear that while determining the scope and the interpretation of the Rules, I have not thought it proper to refer to the various instructions given by the Punjab Government from time to time regarding these Rules and also to the different interpretations placed on these Rules by their Officers, which had been appended as annexures to the writ petitions and the returns filed by the respondents, for the simple reason that those interpretations and instructions were neither helpful or relevant nor binding on us. The Rules had to be interpreted by us unaffected by the different interpretations given by the various officers in that behalf. The intention of the rule-makers had also to be gathered from the Rules themselves uninfluenced by the executive instructions issued by the Government in that regard. I have, however, not refrained from noticing the judicial interpretations of these Rules, e.g., by the Pakistan Supreme Court.

25. In support of their contention that Rule 6 was not confined only to war reserved vacancies under Rule 3, but was general in nature and available for all persons, having war service to their credit, applying for any posts falling vacant even after 31st of December, 1945, great reliance was placed on the judgment of the Supreme Court of Pakistan in Civil Appeal No. 35 of 1958, Manzur Ahmad v. Province of West Pakistan, D/-2-2-1961, wherein it was observed--

"It is important to note that the rule (Rule 6) is not confined in its application to persons who had been appointed to war reserved vacancies, i.e., vacancies which appear upon the list maintained in accordance with Rule 3. The words are altogether general, viz., "Every candidate xxx who is appointed to a Punjab Government service." Rules 7 and 8 are similarly worded generally, so that their application is not restricted in terms to persons appointed in war reserved vacancies."

26. In the abovementioned judgment, the question involved was one of seniority to be determined between Manzur Ahmad appellant, who had war service to his credit, on the one hand, and Messrs. Mohpmmad Ihsan-ur-Rehman Khan and Muh; i; imad Rafi the contesting respondents, on the other. There a clear finding was given that Manzur Ahmad was recruited against a de facto war service vacancy. He was, consequently, given the benefit of the Rules and made senior to the two contesting respondents. Under these circumstances, the precise question as to whether the Rules had to be read as a whole and Rule 6 could not be divorced from the context did not arise for decision in that judgment, with the result that the observations relied upon by the petitioners were merely obiter dicta. Besides. I say so with respect, there was no discussion regarding the point as to why Rule 6 was not confined in its application only to persons who had been appointed to war reserved vacancies. No reasons had been given for coming to that conclusion except this that the words in Rule 6 were general, because it had been mentioned therein--

"Every candidate who is appointed to a Punjab Government service x x x "

In my opinion, there was no other alternative but to use the expression "appointed to a Punjab Government service". Under Rule 3, direct recruitment on a substantive basis to all the services in the Punjab Government had been stopped. Undoubtedly, there were a number of Departments in the Punjab Government, where, by virtue of Rule 3. the posts remained unfilled. After the war, all these vacancies in the various departments were thrown open to persons with war service to their credit. Candidates were then recruited to the different services. Rule G dealt with fixation of seniority of the appointees in the cadres of various services. This rule, therefore, said that when a person was appointed to a Punjab Government service, i.e., any Punjab Government service, then his seniority would be fixed in the way mentioned in that rule. In the very nature of things "Punjab Government service" had to be preceded by the word "a" and not "the", because these Rules were not dealing with one particular service only, but with the various services under the Punjab Government. A candidate could have been appointed to any one of those services and, therefore, it was stated in Rule 6 that when a candidate with war service was appointed to a Punjab Government service, i.e., any Punjab Government service, his seniority would be fixed in the manner mentioned in that rule. Likewise, Rules 7 and 8 had also to be similarly worded. This apart, all the contentions that are being raised in this Court regarding the interpretation and the scope of the Rules were not agitated before the Supreme Court of Pakistan and, therefore, that Court had no occasion to deal with them.

27. Learned counsel for the petitioners then referred to two decisions of this Court by Tek Chand J. in *Dilbagh Rai v. Punjab State*, 1968 Serv LR 503 (Punj) and *Ram Rattan Bakshi Vs. The State of Punjab and Another*, in which a reference had been made to these war service Rules.

28. I have gone through these authorities and I am of the opinion that they do

not help us in any way in interpreting the Rules. In the former case, Dilbagh Rai, petitioner, had joined as a Clerk in the Transport Department in December, 1946, after rendering war service. He was given the benefit of war service towards seniority and promotion by the Government in October, 1966, after he had made several representations in that behalf. The order of the Government, however, was only partially implemented by the officials concerned. The petitioner filed a writ of Mandamus in this Court and Tek Chand J. issued the said writ to the Government to enforce and implement its decision taken in October, 1966.

29. In the latter decision, Ram Rattan Bakshi petitioner volunteered his services in the Second World War and served in the I.A.V. Section from April, 1942 to December, 1948. He was given seniority in 1947 in accordance with war service Rules, but no decision about the fixation of his pay was communicated to him. Another colleague of his, however, who was placed in identical circumstances, was given war service benefit including those of pay. It was held by Tek Chand J. that the petitioner was entitled to the benefit of the war service under the war service Rules and could not be discriminated. It was held in that ruling that the concessions given under the war service Rules could not be withdrawn by the Government by issuing executive instructions, because no circular letter could abridge the rights conferred by the statutory rules.

30. There are two other Bench decisions of this Court in which also a reference was made to these war service Rules. The first was Civil Writ No. 1399 of 1961 (Puni) Honorary Captain E. Section Dass v. State of Punjab, decided by Section B. Capoor, J. and myself on 23-5-1963. This authority was relied on by the counsel for the respondents in support of the pro-position that Rule 6 and other concessions set out in the war service Rules were available only to such candidates with war service, who were appointed against substantive vacancies reserved upto 31st of December, 1945, under Rule 3. In this case. I had written the judgment and Capoor, J. had agreed with me. There, I had observed--

"Learned counsel for the petitioner then submitted that assuming for the sake of argument, that no posts had been reserved for war service candidates under Rule 6 of the War Service Rules, the petitioner should have been assigned a place in the cadre after giving him the benefit of the war service rendered by him.

There is no merit in this contention, because, firstly, this point was not taken by him in the writ petition and his case throughout had been that he had been selected against one of the vacancies in the cadre of the Punjab Forest Service Class I reserved for war service candidates. Secondly, Rule 6 applies to those posts, which had been reserved for war service candidates under Rule 3 of the War Service Rules. If in a case, the provisions of Rule 3 are not attracted, then no benefit can be derived from Rule 6 alone. Rule 6 forms an integral part of the entire set of War Service Rules and cannot be singly taken out and made use of by the petitioner."

31. The second decision was of Mehar Singh and Grover JJ. in Civil Writ No. 1478

of 1960 (Puni), Chandan Singh v. Puniab State, decided on 23-11-1962. There, Grover J. who wrote the judgment and with whom Mehar Singh J. concurred, after referring to the scope of the war service Rules observed--

"It must consequently be held that there was no breach of the rules when Ved Parkash respondent was given seniority over the petitioner by virtue of his appointment against a permanent post with effect from 15th January, 1943 (assumed date) in view of the period of his war service and the petitioner's appointment with effect from 12th April, 1943."

At another place, while discussing Rule 6, PS to whether it was mandatory or directory in nature, it was held---

"There is another insuperable difficulty in the way of any relief being granted to the petitioner. Once Rule 6 of the War Service Rules is held to be applicable in the matter of fixing seniority, it will not be open to this Court to issue any writ in the nature of mandamus or any other appropriate order or direction for treating the impugned orders as ineffective for the simple reason that the aforesaid rule is more of a directory nature than mandatory. The language employed leaves room for exercise of discretion by the Government and in such circumstances it is well settled that the extraordinary powers under Article 226 can neither be invoked nor exercised."

32. Let us now examine the case of the petitioners in the light of the scope and the interpretation of the Rules made above. All the petitioners were initially appointed as Assistant Clerks in the Irrigation Branch of the Public Works Department in 1946 and 1947 in a temporary capacity. According to the return of the respondents, they were not appointed in the vacancies, which were reserved for war service candidates under Rule 3. As a matter of fact, they had been appointed temporarily in temporary ex-cadre posts. There is nothing on the record to counteract this assertion of the respondents. It has, therefore, to be assumed that what the Government had stated was correct. That being so, according to the interpretation that I have placed on the Rules, they cannot have the benefit of Rule 6 for the fixation of their seniority as against the respondents, who were recruited earlier than the petitioners. As I have already said above, it was conceded by the counsel for the petitioners that if benefit for Rule 6 was not given to the petitioners, they would certainly become junior to the respondents.

33. After having dealt with the scope and interpretation of War Service Rules, I will now deal with the other contention raised by the learned counsel for the petitioners to the effect that the Government, after having once granted benefits under the Rules by confirming the petitioners with effect from 1st February, 1949, as Assistant Clerks by its order dated 29th October, 1956, could not review its decision and de-confirm the petitioners. Reliance for this submission was mainly placed on three decisions--

1. AIR 1937 27 (Privy Council) .

2. Chaman Lal Loona and Co. Vs. Dominion of India, New Delhi, .

3. Deep Chand v. Additional Director, Consolidation of Holdings, Punjab, Jullundur (1964) 66 PLR 318=AIR 1964 P&H 249 .

34. The factual position regarding this point is that on 29th of October, 1956, the petitioners were confirmed as Assistant Clerks with effect from 1st February, 1949. In 1960, show cause notices were issued to them informing them that the benefit of war service under Rule 6 was available only to those war service candidates who got permanent appointments and since the petitioners had been initially appointed on temporary posts and they continued to remain temporary up to the repeal of the Rules, the benefit of war service was, therefore, wrongly allowed to them. It had now been decided to withdraw the war service benefit wrongly allowed in their cases and to de-confirm them, because their confirmation in 1956 had been incorrectly done in consequence of the war service benefit having been wrongly given to them. They were, therefore, asked to show cause within 15 days of the receipt of the notices as to why the action contemplated should not be taken to restore them to their original positions of seniority. The petitioners gave their replies to the show cause notices. Amongst other things, it was stated therein that it had been authoritatively decided by a Division Bench of the Punjab High Court in Jagdip Singh v. State of Punjab, Letters Patent Appeal No. 358 of 1959, D/-23-10-1959 (Punj), that a person, who was once confirmed, could not be de-confirmed. It appears that this matter remained pending for quite some time and in February, 1964, a letter was issued by the Punjab Government to all the Superintending Engineers of the Irrigation Branch of the Public Works Department saying that the judgment of the Supreme Court in the case of State of Punjab Vs. Jagdip Singh and Others, , had been received, by which the judgment of this Court was reversed. Accordingly, the war service benefit, if granted in contravention of the rules, could be withdrawn even now and the seniority could be refixed.

In view of the judgment of the Supreme Court, it was established that the benefit of war service had been erroneously allowed by them to the Clerks, who were initially appointed on temporary posts and continued to remain temporary up to 1956, in contravention of Rule 6. The said benefit might, therefore, be withdrawn forthwith. Consequently, in June 1964, the war service benefit given to the petitioners was withdrawn and their dates of confirmations were accordingly changed, with the result that the respondents were shown senior to them. Now the Question is whether the Government could do so by reviewing its earlier decision.

35. It is undisputed that previously when the petitioners were confirmed with effect from 1st of February, 1949, the Government had interpreted the Rules in favour of the petitioners, who were given the benefit of war service, although they had been appointed temporarily on ex-cadre temporary posts which had not been reserved for war service candidates under Rule 3. Subsequently, the Government realised that it had misinterpreted the Rules and erroneously given

the benefit of war service to the petitioners and, consequently, they withdrew that benefit from the petitioners and revised their seniority. Could this be done under the law?

36. In my view, if owing to some bona fide mistake, the Government has taken a decision regarding the confirmation of an officer, it can certainly revise its decision at a subsequent stage, when the mistake comes to its notice. The mistake can be corrected and it cannot be said that it should be allowed to perpetuate even when the same is discovered. The consequent reduction of the officer could not amount to reduction in rank and attract the applicability of Article 311 of the Constitution. Such a reduction is the necessary result of any routine administrative decision. It is only when an officer brings his case within the purview of Article 311 of the Constitution that he can attack the legality of any order passed by the Government, which might adversely affect his career in Government service. Such a case does not come within the four corners of Article 311 [of the Constitution. In the instant case, the Government, after having misinterpreted the Rules, had given war service concessions to the petitioners. Subsequently, they realised their mistake and withdrew those benefits, with the result that the seniority of the petitioners was affected. The Government, in my opinion, could correct the error and such a decision would not come within the ambit of Article 311 of the Constitution. But it is noteworthy that in the present case, the petitioners had been given even the show cause notices and their representations had been considered by the Government before it took the impugned decision.

37. The view that I have taken is amply supported by authority. It was held by a Bench of the Calcutta High Court in *Benukar Mahata Vs. State of West Bengal and Others*, , that in order that the provisions of Article 311 of the Constitution might be attracted, the reduction in rank had to be by way of imposition of penalty. Where such reduction resulted from a normal step taken in the course of office administration to rectify an error or a mistake and there was no penalty involved in the readjustment, there was no reduction in rank within the meaning of Article 311 of the Constitution and the procedure prescribed in Clause (2) of Article 311 need not be followed.

38. Similarly, a Division Bench of the Madras High Court, consisting of P. V. Rajamannar, C. J., and Ramachandra Iyer J. in *N. Devasahayam Vs. The State of Madras and Others*, , held--

"Once a civil servant is unable to invoke the provisions of Article 311 (1) or (2) of the Constitution in his aid. there is no other provision under which he can challenge the validity of the order of the Government which might adversely affect his official career. It is unnecessary to deal with a hypothetical case in which an officer without any ostensible reason and with no rule to support the action is reduced in rank or with a case in which mala fides on the part of the Government is alleged and proved.

This is a simple case in which the appellant who had obtained benefit in the way of seniority by the relaxation of rules has been deprived of that benefit by a subsequent cancellation of such relaxation. The appellant cannot claim as of right any particular rank in his substantive cadre. Least of all can he seek to enforce such a right."

39. Raghubar Dayal J. in O.N. Chauhan Vs. Collector of Central Excise, Allahabad, , observed--

"The expression "reduction in rank" in Article 311(2), implies the posting of a public servant to a post of a lower rank by way of punishing him for some misbehaviour. There appears to be nothing wrong in a public servant, who is selected for a selection post not on account of his being the senior-most person entitled to that post but on account of some senior of his being considered unfit for that post, reverting to his original post in case it is found by an authority superior to the selecting authority that the supersession of the senior was unjustified and that the selection post should go to the senior."

40. In another decision of the Lucknow Bench of the Allahabad High Court in K. B. Sharma v. Transport Commr., U. P. Lucknow 1968 SLR 830 = AIR 1998 All 27 it was remarked that an order of confirmation, if passed under some mistake could certainly be revised with a view to correct the mistake. Such a revision, even if it might affect the person confirmed earlier, could by no means attract Article 311 of the Constitution.

41. I. D. Dua, C. J. of the Delhi High Court in Labh Singh Waryam Singh Vs. Union of India, , was of the view that the reduction, resulting from a normal administrative decision to correct the mistake, did not involve any penalty and, consequently, Article 311(2) of the Constitution was not attracted in such a case.

42. The decisions, relied on by the learned counsel for the petitioners, are of no assistance to his clients. Rule AIR 1937 27 (Privy Council) is clearly distinguishable on facts. There, a Sub-Inspector of Police was granted an invalid pension by a competent authority and he thus duly ceased to be in service. The officer succeeding the authority, which had granted the pension, reconsidered the matter and ordered his removal from the service. In those circumstances, it was held by the Privy Council that in a case in which after Government officials, duly competent and duly authorised in that behalf, had arrived at one decision, their successors in office, after the decision had been acted upon and was in effective operation, could not purport to enter upon a reconsideration of the matter and arrive at another and possibly different decision.

43. Similarly, Chaman Lal Loona and Co. Vs. Dominion of India, New Delhi, has no application to the facts of the present case. There, disciplinary proceedings had been taken against the petitioner and they had ended in his favour. Subsequently, another officer again started disciplinary proceedings on the same charges, and in those circumstances, it was held that when a matter had been finally disposed by a competent authority, it could not be reopened by his

successor except under the express provisions of law.

44. In Deep Chand's case (1963) 66 PLR 318 = AIR 1964 P&H 241 it was held that an Additional Director of Consolidation was not empowered u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, to review his order on the merits of the case. He could not, therefore, recall his earlier erroneous and unjust order, whenever it was discovered that the error was due to his own mistaken view of the merits of the controversy. This case has nothing to do with the point in issue in the present case, where the Government was not acting under any statute. As I have already said, certain concessions had been erroneously given to the petitioners by the Government and the same were later on withdrawn by it. Moreover, any officer who was adversely affected by the seniority list prepared by the Government, could make a representation and if there was merit in that, the said list could be altered. It could not be said that the seniority list prepared by the Government could under no circumstances be changed.

45. I would, therefore, hold that there is no merit in this contention of the petitioners and the Government was well within its rights to withdraw the war service concessions erroneously given to the petitioners earlier by wrong interpretation of the Rules and thus change the dates of their confirmation.

46. It might be mentioned that the learned counsel for the respondents submitted that Rule 6, on the basis of which the petitioners were claiming seniority, was merely directory and not mandatory in nature. It gave discretion to the authorities in the matter of fixation of seniority and that being so, the extraordinary powers under Article 226 of the Constitution could neither be invoked by the petitioners nor exercised by this Court. It was also contended by the learned counsel for the respondents, other than respondents Nos. 1 and 2, that the war service Rules were ultra vires Articles 14 and 16 of the Constitution. It might also be stated that the alternative argument raised by the learned counsel for respondents Nos. 1 and 2 was that, even if it be assumed, that the benefit of Rule 6 could be taken by persons appointed to all the vacancies and not necessarily to war service reserved vacancies under Rule 3, as contended by the learned counsel for the petitioners, the petitioners in the instant case could not claim that benefit on the date when they were confirmed, viz., 28th of October, 1956, because on that day, Rule 6 stood abrogated, since the operation of all the Rules was terminated with effect from 21st of January, 1953.

47. But in the view that I have taken of the points raised by the petitioners, it is needless to discuss the contentions urged by the respondents.

48. In the result, these writ petitions fail and are dismissed. There will, however, be no order as to costs.

Gurdev Singh J.

49. The main question requiring the consideration of this Full Bench in these two

writ petitions (Nos. 1164 and 1481 of 1964) pertains to the interpretation of the Punjab Government Services (War) Amendment Rules, 1943 (hereinafter called the Rules). The petitioners claim benefit of Rule 6 of these Rules which, though originally granted to them, was later withdrawn by the State Government in fixing their seniority. My learned brother Pandit, J. has expressed the opinion that the benefit of this Rule 6 cannot be claimed by the petitioners and both the petitions must, accordingly, be dismissed. I have had the advantage of going through the opinion recorded by Pandit, J., but notwithstanding the respect that I have for my learned brother, I regret I do not find it possible to subscribe to the view taken by him regarding the interpretation of the relevant rule.

50. The material facts in both the petitions are identical, and in the course of arguments reference has been made only to the facts in Civil Writ 1164 of 1964 as counsel for the parties were agreed that once the relevant rules are interpreted in the light of the facts of one case, the other case would be easily disposed of.

51. The relevant facts are set out in the referring order and the judgment that my learned brother Pandit, J. has recorded, and it will suffice to briefly recapitulate the salient facts,

52. The petitioners in both the petitions, as also the respondents (other than respondents 1 and 2). are the employees of the Irrigation Branch of the Public Works Department, Punjab, having originally joined as Assistant Clerks in that department. The dates of their appointments are shown in annexure 2 of Civil Writ 1164 of 1964, according to which Narinder Singh, son of Kala Singh, was the first among the petitioners to be appointed as Assistant Clerk, his date of appointment being 29th July, 1946. The other petitioners were appointed subsequently on various dates in the years 1946, 1947 and 1948. The petitioners in Civil Writ 1164 of 1964 were confirmed as Assistant Clerks with effect from 1st February, 1949. In the second writ petition, 13 petitioners were confirmed as Assistant Clerks on the same date and the rest on various dates in the years 1951, 1952 and 1953. From time to time they were promoted to the higher grade.

53. Prior to their appointment as Assistant Clerks in the Irrigation Department, all the petitioners were working as Civilian Clerks in the Armed forces during the Second World War, and it was after demobilisation that they joined the Irrigation Department in temporary capacity, though in due course they were confirmed in the posts of Assistant Clerks. At the time the petitioners joined the Irrigation Department, the respondents other than respondents 1 and 2 in both the petitions were already serving in that department as Assistant Clerks. Giving the petitioners benefit of their war service, the State Government fixed their pay and seniority as permanent Assistant Clerks from various dates indicated in the notification of the P. W. D. Irrigation Branch, dated 29th October, 1946, copy of which is marked Annexure Rule IX in Civil Writ No. 1164 of 1964. Later on, however, notices were issued to the petitioners in the year 1960 calling upon

them to show cause why the war service benefit that had been given to them, earlier in the matter of seniority be not withdrawn and the petitioners de-confirmed. The petitioners' representations against the proposed action were, however, turned down by the State Government vide its letter, dated 29 February, 1964, which forms annexure M to the petition. By this letter, the petitioners were informed that the benefit of war service given to them as regards seniority would be withdrawn forthwith. Accordingly, the Chief Engineer passed orders altering the dates of confirmation of the petitioners as Assistant Clerks to their detriment and showing the respondents other than respondents 1 and 2 senior to them. The action of the Government in putting back their confirmation and depriving them of the benefit which they had already obtained naturally adversely affected the petitioners so far as their confirmation, promotion, seniority, pension etc., were concerned. Accordingly, they have approached this Court under Articles 226 and 227 of the Constitution for setting aside the order of the State Government revising their seniority.

54. Though in the return filed by the respondents it was urged by way of preliminary objection that a joint petition under Articles 226 and 227 of the Constitution was not competent and the dispute relating to seniority of the members of the service was not justiciable in a Court of law. these objections have not been pressed before this Bench and do not require a decision at our hands. The only question that has been debated before us relates to the interpretation of the Rules and their applicability to the petitioners.

55. In defending the impugned order by which the petitioners' seniority has been revised and their dates of confirmation as Assistant Clerks put back, it has been urged by the respondents:--

(1) that the benefit of the war service rendered by the petitioners cannot be afforded to them in fixing their seniority;

(2) that as on the day the petitioners joined the Irrigation Department, all the vacancies reserved for war service candidates had been filled up, and they were appointed temporarily against temporary posts, they could not claim seniority over the Assistant Clerks who had been recruited earlier to the Irrigation Department;

(3) that the War having come to an end before the petitioners joined the Irrigation Department, they were not entitled to claim benefit of the War Service Rules; and

(4) that the War Service Rules, of which the petitioners claim benefit being violative of Articles 14 and 16 had become void and inoperative on the enforcement of the Constitution and thus cannot be enforced.

56. For proper interpretation of these rules and to ascertain their exact import, it is necessary to keep in view the circumstances in which these rules were promulgated. The Second World War broke out on 3rd September, 1939, and

though the hostilities ceased on 15th August, 1945, officially the war ended on 1st April, 1946. Throughout the war, India was a part of the British Empire and the pick of its youngmen was drafted for service in the army to fight on behalf of the Allies. It is an historical fact that in the first couple of years of the War the Allies met with staggering reverses and persistent efforts were made and several measures initiated by them in India and other parts of the British Empire to step up war effort and to induce youngmen to come forward in increasing numbers to join the armed forces. Even persons who were already serving in various departments of the civil administration in India were encouraged to join the army and man the posts for which they were found qualified to serve. To achieve that purpose, it was necessary that interests of all volunteering for military service be safeguarded and some inducement offered to them. This was all the more necessary in the case of persons already serving in various civil departments of the Government as in absence of any measure for compulsory military service Kuch youngmen would not be attracted to join the army. In the year 1943, when the War Service Rules, with which we are dealing in this case, were promulgated. the Allies were in a bad way. It was with this end in view that the War Service Rules were promulgated. With this historical background, we may now turn to the contents of those Rules.

57. For appreciation of the various contentions raised by the parties, it is necessary to set out the Rules, especially in view of the contention put forward by the respondents, which has been accepted by my learned brother Pandit J. that the various rules formed an integral whole and must be read together for their proper interpretation. These Rules were promulgated on 18th September, 1943 by the Punjab Government (as it was before the Partition of the country) in exercise of its powers conferred by Clause (b) of Sub-section (1) and Clause (b) of Sub-section (2) of Section 241 of the Government of India Act, 1935, though they actually came into force on 24th September 1943 when they were published in the Punjab Gazette of 18th September, 1943. Reproduced in extenso they read as under:--

"1 (a) These rules may be cited as Punjab Government Services (War) Amendment Rules, 1943.

(b) They shall apply to all services under the rule-making control of the Punjab Government and shall come into force at once.

2. For the purposes of these rules "war service" should be interpreted as follows:
--

(a) Service of any kind out of India with a mobilised unit or with such unit in India in an area in which active operations have occurred,

(b) Service in India in a unit or formation (including service under military ammunitions or stores authorities) with a liability to serve overseas,

(c) a continuing liability for service overseas as a result of training with a military

unit or formation,

(d) all other service involving subjection to naval, military or air force law,

(e) whole-time service in any civil defence organisation specified in this behalf by the Central or the Provincial Government, and

(f) such other service as may hereafter be declared a war service for the purpose of this definition.

NOTE-- In making selections for Government appointments after the war to posts reserved in any service or department for candidates with war service the order of preference will be as shown above. Only category (a) above will count as combatant service.

3. From the date of the publication of these rules and for such period as may be prescribed direct recruitment on a substantive basis shall not be made to any service of the Puniab Government except with the sanction of Government and for special reasons to be stated by the Administrative Department concerned. Recruitment to vacancies by promotion, confirmation of candidates accepted for permanent employment before the 1st of April 1940, and actually taken into the service before the issue of these rules with a view to permanent employment in due course or transfer from another Government Department wherever such recruitment is authorised by the existing rules will continue as usual. Where in the interest of the Public Service it is necessary to fill vacancies which under the existing rules are filled by direct recruitment, such vacancies in the absence of special Government sanction will be filled so long as these rules remain in force on a temporary basis. Each Head of Department will maintain a list of vacancies left unfilled or filled on temporary basis, for recruitment from among persons with war service to their credit and submit to the Punjab Government and to the Public Service Commission, not later than the 15th May, of each year, a statement giving details of such appointments. This statement shall include vacancies which have been left unfilled or filled on a temporary basis before these rules came into force.

4. Vacancies in all Puniab Government Services left unfilled, or filled on a temporary basis under Rule 3 will be thrown open after the war for recruitment from among persons with war service to their credit and in making such recruitment special importance will be attached to the order in which categories of war service are set forth in the definition in Rule 2, preference being given to those in the higher categories.

5. In the case of a person who has rendered war service his period of war service shall be excluded in computing his age for appointment. Such person shall, if invalided from war service, be entitled further to deduct from his age the period from the time when he was invalided up to the date of his application for appointment or until the end of the war whichever is earlier.

6. Every candidate with war service who is appointed to a Puniab Government

Service, shall be assigned a place in the cadre of such services, which shall be fixed with due regard to his age and the period allowed to be deducted under Rule 5, and shall, as nearly as may be, correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way, The seniority inter se of all candidates so appointed to a cadre shall be determined by their ages irrespective of the class of war service rendered by each of them.

7. A candidate who has rendered war service shall not be ineligible for selection to a service, class or category merely because he does not possess the educational or other qualification prescribed in the special rules for such service, class or category provided that the appointing authority can certify, in the case of selection for technical services or posts, that the candidate is in possession of technical qualifications equivalent to those prescribed in the said special rules and in the case of selection for non-technical services or posts that the candidate has acquired by experience or otherwise qualifications equivalent to those prescribed in the said special rules.

8. When selection for a service, class or category is made on the basis of a competitive examination comprising a written test or a written test and an oral test in the shape of interview conducted by the Punjab and North-West Frontier Province Joint Public Service Commission or by another authority, a candidate who has rendered war service shall not be required to appear for the written test, provided the Commission or the appointing authority, as the case may be, is satisfied that the candidate has sufficient knowledge to carry on the duties of his office efficiently."

58. Indisputably, these Rules grant concessions to persons having war service to their credit. As stated in Rule 1, they applied to all services under the rule-making control of the Punjab Government. Rule 2 defines "war service" of which the benefit can be claimed by a war service candidate. By Rule 3, direct recruitment on substantive basis to any service of the Punjab Government, except with the sanction of Government and for special reasons, was stopped and a direction was issued to fill up such permanent posts in absence of special Government sanction, only on temporary basis. Under this rule, each Head of Department was required to maintain a list of vacancies left unfilled or filled on temporary basis in accordance with the rules, and these vacancies were expressly reserved for recruitment from among persons with war service to their credit.

59. Under Rule 4, all the vacancies in the Punjab Government left unfilled or filled on temporary basis under Rule 3 were required to be thrown open after the war for recruitment among persons with war service only. Since according to the rules regulating appointment to various services some of the candidates serving in the war were likely to become ineligible for permanent appointment having crossed the maximum prescribed age limit or for failure to obtain the requisite educational qualifications, it was thought necessary to safeguard the interests of

such candidates so that their chances of securing Government employment after discharge from the armed forces are not prejudiced. Thus, to further safeguard the interests of such candidates provision was made in Rules 5 and 7 to relax the age limit and educational qualifications. Particular care was taken to see that the persons who had joined the armed forces do not suffer on entering civil service under the Punjab Government by providing in Rule 6 that such a candidate shall be assigned a place in the cadre which shall be fixed with due regard to his age and the period allowed to be deducted under Rule 5, and it shall, as nearly as may be, correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way. Rule 8 gave further concession to war candidates by providing that where selection for a service is made on the basis of a competitive examination, a candidate who has rendered war service shall not be required to appear for the written test provided that the Commission for the appointment or the appointing authority, as the case may be, is satisfied that the candidate has sufficient knowledge to carry on the duties of his office efficiently.

60. Thus, we find that by these Rules the Punjab Government not only reserved permanent vacancies in all departments of the Government that were required to be filled by direct recruitment, and occurring during the period for which Rule 3 was to remain in force, for persons with war service, but it also granted such persons concession in the matter of age and educational qualifications especially. In view of the concession relating to age and grant of benefit of the war service some provision had to be made in the rules for fixation of the seniority of such war candidates vis-a-vis those already serving in the department, appointed by promotion or otherwise recruited. It was for that purpose that Rule 6 was incorporated in the rules, providing:--

"Every candidate with war service who is appointed to a Punjab Government Service, shall be assigned a place in the cadre of such services, which shall be fixed with due regard to his age and the period allowed to be deducted under Rule 5, and shall, as nearly as may be, correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way."

61. On a plain reading of this rule, It is abundantly clear that grant of a particular concession under a specific rule is not dependent upon the applicability of any other rule but only on the length of the war service rendered by a candidate, for example, a war service Candidate seeking employment in a civil department under the Punjab Government may possess the necessary educational and technical qualifications prescribed for a job but on the date of application he may be faced with the fact that during the period that he had served in the army he had crossed the maximum age prescribed for recruitment to that post and was thus ineligible. In such a case he can certainly avail of the concession granted to a war candidate under Rule 5 in computing his age. Similarly the age of a war service candidate on the date of the application for appointment to a civil post may be within the prescribed limit, but having interrupted his studies by joining

the army, he may be faced with the fact that he does not fulfil the requisite educational or technical qualifications and was thus not eligible for appointment. In such a situation, he can claim benefit of Rule 7 or 8, as the case may be. In fact, it is not seriously disputed on behalf of the respondents that the benefits of Rules 5 to 8 providing for relaxation of age and educational qualifications could be claimed and granted to candidates with war service not only in respect of the posts reserved under Rule 3 but also for recruitment to other posts.

There is nothing in Rule 6 (which relates to fixation of seniority and with which we are concerned in this case) or in Rules 5, 7 and 8 to limit their operation to the war reserved posts, namely, to permanent posts reserved for appointment from among the candidates with war service at the conclusion, of the war, and I see no reason why in absence of any compelling circumstance or indication to the contrary in the Rules themselves, full effect be not given to the language of these Rules 5, 6, 7 and 8. When the language is quite clear and unambiguous, it has to be given effect to. Since these Rules grant concession to a category of candidates for Government service and were intended to safeguard their interests and to give them preference over those who did not volunteer for war service, there is no justification for limiting their scope so as to confine their applicability only to such posts as were reserved under Rule 3.

62. In support of the respondents' contention that the provision with regard to fixation of seniority contained in Rule 6 would apply only to the posts reserved under Rule 3, it is contended that the Rules must be read as a whole and the Rules 5 to 8, which relate to relaxation of age and educational qualifications are merely intended to protect the interests of the war candidates in appointments to the posts reserved under Rule 3 and cannot be extended so as to cover appointments made after reservation in favour of war candidates had stopped. I do not find it possible to accept this contention. While interpreting a particular set of rules, all the rules have no doubt to be read as a whole to ascertain their true import, purpose and effect, but this does not mean that in absence of anything in the particular rule itself or indication in the context in which it occurs, one rule has to be read as subservient to the other, and despite its wide language and admitted applicability to cases other than those contemplated in the rule, it has to be applied to a limited extent. The contention that Rules 5 to 7 were merely "handmaids", as the respondents' counsel Mr. D. N. Avasthy called them, to Rule 3, Ignores not only the clear and unambiguous and wide language of those rules but also proceeds on the assumption that in promulgating these rules the Punjab Government merely intended to reserve certain vacancies for a part of the war duration exclusively for candidates who were serving in the war, and did not intend to grant them any other concession. I regret I find no warrants for such an assumption, but on the contrary as I have indicated earlier, I am of the opinion that while framing these Rules the Punjab Government was actuated by a desire not only to reserve posts for the war service candidates but also give them preference in the matter of appointments to various posts in the civil administration of the Punjab Province by providing for relaxation of the age

and educational qualifications. In this view of the matter, it would follow that even in the matter of recruitments to posts other than those reserved under Rule 3, a candidate with war service to his credit could avail of relaxation of age and educational qualifications in accordance with the provisions contained in Rules 5 to 8.

63. If this is the position with regard to the applicability of Rules 5 to 8, it cannot be different in applying Rule 6 which relate to fixation of seniority. The language of that rule is wide, and there is nothing in it to limit its operation to persons recruited to war reserved posts. This rule opens with the words "every candidate with war service who is appointed to a Punjab Government Service shall be assigned a place in the cadre of such service.....". The plain meaning of this expression is that the provision with regard to the fixation of seniority made in this rule can be availed of by every candidate with war service who is appointed to any service under the Punjab Government, and this would clearly include even those appointments that had not been made against posts reserved for war service candidates under Rule 3. Had it been intended that this provision with regard to the fixation of seniority contained in Rule 6 should apply only to the war service posts reserved under Rule 3, Rule 6 would have been differently worded, and it would have read something like this:--

"Every candidate with war service, who is appointed to "a post reserved under Rule 3" to a Punjab Government Service shall be assigned.....".

64. The words underlined (here in " ") above do not occur in Rule 6. For accepting the contention raised on behalf of the respondents that this Rule 6 applies only to posts reserved under Rule 3, we will have to introduce these words in that rule, but this obviously is not permissible. The language of this rule is clear and unambiguous, and its effect and general applicability cannot be whittled down solely on the assumption which, in my opinion, is unwarranted that the object of promulgation of these War Service Rules was merely to reserve certain posts for war service candidates and not to grant them any other concession in the matter of recruitment to various posts in the civil administration of the Punjab Government. The Court is not at liberty to add to the language of a statute especially when it is clear and unambiguous, and the provision with the interpretation of which it is concerned can be given effect to as it stands and without adding any word to it. It is also a well-established rule of interpretation that the words of a statute when clear and unambiguous have to be given full effect to Irrespective of its effect or hardship on others. In fact, I am of the opinion that if the interpretation canvassed on behalf of the petitioner is adopted and it is held that Rule 6 is not confined to the war reserved posts but applies to all cases relating to the fixation of seniority of persons who had rendered war service vis-a-vis others, it does not lead to any undue hardship. On the contrary, the refusal to give benefit of these rules in the matter of fixation of seniority to persons with war service to their credit would inflict hardship on such ex-service personnel and not only defeat the purpose of the rules but also

amount to breach of faith and assurances held out in these rules to the candidates who joined the army. In Civil Writ 1399 of 1961, D/- 23-5-1963 (Punj) on which reliance has been placed on behalf of the respondents, my learned brother Pandit J. with whom S. B. Kapoor J. concurred, after examining the scope of the War Service Rules, in dealing with a similar contention observed:--

"Learned counsel for the petitioner then submitted that assuming for the sake of argument that no posts had been reserved for war service candidates under Rule 6 of the War Service Rules, the petitioner should have been assigned a place in the cadre after giving him the benefit of the war service rendered by him.

There is no merit in this contention, because, firstly, this point was not taken by him in the writ petition and his case throughout had been that he had been selected against one of the vacancies in the cadre of the Punjab Forest Service Class I reserved for war service candidates. Secondly, Rule 6 applied to those posts which had been reserved for war service candidates under Rule 3 of the War Service Rules. If in a case the provisions of Rule 3 are not attracted, then no benefit can be derived from Rule 6 alone. Rule 6 forms an integral part of the entire set of War Service Rules and cannot be singly taken out and made use of by the petitioner."

65. The latter observations with regard to the interpretation of Rule 6 are in the nature of obiter dictum as in the case with which the Division Bench was dealing the petitioner's claim was that he had been appointed against a war reserved post and was thus entitled to the benefit of Rule 6. Apart from this, as I have observed earlier, it is true that Rule 6 forms an integral part of the entire Bet of War Service Rules, but speaking with respect. I find it difficult to subscribe to the proposition that its benefit cannot be claimed by a Government employee with war service to his credit who had not been appointed against a vacancy reserved under Rule 3. If we accept the argument that the benefit of Rules 5 to 8 could be claimed only by persons appointed in the vacancies reserved under Rule 3, it would seem to follow that as soon as those vacancies were filled up the entire set of rules had exhausted itself and ceased to be operative. We, however, find that except for Rule 3 which was deleted with effect from 1st January, 1946, all other rules continued in force till 1953 when they were expressly repealed. This appears to indicate that the intention was to extend the concession granted to the candidates with war service to their credit not only in the matter of recruitment to the posts reserved under Rule 3 but also to other vacancies occurring during the period for which the rules remained in force, thus giving sufficient time to the ex-service candidates to obtain employment in other departments under the Punjab Government. The Rule 8 also seems to support this impression. In view of what has been said above I am of the opinion that the seniority of the petitioners as originally fixed was in accordance with Rule 6 and the Government was not justified in re-fixing their seniority on the assumption that Rule 6 applied only to posts reserved under Rule 3.

66. This brings me to the consideration of the other contentions raised on behalf of the respondents in opposing the grant of writ and quashing the order re-fixing the petitioners' seniority. These contentions are:--

(1) That no relief can be granted to the petitioners under Article 226 of the Constitution as Rule 6 on the basis of which the petitioners claim seniority is merely directory and not mandatory, vesting discretion in the authorities concerned;

(2) that the Rule 6 is violative of Article 14 of the Constitution and thus cannot be enforced by any relief granted on its basis; and

(3) that the entire set of rules having been abrogated in 1953, no relief can be obtained on their basis nor any direction issued to enforce them.

67. So far as the first contention is concerned, reliance has been placed upon the Division Bench decision of this Court in Civil Writ No. 1478 of 1960, D/- 23-11-1962 (Puni). wherein Grover J. (as he then was) observed as under: --

"There is another insuperable difficulty in the way of any relief being granted to the petitioner. Once Rule 6 of the War Service Rules is held to be applicable in the matter of fixing seniority, it will not be open to this Court to issue any writ in the nature of mandamus or any other appropriate order or direction for treating the impugned orders as ineffective for the simple reason that the aforesaid rule is more of a directory nature than mandatory. The language employed leaves room for exercise of discretion by the Government and in such circumstances it is well settled that the extraordinary powers under Article 226 can neither be invoked or exercised."

68. Reference is also made to the un-reported decision of the Supreme Court of Pakistan in Manzur Ahmad v. Province of West Pakistan, decided on 2-2-1961, wherein Cornelius C. J.. while dealing with the interpretation of these very rules observed: --

"It remains to consider what place belongs to Manzur Ahmad in the cadre of the Puni"ab Forest Service Class I, within the contemplation of the Rules. As has been seen, Rule 6 gives a wide discretion to the appointing authority in regard to the fixation of the seniority, and if the facts showed that the place given to him has been fixed with due consideration to the various factors enumerated in Rule 6, we imagine that the scope for interference by a Court would have been reduced to nothing. But that is clearly not the case. What actually happened was this, Some three years after the issue of the last instructions of 1946, on the 16th February, 1949, the Punjab Government issued a fresh instruction to the Departments which purported to clarify "some confusion in the matter of concession admissible to ex-service men on their appointment to civil posts"..... In the High Court, the learned Judges thought that by this "clarification" a mistake had been corrected which they found to lie in the instructions of the 11th December, 1946, viz., that the Government had lost sight

of two facts-- (1) that Rule 6 was no longer of statutory force and (2) that the application of Rule 6 injured the rights of those non-war service officers who had been recruited after that date, With respect to the views of the learned Judges, we cannot see that any such mistakes appear from the printed papers." In that case, their Lordships interpreted Rule 6 in the manner in which I have done, and despite the observation that Rule 6 was somewhat discretionary, they granted writ of mandamus directing the Government of West Pakistan to give due seniority to the petitioner Manzur Ahmad in the cadre of the Provincial Forest Service Class I taking into account the war service rendered by him.

69. It is true that where an order is made by an authority in exercise of the discretionary powers, this Court will not interfere with the discretion exercised by the authority concerned nor can a writ lie to compel an authority to exercise its discretion in a particular way, but the Court is certainly competent to go into the question to ascertain whether the discretion has been exercised by competent authority and within the ambit of such powers conferred on it. Where it is found that the order is made in excess of the discretion vesting in the authority, or by ignoring the principles on which the authority is required to exercise such discretion, or in violation of the limitations imposed upon it, the Court will not hesitate to interfere with such an order even though it purports to have been made in exercise of discretionary powers. In this view of the matter, the extent of the discretion vesting in that authority in fixing seniority of War Service candidates under Rule 6 of the War Service Rules may now be examined. This rule reads thus:--

"Every candidate with war service who is appointed to a Punjab Government Service, shall be assigned a place in the cadre of such services, which shall be fixed with due regard to his age and the period allowed to be deducted under Rule 5, and shall, as nearly as may be, correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way. The seniority inter so of all candidates so appointed to a cadre shall be determined by their ages irrespective of the class of war service rendered by each of them."

70. The argument that in fixing seniority under this rule the authority concerned has a certain discretion in the matter is based on the words "shall, as nearly as may be. correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way" Before these words, however, basis is laid down for fixing seniority and the factors which have to be taken into consideration in fixing seniority are age and the period which is allowed to be deducted under the previous Rule 5. This Rule 5 provides that in the case of a candidate who has rendered war service, the period for which he has served in the war shall be excluded in computing his age, and if he was invalided from war service, he shall further be entitled to deduct from his age the period from the time when he was invalided upto the date of his application for appointment or until the end of the war whichever is earlier. In other words, in fixing seniority of

officers in a particular cadre, under this rule, those who have war service to their credit are to be given benefit as to age and the period spent by them in war service.

The object of allowing this benefit of War service to the war service candidates as stated in this rule is to ensure that a person who volunteered for service during the war should not suffer or be at a disadvantage and he should at least get a place in the service which he would have occupied if he had not joined the army but had entered the particular civil service on the date he joined the army. There may be cases in which even after allowing this benefit of age and war service a war service candidate may not get the place which he would have occupied if he had not joined the army and served in the war. It is to remedy such a situation that the words "as nearly as may be, correspond with the place which he would have had if the war had not intervened and he had qualified in the normal way," were incorporated in this Rule 6. It is only for the purpose of giving a place in the civil service to a war service candidate, which would correspond to the place that he would have occupied if the war had not intervened, that some discretion had been given to the authority. Except for this discretion for the limited purpose of ensuring that a war service candidate gets the place which he would have occupied if the war had not intervened, there is no discretion vesting in the authority in the matter of fixation of seniority of a war service candidate under Rule 6 as would be apparent from the use of the word "shall" at various places in the rule.

71. It thus follows that if in fixing the seniority of a war service candidate his age and the period allowed to be deducted under Rule 5 are not taken into account and he is not given benefit of the same, the fixation of seniority will not be in accordance with such rule, and it cannot be defended on the plea that in fixing seniority ignoring these factors the authority had exercised the discretion vesting in it. Similarly, if seniority is fixed on wrong interpretation of Rule 6, there can be no room for argument that since the authority had discretion in the matter, there should be no interference with the order fixing seniority. In the case with which we are dealing, it has never been pleaded on behalf of the respondents that in fixing the seniority of the petitioners vis-a-vis the other persons in the same cadre, the authorities had exercised the discretion vesting in them under Rule 6, nor has it been even asserted that this discretion had been exercised so as to ensure that a war service candidate gets the place as nearly as may be corresponding to that which he would have got if the war had not intervened and he had qualified in the normal way. Accordingly, I find that this Court is not debarred from going into the validity of the order fixing the petitioner's seniority and affording him the necessary relief once it is found that the benefit of war service had been wrongly denied to him in fixing seniority under Rule 6.

72. This brings me to the consideration of the plea raised on behalf of some of the respondents that the Rule is violative of Article 14 of the Constitution and thus cannot be enforced as it leads to discrimination. These rules were framed in

1943 long before the Independence of the country. It is true that if these rules are inconsistent with any provision of the Constitution, they cannot be enforced. The Constitution was promulgated in 1951 and it was before that that all the three petitioners were appointed after having served in the Second World War. It is not disputed that on their entering the service under the State they were entitled to the benefit of War Service Rules and their seniority had to be fixed in accordance with Rule 6. Thus, the benefit of war service had accrued to them before the promulgation of the Constitution, and in fact the same was granted to them in fixing their seniority. The petitioners enjoyed that benefit till the year 1964 when their seniority was refixed to their disadvantage by the impugned order. It is thus evident that before us the petitioners' grievance in short is that the benefits of War Service Rules to which they were admittedly entitled on the day they joined the cadre, and that was before the promulgation of the Constitution, could not be taken away from them nearly 13 years after the promulgation of the Constitution.

By these writ petitions, the petitioners do not want conferment of any benefit under the War Service Rules but merely relief against deprivation of the benefits which they were already enjoying. Reliance on the War Service Rules has been placed by the petitioners to show that their seniority was rightly fixed in the first instance and they could not be deprived of the same by a subsequent order of the Government. It is thus not a case for the grant of any benefit to the petitioners under the War Service Rules but of protecting the petitioners against the deprivation of the benefits that they were enjoying and to which they were entitled before the Constitution came into force. It is true that Article 16 of the Constitution invalidates all laws and rules and regulations which were in force at the time the Constitution was promulgated to the extent that they were inconsistent with the provisions of the Constitution, yet there is nothing in the Constitution itself which empowers the authorities to take away the benefits that had already accrued and had been enjoyed under the then existing rules. As has been observed earlier, in the case before us the grievance of the petitioners is that the benefit which they were enjoying under the War Service Rules and that had accrued to them before the Constitution came into force had been taken away by the authorities on a wrong interpretation of the rules and that too long after those rules had been abrogated in the year 1953. It thus cannot be said that what the petitioners want is the grant of any benefit under the War Service Rules. On the other hand, they merely want to retain the benefits that had already accrued to them before the Constitution came into force.

73. Apart from this, I do not find it possible to agree with the contention that the War Service Rules are hit by Article 14 or are inconsistent with any provision of the Constitution. The rule was not intended to discriminate one employee in a service against another but to make reservation and confer certain advantages on a particular group in a service. The group to which certain benefits have been granted is specified and is confined to persons who had served in the Armed Forces during the last war. This classification is based on reasonable criteria and

the rules thus cannot be struck down as discriminatory,

74. The last objection raised on behalf of the respondents is that the entire set of the War Service Rules having been abrogated as far back as the year 1953, no relief can be obtained on their basis nor any direction issued to enforce them. As has been observed earlier, the petitioners' grievance before us is that the benefit that had been validly granted to them under the War Service Rules, which were admittedly in force when they joined the service and which governed them, had been withdrawn in the year 1964 illegally and on a wrong interpretation of Rule 6 of the War Service Rules. The petitioners do not want the enforcement of those rules. On the contrary, the respondents have sought to justify their conduct in revising the seniority of the petitioners to their detriment on a new interpretation of Rule 6 contending that the original interpretation on the basis of which the petitioners were granted seniority was wrong. It is thus obvious that it is the respondents who wish to deprive the petitioners of the benefit that they were enjoying and the respondent-authorities have purported to act on the rules that had already been abrogated. I thus find that there is no impediment in the way of the petitioners being granted relief under Article 226 of the Constitution once it is found that their seniority as originally fixed under the War Service Rules was correct and the authorities had no power to revise that order on a wrong interpretation of the relevant rules, and that too after the rules had been abrogated.

75. In view of the interpretation that I have placed on Rule 6 and my opinion that its benefit is not confined to persons who have been appointed against war reserved posts but can be claimed by all entrants to Government service who have rendered war service irrespective of the fact whether they hold a post which was reserved for war service candidates under Rule 3 or some other post, both these petitions have to be allowed. I, accordingly, accept them and award the petitioners a writ of mandamus directing the State Government of Punjab to restore the petitioners to the same position in the cadre which they were holding before the impugned order was passed and give them the benefit of their war service referred to in Rule 6. In view of the fact that it is the wrong order of the Government that has compelled the petitioners to approach this Court, I would further direct that the petitioners shall have their costs to these petitions from the State of Punjab.

H.R. Sodhi, J.

76. I have had the privilege of going through the judgments of my brethren P. C. Pandit and Gurdev Singh, JJ. I am in agreement with the reasoning and conclusions of my brother Pandit J.

ORDER OF THE FULL BENCH.

P.C. Pandit, Gurdev Singh and H.R. Sodhi, JJ.

77. In view of the majority decision, these writ petitions are dismissed, but with

no order as to costs.