

(2005) 02 P&H CK 0145

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1131 of 1994

Trilok Nath Gupta

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Constitution of India, 1950 — Article 50
Criminal Procedure Code, 1973 (CrPC) — Section 14, 30, 562, 6
Punjab Civil Services (Judicial Branch) Rules, 1951 — Rule 7, 7(5)
Punjab Land Revenue Act, 1887 — Section 108, 110, 145, 167, 207
Punjab Separation of Judicial and Executive Functions Act, 1964 — Section 12(3)
Punjab Superior Judicial Service Rules, 1963 — Rule 16, 4.2, 4.2(1), 6, 8

Citation : (2005) 140 PLR 766

Hon'ble Judges : V.K. Bali, J; K.S. Garewal, J

Bench : Division Bench

Advocate : Sumeet Mahajan, for the Appellant; Nirmaljit Kaur, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Triloki Nath Gupta, the appellant herein served for 30 years and 3 months; 15 years and 9 months in the Punjab Civil Service (Executive and Judicial) and 14 years and 6 months in the Superior Judicial Service. If he had served for 33 years, concededly, he would have earned full pension. Having marginally fallen short of the requisite period entitling him to full pension, he relied upon Rule 4.2 of the Punjab Civil Services Rules, Volume II and on the basis thereof, sought special addition to the qualifying service. He also complained of discrimination between direct recruits and promotees in Punjab Superior Judicial Services in the matter of counting the period of practice for the purpose of pension with regard to direct recruits and non-counting of period of promotees, which he spent while serving in Punjab Judicial Service. He lost on both counts. Writ petition filed by him was dismissed by learned Single Judge of this Court on 18.5.1994. Hence present Letters Patent Appeal under Clause X of

the Letters Patent.

2. The brief facts that need a necessary mention for the purpose of determining the controversy in hand reveal that the appellant graduated in law in 1958. He was appointed to the Punjab Civil Services (Executive Branch) on 1.12.1961. On 2.10.1964, he was absorbed in the Punjab Civil Service (Judicial Branch) and on 1.9.1977, he was promoted to the Punjab Superior Judicial Service. He retired as District & Sessions Judge on 31.3.1992.

3. Members of the Punjab Superior Judicial Service are governed by the provisions of the Punjab Superior Judicial Service Rules, 1963 (hereinafter referred to as "the Rules of 1963"). Recruitment to the service is governed by Rule 8 of the Rules of 1963, which recognises two modes of recruitment, namely, by promotion from amongst the members of the Punjab Civil Service (Judicial Branch), who have completed not less than ten years continuous service as such and by direct recruitment. Minimum and maximum age for direct recruitment is 35 and 45 years, respectively. Direct recruits must have to their credit not less than 10 years practice as an Advocate or Pleader. In view of the provisions contained in Rule 16 of the Rules of 1963, which deals with death-cum-retirement benefits, in case of a direct recruit to the service, actual period of practice at Bar not exceeding 10 years, would be added to his qualifying service for superannuation pension and other retiral benefits. There is no corresponding rule, which may entitle a promotee to count the number of years that he might have served in judicial service.

4. On the basis of the provisions of the rules, as mentioned above, it has been the case of the appellant that the rules are discriminatory in the matter of calculation of pension, inasmuch as, whereas, in the case of a direct recruit, service rendered by him in Superior Judicial Service is to be added by 10 years, there is no corresponding provision for a promotee to count the period spent by him while serving in Judicial Service. This contention raised on behalf of the appellant was repelled by learned Single Judge by giving findings as follows:-

"A perusal of Rule 9 shows that direct recruitment to the service is restricted to the persons in the age group of 30 to 45 years. Normally, such a person would retire after putting in a comparatively much shorter period of service. As a result, even the admissible pension would be less than that granted to a promotee. It was apparently to undo this hardship that Rule 16 was substituted to provide that an addition of actual period of practice at Bar not exceeding 10 years shall be made to the service qualifying for superannuation pension. However, it cannot be said that this addition to the qualifying service causes discrimination against a period appointed by promotion. It is no doubt, true that even in case of appointment by promotion, an officer becomes eligible only after he has worked in the Punjab Civil Service (Judicial Branch) for a period of 10 years but he gets the benefit of entire service towards computation of pension. By the amendment of Rule 16, the hardship to the direct recruitment has been done away with. The persons appointed by direct recruitment have been brought at par with those

appointed by promotion. A promotee cannot complain of discrimination. In his case, the entire period of service is taken into consideration for determining the amount of pension due to him. -"Rule 16 does not discriminate against a promotee. Consequently, the complaint is discrimination made by the petitioner cannot be sustained."

5. We do not find any exception to the findings given by learned Single Judge, as quoted above, nor, in fact, anything has been urged that may detract from the said findings. But the other significant point that has been raised is with regard to applicability of Rule 4.2(1) of the Punjab Civil Service Rules, Volume-II (hereinafter referred to as "the Rules"). Same reads thus:-

"4.2(1). A Government employee appointed to a service or post after the twenty sixth day of October, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension), the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty five years, or a period of five years, whichever is less, if the service or post to which the Government employee is appointed is one-

(a) for which post graduate research or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty five years of age are normally recruited; provided that this concession shall not be admissible to a Government employee unless his actual qualifying service at the time he quits Government service is not less than ten years.

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rules."

6. It is conceded position that if this rule may be applicable in the case of the appellant, he would be certainly entitled to full pension as in that case, 1/4th of length of his service or the actual period by which his age at the time of recruitment is exceeded 25 years or a period of 5 years, whichever is less, shall have to be counted. In that matter, concededly as well he will deem to have completed 33 years or more service, thus, entitling him to full pension. As to whether the case of the appellant would be covered under Clause (a) of the Rule 4.2(1) of the Rules is, however, subject matter of debate. It is the case of the appellant that the post that he came to occupy, even by way of absorption, in Judicial Service, did require post graduate or specialist qualification or experience in professional fields. The appellant, it is urged, could not possibly be absorbed in Superior Judicial Service which would be a new appointment unless he would have specialist qualification or experience in professional fields. He did have specialist experience in professional fields further contends the learned counsel in support of the present appeal.

7. Ms. Nirmaljit Kaur, learned Additional Advocate General, Punjab, however, joins issue with the counsel for the appellant and argues that it is the first post for which the appellant was appointed, which alone would be relevant for the purpose of covering the case of an employee under clause (a) of the Rule 4.2(1) of the Rules.

8. Learned Single Judge, while repelling the contention raised on behalf of the appellant, observed as follows:-

"In view of the amended provision of Rule 16 (supra) and the above proviso, this rule is certainly applicable to the members of the Superior Judicial Service. However, the benefit under this rule is available only when a government employee is appointed to a post for which "(a) post-graduate research or specialist qualification, or experience in scientific, technological or professional fields, is essential and (b) to which candidates of more than 25 years of age are normally recruited." It has not been shown that a person appointed to the Punjab Civil Service is required to possess any "post graduate specialist qualification or experience in scientific technological or professional fields." Consequently, the first condition which is essential for invoking the provisions of Rule 4.2(1) is not fulfilled. As a result, the benefit claimed by the petitioner under this rule is not admissible to him."

9. A perusal of the findings recorded by learned Single Judge, as reproduced above, would clearly make it out that even though, Rule 16 of the Rules has been held applicable to the members of Superior Judicial Service, same has not been made applicable to the appellant for the reason that he was initially appointed to Punjab Civil Service (Executive Branch) wherein, he was not required to possess any post graduate specialist qualification.

10. During the pendency of the appeal, the appellant filed additional affidavit wherein, it has, inter-alia, been pleaded that Section 6 of the Code of Criminal Procedure 1889 (hereinafter referred to as "the code"), broadly speaking constituted two categories of Criminal Courts, i.e., Courts of Session and Courts of Magistrates. Section 14 of the Code empowered the State Government to confer upon any person, who held any judicial post or possessed such other qualifications as may in consonance with the High Court be specified in this behalf, powers of a Magistrate. u/s 30 of the Code, the Magistrates of Ist Class were empowered to try all offences punishable with imprisonment not exceeding seven years. Thus, before October, 1964, all offences under the Indian Penal Code, excepting those triable exclusively by the Court of Session under Column 6 of the First Schedule of the Code, were tried by the Magistrates, who also used to try offence under other Central and Punjab Acts. While holding regular trials of criminal cases, the Magistrates were required to perform several other duties, such as attaching property of the absconding accused u/s 88; requiring security of good behaviour under Sections 108 and 110; holding inquiry to prevent disputes concerning land etc. likely to cause breach of peace u/s 145; remanding the accused to police or judicial custody u/s 167; committing the accused to the

Court of Session for trial after inquiry under Sections 207 and 207-A; punishing the complainant for making a false or frivolous complaint u/s 250; holding summary trials u/s 260; prosecuting the witnesses for perjury committed during trial or inquiry u/s 479-A; holding inquiry for awarding maintenance to wives and children u/s 488; releasing the accused on bail during trial or investigation u/s 496 and 497; disposing of case property on conclusion of trial u/s 517; restoring possession of immovable property to persons dispossessed by use of .criminal force u/s 522; releasing the convicts on probation u/s 562 of the Code etc. All this was judicial work. It is then pleaded that members of P.C.S. (Executive Branch) used to be appointed as Extra Assistant Commissioners/Assistant Commissioners and Magistrates. They also used to preside over the Revenue Courts under the Punjab Land Revenue Act. In compliance with Article 50 of the Constitution, judiciary was separated from the executive in the State of Punjab with effect from October, 1964, by the Punjab Separation of Judicial and Executive Functions Act, 1964 (hereinafter referred to as "the Act of 1964"). In consequence of its separation, amendments in the Code and other Central Acts as well as Punjab Acts, fully detailed in Parts I, II and III of the Schedule of the Act of 1964, were made and the Court work, specific to trial of criminal offences, commitment proceedings, inquiry proceedings as to maintenance of wives and children, was assigned to Judicial Magistrates under the supervision and administrative control of the High Court. This was the same work which the members of the P.C.S. (Executive Branch) used to do as Magistrates. Since the existing strength of the PCS (Judicial Branch) was not adequate for providing the personnel required to work as Judicial Magistrate, suitably qualified persons were selected from the PCS (Executive Branch) and permanently absorbed in the PCS (Judicial Branch) in accordance with Para 6(v) of the Statements of Objects and Reasons of the Bill, Annexure A-2, which reads as follows:-

"Provision has been made that as a transitional measure, for a period not exceeding six months from the date the Bill is enacted and enforced,, the State Government shall appoint Judicial Magistrates out of the members of the Punjab Civil Service (Executive Branch) in consultation with the High Court. The existing strength of the Punjab Civil Service (Judicial Branch), not being adequate for providing the personnel required to work as Judicial Magistrate, some suitably qualified persons will be selected from the Executive Branch of the Service for being permanently absorbed in the State Judicial Service. During transitional period stated above, it is intended to complete all necessary formalities and to increase the strength of the Judicial Service to the required level."

Act of 1964 made it necessary for the State to amend the PCS (Judicial Branch) Rules and same were amended by the Punjab Government Notification dated 31.3.1965. It is then pleaded that the appellant, who was working as a Magistrate Ist Class and Extra Assistant Commissioner at Amritsar and was a Law Graduate, with experience of 2 years and 10 months, was, on separation, selected as a suitably qualified person from the PCS (Executive Branch) and was permanently absorbed in the PCS (Judicial Branch) on his option under new Rule

7 and with this, he ceased to be a member of PCS (Executive Branch) under Rule 7(5) of the P.C.S. (Judicial Branch) Rules. It is then pleaded that even before the addition of Rule 7, appointment as Subordinate Judge by virtue of the office held by a member of the P.C.S. (Executive Branch), whether or not he was a law graduate, was permissible under Rule 6(a) of the Rules, which reads thus:-

"Notwithstanding anything to the contrary contained in these rules, the State Government may after consultation with the Punjab Public Service Commission and the High Court, appoint any Assistant Commissioner, Extra Assistant Commissioner, Cantonment Magistrate, Tehsildar or Naib Tehsildar, to be a Subordinate Judge by virtue of his office although he does not possess any of the qualifications laid down herein before."

11. It is pleaded in the end that from the aforementioned duties of the members of PCS (Executive Branch) prior to separation, it is apparent that members of the PCS (Executive Branch) were appointed/absorbed in the PCS (Judicial Branch) by virtue of the office held by them. Experience of the Magistrate was treated equivalent qualification for appointment in the PCS (Judicial Branch). Experience of the Magistrate prior to separation was nothing but experience in professional field. Since the appellant was member of the PCS (Executive Branch) prior to his absorption in PCS (Judicial Branch) on 2.10.1964, his case was squarely covered under Rule 4.2(1) of the Punjab Civil Service Rules, Volume II Part I, entitling him to claim the benefit of special addition to qualifying service for superannuation pension.

12. The pleadings as made in the additional affidavit filed during the pendency of the appeal, have not been controverted even though the stand of the State continue to be that since the appellant was not appointed in PCS (Judicial Branch) and for which, post graduate qualification or specialist experience in the professional fields was not necessary, Rule 4.2(1) of the Rules would not be applicable.

13. Before we might evaluate the respective contentions of learned counsel representing the parties and adjudicate the issue, we would like to mention that pension is not a bounty.

14. At the out set, we must mention as to what is the concept of pension and the essentials which qualify a civil servant to claim it as a retirement benefit under the law. It is well known that pension serves a beneficial purpose, both to the public and to person, who is to receive it. The purpose behind it is to reward faithful service by a pension allowance. For that reason, the legislation to pension matters has to be applied fairly and broadly so that benefits intended are not arbitrarily withheld. It was held by a Division Bench of this Court in *The State of Punjab and Anr. v. Shri D.N. Rampal* 1985(1) S.L.R. 14 that all reasonable doubts in that regard go in favour of the applicability of the Civil Services Rules, or such law, by liberal construction in favour of the employee.

The right of a Government servant to receive pension under the Civil Services

Rules was considered even as property, the rejection of which invoked the principle of natural justice audi alteram partem (State of Punjab v. K.R. Erry and Sobag Rai Meyta 1972 SLR 836. In the said case, it was even negated to be a bounty. It obviously is not even a reward. It can broadly be then described as a just allowance or stipend made in consideration of past services. And it is on this broad meaning, as it appears to us, that the term "pension", though not defined, is used in the Punjab Civil Services Rules." Hon"ble Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), held as under:-

"Summing up it can be said with confidence that pension is not only Compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

15. It is too well settled that a beneficial provision has to be interpreted liberally so as to give it a wider meaning, rather than a restrictive meaning which would negate the very object of the provision. Supreme Court in Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, , while dealing with the beneficial legislation, observed as follows:-

"The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions, in construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the colour, "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court*, we had

occasion to say,

Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

16. While dealing with the beneficial legislation, Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , held that "we cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose."

17. Once again, while dealing with labour industrial disputes, Supreme Court in *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, , held that "It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision."

18. Conspectus of judicial decisions, referred to above, would, thus, manifest that pension laws are beneficial in nature and, therefore, same are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision and further that in constructing the statutes, the imposture of literal construction must be avoided. The Judges ought to be more concerned with the "colour" the "content" and the "context, as has specifically been held in *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*'s case (supra).

19. Applying the test of interpretation in social and welfare legislation, what straightaway comes to the fore in the present case is the very appointment and absorption of the appellant in judicial service and then his promotion in Superior Judicial Service in Punjab. The appellant was, indeed, in PCS (Executive Branch). His initial appointment, no doubt, was in the post for which post graduate research or specialist qualification or experience in scientific technological or professional fields was not essential but it is not on the dint of the appellant having been appointed on the post of PCS (Executive Branch) that the appellant is relying upon Rule 4.2 (1.) of the Rules. It is his case that he was appointed on absorption in PCS (Judicial Branch) for which, indeed, an experience in

professional fields was essential.

20. Article 50 of the Constitution required the States to take steps to separate the judiciary from the executive in the public service of the State. Keeping in view the provisions of Article 50 of the Constitution, the Punjab Separation of Judicial and Executive Functions Act, 1964, came into being. Preceding the Act of 1964, the Government issued notification dated 30.9.1964, giving objects and reasons of separation of judiciary from the executive. It has, specifically, been mentioned in para 6(v) of statement of objects and reasons, reproduced above, that as a transitional measure, for a period not exceeding six months from the date the Bill is enacted and enforced, the State Government shall appoint (emphasis supplied) Judicial Magistrates out of the members of the Punjab Civil Service (Executive Branch) in, consultation with the High Court and further that suitably qualified (emphasis supplied) persons would be selected from the Executive Branch of service for being permanently absorbed in the State Judicial Service. Members of PCS in the Executive Branch were, thus, to be appointed in judicial service subject to their fitness. The same objects and reasons in particular dealing with the situation as mentioned in para 6(v) above, also find mention in the statement of objects and reasons, preceding the provisions of the Act of 1964.

21. That the members of PCS (Executive Branch) was appointed in Judicial Service on separation of Judiciary from Executive would be clear from Sub-section 3 of Section 12 of the Act of 1964, which reads as follows:-

"12(3). The State Government in consultation with the High Court, may, for such period not exceeding six months from the commencement of the Punjab Separation of Judicial and Executive Functions Act, 1964, as it may think fit, appoint as many persons who are members of the Punjab Civil Service (Executive Branch) as may be considered necessary to be Judicial Magistrate in any direct; and the State Government, in consultation with the High Court, may define local areas within which such persons may exercise all or any of the powers with which they may, respectively, be invested under this Code."

22. The objects and reasons preceding the Act of 1964, the objects and reasons mentioned in the Act of 1964 itself and Sub-Section 3 of Section 12 of the Act of 1964, would, thus, demonstrate that members of the PCS (Executive Branch) were to be appointed as Judicial Magistrate. The appellant was, thus, appointed and became a member of judicial service in Punjab. It is on this post and the one held by the appellant on his promotion to Superior Judicial Service that Rule 4.2 (i) of the Rules is sought to be made applicable.

23. It is quite apparent that pursuant to the Act of 1964 necessary amendments came to be brought about in the Punjab Civil Service (Judicial Branch) Rules, 1951 (hereinafter referred to as "the Rules of 1951"). These amendments came about vide notification dated 31.3.1965. Rule 7 that was added reads as follows:-

"7.(1) Notwithstanding anything contained in these rules, the Governor may, in

consultation with the High Court, appoint to the Punjab Civil Service (Judicial Branch) any person, who is member of the Punjab Civil Service (Executive Branch) and .who, before the first day of May, 1965, has opted or opts for appointment to the .Punjab Civil Service (Judicial Branch).

(2) A person appointed under sub-rule (1) shall become a temporary member of the Punjab Civil Service (Judicial Branch) and shall be so treated unless and until he is absorbed permanently in that service or is reverted to the Punjab Civil Service (Judicial Branch).

(3) If during one year of the appointment of such a person the High Court recommends that he be reverted to the Punjab Civil Service (Executive Branch), the Governor shall, as soon as may be practicable, revert him to the Punjab Civil Service (Executive Branch).

(4) During the period of one year referred to in sub-rule (3), a person so appointed may withdraw his option for appointment to the Punjab Civil Service (Judicial Branch) and thereupon he shall, as soon as may be practicable, be reverted to the Punjab Civil Service (Executive Branch).

(5) Where a person so appointed was a permanent member of the Punjab Civil Service (Executive Branch) before his appointment to the Punjab Civil Service (Judicial Branch) and the High Court has neither recommended his reversion under sub-rule (3) nor has he withdrawn his option under sub-rule (4), he shall, on the expiry of one year from his appointment under sub-rule (1), be deemed to have become a permanent member of the Punjab Civil Service (Judicial Branch) and shall cease to be a member of the Punjab Civil Service (Executive Branch).

Provided that where a person so appointed was on probation in the Punjab Civil Service (Executive Branch) before his appointment to the Punjab Civil Service (Judicial Branch) he may, subject to the provisions of sub-rules (3) and (4) be confirmed in the Punjab Civil Service (Judicial Branch) on the expiry of the period of probation if a permanent vacancy is available and shall thereon become a permanent member of that service."

24. Perusal of Rule 7, as reproduced above, would further manifest that the appellant was appointed in the PCS (Judicial Branch). Having held that the appellant was appointed in the-PCS (Judicial Branch), the question that further arises is as to whether for his appointment as a member of the said service, the appellant was required to have experience in professional fields. We may clarify at this stage itself that a person is entitled to the benefit of Rule 4.2(1) of the Rules, if he is appointed against the post for which post graduate research is essential. He is also entitled to the benefit of the said rule, if the post against which he is appointed, requires specialist qualification or experience either in scientific, technological or professional fields. In other words, a person shall be entitled to the benefit of the rule aforesaid if he has either done research in post graduation or has specialist qualification or experience either in scientific or

technological or professional fields. Therefore, if the appellant has experience in professional fields, he would be entitled to the benefit of Ruled 4.2(1) of the Rules.

25. It may be true that it has not been specifically mentioned above either in the objects and reasons preceding the Act of 1964 or the provisions of the Act of 1964 or for that matter, in PCS (Judicial Branch) Rules, 1951 as amended, that for appointment on absorption in PCS (Judicial Branch), experience in professional fields may be necessary but the question that arises as to whether any one having no experience of professional fields could be appointed to PCS (Judicial Branch). This Court is of the considered view that if members of PCS (Executive Branch) by virtue of duties assigned to them were not well versed with judicial/legal matters nor had gained any experience in judicial/professional fields, they would not have been allowed to join service in PCS (Judicial Branch).

26. It may be recalled at this stage that statement of objects and reasons in para 6(v) clearly provides that some suitably qualified persons may be selected from the Executive Branch of service for being permanently absorbed in judicial service. Para aforesaid stands incorporated in the Act of 1964, preceding the statute in the statement of objects and reasons. By virtue of the provisions contained in sub-section 3 of Section 12 of the Act of 1964, the State Government could appoint Judicial Magistrates from members of the PCS (Executive Branch) in consultation with the High Court. Surely the High Court would not appoint members of PCS (Executive Branch), if they were not suitable or fit to be appointed as members of PCS (Judicial Branch).

27. Members of PCS (Executive Branch), who were to be found suitable were those officers, who were discharging their duties in PCS (Executive Branch), which they were also to perform as members of PCS (Judicial Branch).

28. In the additional affidavit filed by the appellant, duties performed by the members of PCS (Executive Branch) have been given in detail, mention whereof has been made in the earlier part of the judgment. Admittedly, all functions, as mentioned in the additional affidavit, were such that after separation of judiciary, these had to be performed by the members of PCS (Judicial Branch).

29. While performing their duties as members of PCS (Executive Branch), members of the said service were performing judicial functions. By virtue of the provisions contained in Sections 6 and 30 of the Code of Criminal Procedure, all the Magistrate, 1st Class were empowered to try offences punishable with imprisonment not exceeding seven years. All offences under the Indian Penal Code, excepting those triable exclusively by the Court of Session, were tried by the Magistrates. There was no distinction while performing such duties between the Magistrates on judicial side and the Magistrates on executive side. They also used to preside over the Revenue Courts under the Punjab Land Revenue Act, 1987, Punjab Security of Land Tenures Act, 1953, Punjab Village Common Lands (Regulation) Act, 1961 and many other local Acts. They would also try suits

under the Punjab Land Revenue Act for recovery of the rent by following the same procedure as is followed in regular civil suits. Rule 7 was added in the Punjab Civil Service (Judicial Branch) (First Amendment) Rules, 1965, which empowered the Governor in consultation with the High Court to appoint to PCS (Judicial Branch) any person, who is a member of PCS (Executive Branch). This could not have been done unless, the members of service of PCS (Executive Branch) were found fit and suitable by virtue of the duties performed by them being members of PCS (Executive Branch).

30. The only question that, however, further arises is as to whether while performing the functions such as mentioned in the additional affidavit, the appellant can be said to have gained experience in professional fields. The word "professional" as per the Oxford Dictionary means "(1) of or belonging to or connected with a profession; (2)(a) having or showing the skill of a professional competent, (b) worthy of a professional; (3) engaged in a specified activity as one's main paid occupation; (4) engaged in a specified habitual activity regarded with disfavour." In Webster's Encyclopedic Unabridged Dictionary, the word "professional also means a person who belongs to one of the professions. Word "professional" in Cambridge International Dictionary of English, related to the work that you do as a job etc. The word professional in the Law Lexicon, Second Edition, means "professional attainment in special knowledge as distinguished from mere skill; a practical dealing with affairs as distinguished from mere study or investigation; and an application of such knowledge to uses for others as a vocation as distinguished from its pursuits for its own purposes. Word "professional" in the considered view of this Court cannot be confined to a person practicing law as a Lawyer."If a person may by virtue of the duties conferred upon him constantly deals with legal affairs, he can be called a professional, even though, he may not be in private practice as such. To illustrate, an Architect or a Doctor would be a professional irrespective of the fact that he is in private practice or in the Government job. It is for that precise reason that in the matter of appointment to Judicial Service, those, who are in private practice and those, who are engaged in performing judicial functions, have been treated as par. Be it a case of appointment at the lowest rung in the judiciary or the highest post, those who are practicing law and those who are performing judicial functions, are treated at par. The appellant had experience in professional fields and unless he was to have that, he would not have been appointed to any post in judicial service. We reiterate that it has not been specifically mentioned in the provisions dealing with Separation of Judiciary Act of 1964 or the provisions contained in the Rules of 1951 that experience in professional fields would be essential for appointment in judicial service but the same is inherently implied. It is in situation such as the one in hand that the Judges ought to be more concerned with the "colour" the "context" and the "content" of statutes. While interpreting social or beneficial legislation, liberal import is utmost necessary. The appellant has served the institution with dedication for more than 30 years. Rule 4.2(1) of the Rules provides scope for an

employee to get pension for maximum qualifying service and the appellant cannot be denied the same on which depends his livelihood after he has retired.

31. In view of the discussion made above, we set aside the order passed by learned Single Judge and allow this appeal. Consequently, we direct the Government to give benefit of provisions of Rule 4.2(1) of the Rules to the appellant by adding to his service 1/4th of the period spent by him while calculating his pension. Surely if calculated, in the manner aforesaid, the appellant would qualify for superannuation pension calculated for service of 33 years. Let pension of the appellant be calculated and fixed again making him eligible to add to his service qualifying for superannuation pension as envisaged under Rule 4.2(1) of the Rules. This calculation must be done within a period of three months and the arrears be paid to the appellant within a period of next two months. In peculiar facts and circumstances of this case, however, there will be no order as to costs.