concerned shareholders. As per record there is no *wari* of Mukhtiar Singh on the disputed watercourse."

(16) Once *Warabandi* has been sanctioned in accordance with the procedure prescribed after hearing the concerned shareholders, the remedy, if any, lay under section 68 of the Act, and that can not be allowed to be urged in a collateral proceeding that the water-course on the basis of which *Warabandi* has been fixed is not authorised.

(17) In view of the finding recorded above, the writ petition is dismissed. However, we leave the parties to bear their own costs.

S.C.K.

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

KESAR CHAND,—*Petitioner.*

versus

STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ Petition No. 2864 of 1983

June 2, 1988.

Constitution of India, 1950—*Article* 14—*Punjab Civil Service Rules, Volume II—Rule* 3.17(*ii*)—*Pensionary benefits and gratuity—Eligibility—Services of work charged employees regularised by award of Industrial Tribunal—Period of service prior to regularisation—Such period—Whether to be counted in determining qualifying service—Rule* 3.17(*ii*) *excluding period of service in work charged establishments—Rule—Whether unjust, arbitrary and violative of Article* 14—*Regularised employees—Whether entitled to benefit of Rule* 3.17.

Held, that once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Punjab Civil Service Rules. Equal *protection of laws must mean the protection of equal laws for all* persons similarly situated. Article 14 of the Constitution of India, 1950 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating

service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged estalishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub-rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution of India, 1950.

(Para 16).

Held, that a regularisation of services must be against a particular post and the employee will be demeed to have been made permanent on the post against which his services have been regularised. Once the services of a work- charged employee are regularised he will be deemed to be entitled to the benefit under Rule 3.17 of the Rules.

(Para 19).

(These cases referred to Division Bench by Hon'ble Mr. Justice Gokal Chand Mital on 6th May, 1986, *and the same were fixed before a Division Bench consisting of Hon'ble Mr. Justice J. V. Gupta and Hon'ble Mr. Justice Gokal Chand Mital. The Special Division Bench referred the cases to Full Bench on 17th September,* 1986 *on the following points:—*

> *"Since the rules regarding workcharged employees have remained in force for more than half a century and there is no direct decision of any Court so far and since the decision may have far reaching financial implications,* inter alia, *we are of the considered opinion that this matter be decided by a Full Bench as the decision would bind the States of Punjab, Haryana and Union Territory, Chandigarh."*

The Full Bench consisting of The Hon'ble The Chief Justice Mr. V. Ramaswami, The Hon'ble Mr. Justice Ujagar Singh and The Hon'ble Mr. Justice G. R. Majithia finally decided the cases on 2nd June, 1988.

Writ Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ of Certiorari, Prohibition, Mandamus or*

any other writ order or direction as deemed fit in the circumstances, be issued to the respondents:—

(i) *directing the respondents to sanction the pensionary and other benefits to the period for the period he served the respondents and calculating the pension in accordance with his entitlement as applicable to all other employees.*

(ii) *directing the respondents to pay the gratuity to the petitioner for the period of his service right from* 1951 *to the date of retirement, as per his entitlement on the last pay drawn at the time of retirement.*

(iii) *for declaring the Rule* 3.17 *of the Punjab CSR Vol. II so as it deprives the petitioner from receiving the pension for the period he served the State in any capacity and being paid from any fund, is ultra-vires of the Constitution of India and declaring Rule* 1.2 & 1.4(*iii*) *as violative of the Constitution.*

(iv) *Record of the case be summoned.*

(v) *Filing of certified copy of annexures be exempted.*

(vi) *the writ petition may kindly be allowed with costs.*

J. C. Verma, Advocate and Dinesh Kumar, Advocate, *for the Petitioners.*

H. C. Bedi, Aditional A. G. Punjab, *for the Respondents.*

JUDGMENT

G. R. Majithia, J.

This bunch of writ petitions (CWP Nos. 1499/83, 2864/83, 4125, 4908, 1530, 2319 and 4216 of 1984, 1039, 5141, 41, 3678, 4072, 4712, 4720, 4721, 5584 of 1985 and 1171/87) will be disposed of by a common judgment.

(2) We have referred to the facts as given in CWP No. 2864/1983.

(3) The factual matrix has little relevance to the issues raised and canvassed at the hearing. However, a brief resume of the facts is necessary to appreciate the points urged.

(4) The petitioner joined as a Beldar on August 1, 1951, as a work-charged employee in the office of the Sub-Divisional Officer, Pathankot. He had a regular service, without any break, from the date of joining the service till the date of his superannuation — October 3, 1977.

(5) After his superannuation, the petitioner represented to the respondents for grant of pensionary benefits for the reasons that he had served the department regularly and the post against which he was appointed was a regular post. Even in the Industrial Award dated June 1, 1972 (Between the Workman and the Chief Engineer, P.W.D. (B. & R.), Establishment Branch, Punjab, Patiala) which was published in the Government Gazette dated July 14, 1972, it was held by the Tribunal that the work-charged employees were entitled to be confirmed after five years of service. Therefore, the petitioner contends that he would be deemed to have been confirmed in the year 1956. Respondent No. 1,—*vide* its letter No. 1177 B. & R. (4)-73, dated 6th February, 1973, accorded sanction to the regularisation of all those employees of P.W.D. (Irrigation Branch) working work-charged establishment with effect from 15th August, 1972, who had put in ten years' or more service on that date. The petitioner averred that respondent No. 1 has deprived him of the pensionary benefits on the strength of rule 3.17 and rule 1.2 or 1.4(iii) of the Punjab Civil Service Rules Volume II. The petitioner was a government servant and was paid from the government revenue and government funds, and could not be excluded from the purview of Punjab Civil Service Rules in relation to pension. It is pleaded that the action is totally arbitrary and violative of Article 14 of the Constitution of India, as the said rule is discriminatory.

(6) The respondents, in their return, substantially admitted all the factual pleas of the petitioner. It was, *inter alia,* pleaded that the petitioner's qualifying service for pension and gratuity starts from August 15, 1972, i.e., the date from which he is brought on the regular cadre. He did not have a regular service for ten years on the date of his superannuation, i.e., October 31, 1977, thus was not entitltd to pensionary benefits. The service in the work-charged establishments does not count for pension under rule 3.17 (ii) of the Punjab Civil Service Rules, Volume 2.

(7) The writ petition came up for hearing before Gokal Chand Mital, J. The learned judge opined that the question whether the

benefit of pension and gratuity can be allowed to the work-charged employees only from the date they stand regularised in service or after taking notice of the whole of the service, i.e., from the date of joining as a work-charged employee is a matter of importance and has to be judged on the test of 'equality' provisions under Article 14 of the Constitution. A prayer was made to my lord, the Chief Justice, for constitution of a larger Bench.

(8) The matter was subsequently placed for hearing before Gokal Chand Mital and J. V. Gupta, JJ. The Division Bench was of the *prima facie* opinion that the rules regarding the work-charged employees had remained in force for more than half a century and there was no direct decision of any court on the point, and the decision on the point may have far-reaching implications. It observed that the matter be decided by a Full Bench as the decision would bind the States of Punjab, Haryana and the Union Territory of Chandigarh. It is in this manner that the matter has been placed before us.

(9) What is pension ? Is it a right to property or a bounty ? The question came up for consideration before this Court in *Bhagwant Singh* v. *Union of India* (1). It was held that such a right constitutes 'property' and any interference will be a breach of Article 31(1) of the Constitution. The decision given by the learned Single Judge was approved by the Letters Patent Bench in *Union of India* vs. *Bhagwant Singh* (2). The Letters Patent Bench held that the pension granted to a public servant on his retirement is 'property' within the meaning of Article 31(1) of Constitution and he could not be deprived of the same, save by authority of law.

(10) This matter again came up for hearing before a Full Bench of this Court in *K. R. Erry* vs. *State of Punjab* (3). The majority quoted with approval the principle laid down in the earlier two decisions of the Court referred to above and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and that the right of superannuation pension, including its amount, is a valuable right vesting in a Government servant. The Full Bench decision was approved by their

(1) A.I.R. 1962 Pb. 503.
(2) I.L.R. 1965 (2) Pb. 1.
(3) I.L.R. 1967 (I) Pb. & Hry. 278.

Lordships of the Supreme Court in *Deokinandan Prasad* vs. *The State of Bihar* (4), with the following observations :—

> "We are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968, denying the petitioner right to receive affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable."

This view was re-affirmed in *State of Punjab* vs. *Iqbal Singh* (5) where their Lordships of the Supreme Court were pleased to observe as under :—

> "It has been urged by the appellant that the Full Bench decision of the High Court of Punjab & Haryana in K. R. Erry's case (A.I.R. 1967 Punjab 279) is not in accordance with law as superannuation pension is a bounty and is given only as an act of grace. That ground is no longer available to the appellants in view of the decision of this Court in Deokinandan Prasad *v.* State of Bihar (A.I.R. 1971 S.C. 1409) where it was held that pension is not a bounty payable on the sweetwill and pleasure of the Government and the right of a Government servant to receive it is property under Article 31(1) of the Constitution and the State cannot withhold the same by a mere executive order. It was further held in that case that the claim to pension was also property under Article 19(1)(f) of the Constitution and was not saved by clause (v) thereof."

In view of this, the pension is a right to property and a Government servant can not be deprived of this right, save by legislation which, too, has to satisfy the test of Article 14 of the Constitution.

(4) A.I.R. 1971 S.C. 1409.
(5) A.I.R. 1976 S.C. 667.

(11) The principal submission raised by the learned counsel relates to the constitutional validity of rule 3.17 (ii) of Punjab Civil Service Rules Vol. 2 (hereinafter called the Rules) which is in the following terms :—

"If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in Full as qualifying service except in respect of :—

(i) periods of temporary or officiating service in non-pensionable establishment ;

(ii) periods of service in work-charged establishment ; and

Rule 1.4 of the Punjab Civil Services Rules Volume I may be noticed.

"1.4. These rules shall not apply to—

(i) any Government employee between whom and the Government, a specific contract or agreement subsists in respect of any matter dealt with herein to the extent upto which specific provision is made in the contract or agreement (see rule 1.3 above).

(ii) any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force ; and

(iii) any Government employee or class of Government employees to whom the competent authority may, by general or special order, direct that they shall not apply in whole or in part. One of such classes of Government employees is that employed only occasionally or which is subject to discharge at one month's notice or, less. A list of such Government employees is given in Appendix 2.

Note :—Different types of Model forms of agreement for use in the case of Government employees engaged on contract are given in Form Pb. C.S.R. No. 1."

(12) The principle underlying the guarantee of Article 14 of the Constitution is that all persons similarly circumstanced shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(13) In the earliest stages of evolution of the Constitutional Law, Article 14 came to be identified with the doctrine of "classification' because the view taken was that Article 14 forbade discrimination and there will be no discrimination where classification making the differentia fulfils two conditions, viz., (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and, (ii) that differentia has a rational relation to the objects sought to be achieved by the statute in question. See *Ram Krishna Dalmia* vs. *S. R. Tendolkar* (6), their Lordships of the Supreme Court observed as under :—

> "The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be nexus i.e. casual connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

(14) However, a new dimension was given to Article 14 of the Constitution in *E. P. Royappa* vs. *State of Tamil Nadu* (7). In that case, the petitioner, an I.A.S. officer, challenged the order of his transfer on several grounds, including the violation of Article 14. It was pointed out for the first time that Article 14 embodies guarantee against arbitrariness. Their Lordships were pleased to observe as under :—

> "From a positive point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn

(6) A.I.R. 1958 S.C. 538.

(7) A.I.R. 1974 S.C. 555.

enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

(15) The legislation has not only to pass the above test but it must also pass the test that it is not arbitrary. In *Smt. Maneka Ganahi* vs. *Union of India* (8), their Lordships of the Supreme Court were pleased to observe as under :—

"..... what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests squarely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinarie limits ..... Article 14 strickes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

(16) In re : *Special Courts Bill case* (9), their Lordships of the Supreme Court re-stated the following four principles in these terms :—

"The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the

(8) A.I.R. 1978 S.C. 597.
(9) A.I.R. 1979 S.C. 478.

invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion or persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience, it can recognise even a degree of evil, but the classification should never be arbitrary, artificial or evasive.

The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

This proposition was affirmed and explained by the Constitution Bench of the Supreme Court in *Ajay Hasia* vs. *Khalid Mujib Sehravardi* (10), with the following observations :—

"That it must, therefore, now be taken to be well-settled that what Article 14 strikes at is arbitrariness because any

(10) A.I.R. 1981 S.C. 487.

action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law, and is, therefore, violative of Article 14."

The same principle was reiterated in *D. S. Nakara* vs. *Union of India* (11), with the following observations made by their Lordships of the Supreme Court :—

"As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively established the rational principle on which the classification is founded co-related to the object sought to be achieved ? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals is a welfare State will have to strive by both executive and legislative action to help the less fortunate in society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizen otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of the doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object ought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational

(11) A.I.R. 1983 S.C. 130.

prinnciple on which classification is founded but corelates it to the objects sought to be achieved. This approach is noticed in Ramana Dayaram Shetty *vs.* International Airport Authority of India A.I.R. 1979 S.C. 1628 when the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

In the light of the above, let us examine the validity of rule 3.17 (ii) of the Punjab Civil Services Rules Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the Workmen and the Chief Engineer, P.W.D. (B. & R.), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette, dated July 14, 1972. Even otherwise, the matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383, dated 6th February, 1973 Annexure P7) where it was stated that all those work-charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a

work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub-rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.

(17) In relaxation of rule 3.17 (ii) of Rules by the respondent-authorities, the service of sixteen work-charged employees was counted for pensionary benefits and gratuity *vide* Government of Punjab, Department of Irrigation and Power (Irrigation Branch) Memo No. 2/5/81-IB(6)/16411, dated 7th November, 1982 (Annexure P2) which reads as under :—

> "Sanction of the Government of Punjab is accorded in relaxation of Rule 3.17 of Punjab Civil Services Rule Vol. II for counting of previous work-charged service towards gratuity in respect of 16 work-charged employes of Nangal Workshop mentioned in the enclosed statement subject to the condition that no terminal benefit is/has been given to these work-charged employees at the time of regularisation of their service.
>
> Sanction of the Governor of Punjab is also accorded to the counting of service of these 16 work-charged employees towards pension as a special case provided no benefit has already been drawn by them in lieu of pensionary benefits."

If respondent No. 1 has granted exemption from rules in certain cases, we do not find any justifiable reason for excluding others from the grant of pension and gratuity benefits. For this reason too, we find rule 3.17(ii) is bad at law, as it enables the Government to discriminate between employees similarly situated.

(18) In fairness to Mr. Bedi, the learned Additional Advocate-General, the submission made by him may be adverted to. It was contended that (i) a work-charged employee is engaged for a particular purpose upon completion of which his services come to an end, (ii) no order has been passed by the State Government confirming the petitioner against the post on which his services are regularised, and resultantly he does not fulfil the conditions entitling a Government servant for pension, as envisaged by rule 3.12 of the Rules. The counsel also tried to justify the Government

action by placing reliance on rule 1.4 of the Punjab Civil Services Rules Vol. I. It was further contended that P.W.D. (B. & R.) Establishment Branch is not an industry and in support of this submission he replied on *State of Punjab* vs. *Kuldip Singh* (12) and *Om Parkash* vs. *The Management of M/s. Executive Engineer, SYL Division, Kurukshetra* (13).

(19) His first submission is devoid of any merit. In para 3 of the petition, it is specifically averred that the petitioner had regular service, without any break of a single day, right from 1951 to the date of his superannuation in the year 1977. In the corresponding para of the written statement, this assertion has not been denied but the only plea taken is that his qualifying service for pension and gratuity starts from 15th August, 1972, i.e., the day from which he was brought on regular cadre ; and that his service in the work-charged establishment does not count for pension under rule 3.17 (ii) of the Rules. The plea that he has been in continuous service has not been denied. It appears that on the completion of one project, the petitioners were engaged in another project either with break in service or without any break. Every plea raised in a petition has to be specifically denied and in the absence of a specific denial, the assertions made in the petition will normally be deemed to have been admitted or at least the court can proceed on the basis that it is an uncontroverted fact. Since there is no denial by the respondents that the petitioner has been in continuous service since 1951, it would be presumed that he has been in continuous service till the date of superannuation. The second contention that no order has been passed by the State Government confirming the petitioner against the post on which his services were regularised, and so on, is also without merit. The regularisation of services must be against a particular post, and the petitioner will be deemed to have been made permanent on the post against which his services have been regularised. This precisely appears to be the purport of the Punjab Government Memo (Annexure P7), and the award of the Industrial Tribunal dated June 1, 1972, published in the Government Gazette dated July 14, 1972, referred to earlier. In the award, it was specifically held that the work-charged employees who had put in three years of continuous service are entitled to be made permanent and to be confirmed after having put in

(12) I.L.R. 1982 (2) Pb. & Hry. 544.
(13) I.L.R. 1984 (2) Pb. & Hry. 215.

five year's service as demanded by the workmen. The award may bind the workmen and the management of the P.W.D. (B & R) Establishment Branch. Technically speaking it may not be binding on other branches of the P.W.D. Once the services of a work-charged employee are regularised, he will be deemed to be entitled to the benefit under rule 3.17 of the Rules.

(20) The third submission that the Government action was justified in view of rule 1.4 of the Punjab Civil Services Rules Vol. I deserves to be rejected simply on the ground that this rule has not remotest application to the facts of the present case. The learned counsel is not correct in saying that there is a specific contract or an agreement in the instant case, excluding the applicability of the Civil Services Rules, and more particularly, in the light of the fact that the service of the petitioner were regularised, and he would be deemed to have become a member of the service under the Government.

(21) The last submission of the learned Addl. Advocate-General that the P.W.D. (B & R) Establishment Branch is not an industry is not sustainable in law. This question does not arise. However, the rulings relied upon by him, viz., *Kuldip Singh's* case (supra) and *Om Parkash* case (supra) were expressly overruled in *Des Raj* v. *State of Punjab* (14). Their Lordships of the Supreme Court were pleased to hold as under : —

> "The main functions of the Irrigation Department where subjected to the Dominant Nature test clearly come within the ambit of industry. We have not been able to gather as to why even six years after the amendment has been brought to the definition of industry in section 2(J) of the Act the same has not been brought into force. This Court on more than one occasion has indicated that the position should be clarified by an appropriate amendment and when keeping in view the opinion of this Court, the law was sought to be amended, it is appropriate that the same should be brought into force as such or with such further alterations as may be considered necessary, and the legislative view of the matter is made known and the confusion in the field is cleared up."

(14) A.I.R. 1988 S.C. 1182.

(21) Before we conclude we must observe that this judgment will be confined only to pension and gratuity.

(22) In view of the foregoing discussion, the petitions are allowed, with no order as to costs.

R.N.R.

FULL BENCH

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

VIKRAM SINGH AND OTHERS,—*Petitioners.*

versus

SUBORDINATE SERVICE SELECTION BOARD, HARYANA AND ANOTHER,—*Respondents.*

Amended Civil Writ Petition No. 4861 *of* 1986.

June 3, 1988.

Constitution of India, 1950—Articles 14 and 16—Haryana Excise and Taxation Inspectorate (State Service Class III) Rules, 1969—Selection of Excise Inspectors—Allocation of marks for viva-voce test at 12.2 per cent fixed by the Supreme Court for higher services—Whether applies to selection of Excise Inspectors—Higher weightage for viva-voce test—Whether permissible.

Held, that it is clear that in Joginder Singh *vs.* State of Haryana and others 1986(3) S.L.R. 644 (F.B.) the allocation of marks at 28.5 per cent of the aggregate was challenged on the ground that they were excessive and the prayer was to strike down the same as it was against the principles enunciated under Articles 14 and 16 of the Constitution of India, 1950. The prayer was clearly turned down. In view of this judgment of the Full Bench reference to this Bench in this case was not necessary. But it seems that this particular fact of challenge and the specific answer were not brought to the notice of the Court at the time of reference. Since in Joginder Singh's case Haryana Excise and Taxation Inspectorate (State Service Class III) Rules were upheld and it was definitely held that the percentage of marks for viva-voce test fixed at 28.5 per cent does not offend Articles 14 and 16 of the Constitution. The Rules which are involved in the instant case are the very Rules involved in the Joginder Singh's case and the same have been unheld.

(Paras 28, 30 and 32).