under Order 21, rule 2. In the appeal preferred to the Additional District Judge, Ludhiana, which was dismissed on 11th June, 1964, such a contention was never raised. Even in the High Court which dismissed the appeal finally on 15th April, 1966, there was no attack on this ground. It was held by the Supreme Court in *Merla Ramanna* v. *Nallaparaju and others* (6), that the Court to whose jurisdiction the subject-matter of the decree is transferred acquires inherent jurisdiction over the same by reason of such transfer, and if it entertains an execution application with reference thereto, it would at the worst be an irregular assumption of jurisdiction and not a total absence of it, and if objection to it not taken at the earliest opportunity, it must be deemed to have been waived, and cannot be raised at any later stage of the proceedings. The judgment-debtor should have raised this objection that Shrimati Harminder Kaur was not seized of the jurisdiction which she had assumed on the case being transferred by the District Judge. The point might well have been taken before either of the two appellate Courts and there can be no doubt that on the principle of the Supreme Court decision, the judgment-debtor must be deemed to have waived this objection. No injustice has resulted; indeed it would be miscarriage of justice to accept the technical objection at this stage relating, as it does, to a matter which has been pending for many years in Court and could and should have been raised much earlier.

(12) There is no merit in this appeal which fails and is dismissed with costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MOHINDER SINGH,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 3683 of 1968

September 3, 1969.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Section 88—Punjab Zila Parishad (Appointment of Secretaries) Rules (1965)—Rules

(6) A.I.R. 1956 S.C. 87.

5, 6 and 11—*Appointment of a temporary Secretary of a Zila Parishad under rule 11—Age limit and academic qualifications as prescribed in rules 5 and 6—Whether must be fulfilled by a candidate for such appointment—Constitution of India (1950)—Article 226—Office of Secretary of a Zila Parishad—Whether public office—Writ of* quo warranto—*Whether can be issued against the incumbent thereof.*

Held, that it is a fundamental rule of appointment to public offices that the qualifications prescribed for an incumbent of the post apply to all incumbents whether permanently appointed or temporarily appointed for the reason that the duties of the office are the same whether they are performed by permanent incumbents or by temporary incumbents. Necessary qualifications prescribed by the rules cannot be waived in the case of temporary appointments when no such provision of relaxation or waiver exists in the rules. In rules 5 and 6 of Punjab Zila Parishads (Appointment of Secretaries) Rules, 1965, it has not been stated that these rules shall apply only to permanent Secretaries of the Zila Parishad and not to persons appointed temporarily under rule 11. Rule 11 also does not give any indication. Hence rules 5 and 6 of the Rules, prescribing age limit and academic qualification shall apply to the person appointed as temporary Secretary of a Zila Parishad under rule 11. **(Para 7)**

Held, that the office of Secretary of a Zila Parishad has been provided by the Punjab Panchayat Samitis and Zila Parishads Act, 1961, and is, therefore, statutory in nature. Even the duties of the Secretary have been prescribed in the Act. Hence the office is a public office and a petition for the issuance of a writ of *quo warranto* lie against the incumbent of that office in case it is alleged that he is not qualified to hold it or he has usurped it. **(Paras 10 and 13)**

Petition under Articles 226 and 227 of the Constitution of India, praying a writ of certiorari, mandamus, *or any other appropriate writ, order or direction be issued directing the Respondents 1 to 3 to forthwith proceed with the appointment of Secretary, Zila Parishad, Rohtak, in accordance with Rule 10 of the Punjab Zila Parishad (Appointment of Secretaries) Rules, 1965, and also directing the respondents 1 to 3 to remove respondent No. 4 from the office of the Secretary which he is holding against law and in fact amounts to usurpation and further directing respondents No. 4 not to continue to act as such any more.*

P. S. JAIN, V. M. JAIN, AND J. S. NARANG, ADVOCATES, for the Petitioner

R. A. SAINI, ADVOCATE, FOR ADVOCATE-GENERAI (HARYANA), for Respondent No. 1.

U. D. GOUR, ADVOCATE, for Respondents Nos. 2 and 3.

H. S. HOODA, ADVOCATE, for Respondent No. 4.

JUDGMENT.

TULI, J.—The petitioner was employed as Professional Tax Officer in the District Board, Rohtak, with effect from June 16, 1953

and was confirmed in 1954 in the grade of Rs. 125—7½—200—10—250. District Board, Rohtak was abolished in 1962 as provided in section 118 of the Punjab Panchayat Samitis & Zila Parishads Act, 1961 (hereinafter called the Act) and the petitioner was absorbed in the Zila Parishad, Rohtak along with the other employees of the District Board. His designation in the Zila Parishad was changed to Taxation Officer and he has been confirmed as such. The present grade of his pay is Rs. 200—10—250/15—325. In the return it has been pointed out that the petitioner was not absorbed in the Zila Parishad, Rohtak, along with the other employees of the District Board, Rohtak, as the post of Professional Tax Officer was declared surplus. The petitioner was allotted the duty of checking the assessment statements of Professional Tax and then to bring them on rational basis. While performing this duty, he was under the administrative control of the Director of Guidance and Supervision and was attached with the Assistant Director (Guidance and Supervision), Rohtak. This Directorate was abolished in December, 1962 and thereafter the petitioner was attached with the Zila Parishad, Rohtak. During the period he worked in the said Directorate, the petitioner supervised the taxation work of Panchayat Samitis in the districts of Rohtak and Sangrur.

(2) Hoshiar Singh, respondent 4, joined the District Board, Rohtak, as Accountant-cum-Head Clerk on December 31, 1951, in the grade of Rs. 125—7½—200—10—300 against a permanent vacancy. It was obligatory for him to pass the departmental examination for Accountants of District Board. He remained on probation for some time but after the passing of the departmental examination he was confirmed by an order passed on April 9, 1955, with effect from the date of his initial appointment, i.e., December 31, 1951. He was absorbed as an Accountant in the Zila Parishad, Rohtak, after the abolition of the District Board, Rohtak, in the grade of Rs. 200—10—300 with effect from March 1, 1962.

(3) In the petition it has been submitted that the petitioner was senior to respondent 4, which fact is denied in the return filed by respondent 1. It is not necessary for the decision of this writ petition to decide as to the *inter se* seniority of the petitioner and respondent 4.

(4) Shri Hardwari Singh, Secretary of the Zila Parishad, Rohtak, resigned his job, with effect from November 1, 1966 and the necessity arose of filling that vacancy. The Zila Parishad recommended the name of Respondent 4 to the Government who was

appointed as Temporary Secretary of the Zila Parishad and has continued as such till today. It is this appointment of Respondent 4 which has been challenged by the petitioner in the present writ petition which was filed on December 2, 1968 and was admitted on December 9, 1968.

(5) Section 88 of the Act provides for the appointment of a Secretary of the Zila Parishad and his duties have been mentioned in sections 88(3), 96(3) and 98 of the Act. Section 88(2) of the Act is in the following terms:—

> "There shall be a Secretary of the Zila Parishad who shall be appointed by the Government on receipt of a proposal from the Zila Parishad."

(6) It is thus evident that the post of Secretary in a Zila Parishad is statutory and has to be filled in by the Government on receipt of a proposal from the Zila Pasishad. In 1965, the Punjab Government framed Rules called the Punjab Zila Parishad (Appointment of Secretaries) Rules, 1965 (hereinafter called the Rules) and after the coming into force of these Rules, the appointment of the Secretary had to be made in accordance therewith. These rules have been framed in exercise of the powers conferred upon the Government by Section 115 read with Sections 33, 88 and 100 of the Act. Rules 5, 6, 10 and 11 are relevant and are set out below :—

> "5. *Age*—
>
> No person shall be eligible for appointment to the post of a Secretary, unless he has attained the age of 25 years and has not attained the age of 30 years at the time of his appointment. The upper age limit may be relaxed by the Zila Parishad for exceptionally highly qualified and capable candidates up to 40 years and for ex-servicemen up to 52 years :
>
> Provided that the upper age limit shall not apply to persons appointed otherwise than by direct recruitment.
>
> 6. *Academic Qualifications*—
>
> A candidate for appointment as Secretary must be at least a graduate of a recognized University with an experience of working for a minimum period of three

years on a Gazetted post in the Development and Panchayat Department involving administrative and rural development work.

10. *Method of recruitment—*

(1) A Secretary of Zila Parishad may be recruited either by direct appointment or by appointing a Government servant or a servant of a local authority on deputation.

(2) The Zila Parishad will decide whether the Secretary is to be recruited by direct appointment or otherwise.

(3) If the Secretary is to be recruited by direct appointment, the Zila Parishad will send its proposal recommending a panel of three names to the Government stating the age, qualifications and experience of each candidate. The Government will forward the panel to the Commission for adjudging their suitability, and shall make appointment on the basis of the recommendation of the Commission.

(4) If a Government servant or a servant of a local authority is to be appointed on deputation as Secretary of a Zila Parishad, the Zila Parishad will send its proposal to that effect to the Government recommending a panel of three names stating the age, qualifications and experience of each candidate. The Government will forward these names to the Commission for adjudging their suitability and shall make appointment on the basis of the recommendations of the Commission.

(5) If the Zila Parishad has no names to recommend under sub-rules (3) and (4), the Government will place a requisition, with the Commmission for selection through open advertisement on receiving a proposal from the Zila Parishad. In such case the proposal shall be accompanied by a duly-filled up requisition form prescribed by the Commission.

(6) As regards pay and other conditions of service of the Secretary appointed under sub-rule (4) he shall be

governed by the terms of the deputation which shall be settled by the Government in consultation with the Zila Parishad.

11. *Temporary Appointment*—

In case any vacancy of the post of Secretary is required to be filled up urgently, the appointment may be made by the Government on the recommendation of the Zila Parishad for a period not exceeding six months."

(7) The main point debated before me is whether the person who is or is proposed to be appointed Temporary Secretary must possess the academic qualifications mentioned in Rule 6 of the Rules and whether the age limit prescribed in Rule 5 also applies to him. The learned counsel for the petitioner submits that Rules 5 and 6 apply to the person sought to be appointed as temporary Secretary under Rule 11 while the learned counsel for the respondents has argued that Rule 11 is an independent rule not governed by rules 5 and 6. I have devoted my anxious thought to the question and I have come to the conclusion that the contention of the learned counsel for the petitioner is correct. In rules 5 and 6 it has not been stated that these rules shall apply only to permanent Secretaries of the Zila Parishad and not to persons appointed temporarily under rule 11. Rule 11 also does not give any such indication. The learned counsel for the Respondents have relied upon the fact that in sub-rules (3) and (4) of Rule 10 it is mentioned that the Zila Parishad, while recommending the names, is required to state the age, qualifications and experience of each candidate but in Rule 11 no such condition has been laid down although the recommendation under that rule has also to be made by the Zila Parishad. I think the simple reply to that argument is that under Rule 11, the Zila Parishad is expected to suggest one name only for temporary appointment while under sub-rules (3) and (4) of Rule 10, a panel of names has to be proposed and that is why it has been laid down as a duty on the Zila Parishad to state the respective age, qualifications and experience of each candidate in order to enable the Government to determine who is the best out of them all. In my view, it is a fundamental rule of appointments to public offices that the qualifications prescribed for an incumbent of the post apply to all incumbents whether permanently appointed or temporarily appointed for the reason that the duties of the office are the same whether they are performed by permanent incumbents or by temporary incumbents. It is not possible to hold that necessary qualifications

prescribed by the rules can be waived in the case of temporary appointments when no such provision of relaxation or waiver has been made in the rules. I am, therefore, of the opinion that Respondent 4 was not qualified to be appointed as a temporary Secretary in November, 1966 when he was so appointed and his continuance in that office since then is contrary to the rules and cannot be upheld. For similar reasons, the petitioner was also not qualified to be appointed as a temporary Secretary and his claim to that post is not tenable.

(8) The next question debated is whether the present petition under Article 226 of the Constitution is maintainable at the instance of the petitioner when none of his legal rights has been affected by the appointment of Respondent 4 as a temporary Secretary. The learned counsel for the petitioner has submitted that he has praved for a writ of *quo warranto* and has prayed for the removal of Respondent 4 from the office of temporary Secretary that he is holding and any person can make such a petition. The petitioner is an employee of the Zila Parishad, Rohtak, who laid claim to the appointment in preference to Respondent 4 and is certainly interested in the appointment of a duly-qualified person as the Secretary of the Zila Parishad in order to carry out the statutory duties prescribed for a Secretary under the Act. In my opinion, the petitioner has shown sufficient interest to entitle him to maintain the petition for a writ of *quo warranto*. It was held in *Rajendarkumar Chandanmal v. State of M.P. & others* (1) :—

> "For the issue of a writ of *quo warranto* no special kind of interest in the relator is needed nor is it necessary that any of his specific legal rights be infringed. It is enough for its issue that the relator is a member of the public and acts *bona fide* and is not a mere pawn in the game having been set up by others. If the court is of the view that it is in the interest of the public that the legal position with respect to the alleged usurpation of an important public office should be judicially cleared, it can issue a writ of *quo warranto* at the instance of any member of the public."

The learned counsel for Respondents 2 and 3 has relied upon a Division Bench judgment of the Orissa High Court in *Ajoy Kumar*

(1) A.I.R. 1957 M.P. 60.

Jagadev Mohapatra and another v. *Saila Behari Chowdhury and others*, (2), for the proposition that a petitioner for a writ of *quo warranto* is not entitled to obtain the writ, if he is not prejudiced in any way by the continuance in office of the respondent. It is submitted that on my finding that the petitioner was not qualified to hold the office even temporarily, he has not, in any way, been prejudiced. I regret my inability to agree to this submission. The petitioner was himself a candidate for the office but was not selected. It is true that I have found that he was not duly qualified to hold that office just as respondent 4 was not qualified but in case the rules are to be amended or any relaxation has to be made, the petitioner can put forth his right to be so appointed as against respondent 4. It cannot, therefore, be said that the petitioner has not been prejudiced in any way by the appointment of respondent 4 as the Secretary of the Zila Parishad.

(9) The important point then canvassed before me is whether the office of the Secretary of a Zila Parishad is a public office and whether a writ of *quo warranto* lies against the incumbent of that office. In Basu's Shorter Constitution of India, 1967 Edition at page 496, it is mentioned that :—

"A writ of *Quo Warranto* will issue in respect of an office only if the following conditions are satisfied :

(I) The office must be public.....The test of a public office is whether the duties of the office are public in nature.

(II) The office must be substantive in character, i.e., an office independent in title.

(III) It must have been created by statute or by Constitution itself. Thus,

(a) The writ will not lie against the Managing Committee, not created by any statute, or by Rules having statutory force, of a private educational institution.

(b) On the other hand, the writ would issue in respect of the offices of—

(i) Officers appointed under the Calcutta Municipal Act;

(2) A.I.R. 1957 Orissa 159.

(ii) * * * * *

(iii) * * * * *

(iv) Officers of a University created by statute ;

(v) * * * *

(vi) * * * * *

(vii) * * * * *

(viii) * * * *

(ix) * * * *,

(x) * * * *

(xi) Holder of a public office in a local body.

(IV) The respondent must have asserted his claim to the office. * * *

(V) The respondent is not legally qualified to hold the office or to remain in the office.....".

(10) In paragraph 274 at page 146 of Volume XI of Halsbury's Laws of Englance, Third Edition, it has been stated that the office must be held under the Crown or have been created by the Crown, either by charter alone or by statute; and in paragraph 275, it is mentioned that the duties of the office must be of a public nature. I have pointed out above that the office of the Secretary has been provided by the Act and is, therefore, statutory in nature. Even the duties of the Secretary have been prescribed in the Act and, therefore, in my opinion, the duties of the office of the Secretary are of a public nature and the office having been created by the statute is a public office, and a writ of *quo warranto* will lie against the incumbent of that office. In *Narayan Keshav Dandekar* v. *R C Rathi and another* (3), a writ of *Quo Warranto* was issued against a person who was appointed as Assessment Officer on a temporary and officiating post in the Indore City Municipality. The petitioner in that

(3) A.I.R. 1963 M.P. 17.

case was a tax-payer paying annual tax to the Indore City Municipal Corporation.

(11) Their Lordships of the Supreme Court in *The University of Mysore* v. *C. D. Govinda Rao and another,* (4) were hearing an appeal against the order of the Mysore High Court issuing a writ of *Quo Warranto* against the Reader of the University and came to the conclusion that the Reader appointed in that case was a duly qualified person and, therefore, no writ of *Quo Warranto* could issue. In the writ petition in the Mysore High Court or in appeal in the Supreme Court, it was not held that a writ of *Quo Warranto* did not lie because the office of the Reader was not a public office. Their Lordships also enumerated the conditions to be satisfied for issue of writ of *Quo Warranto* as under :—

> "Broadly stated, the *quo warranto* proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of *quo warranto* ousts him from that office. In other words, the procedure of *quo warranto* confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of *quo warranto* is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of *quo warranto* he must satisfy the court, *inter alia,* that the office in question is a public office and is held by usurper without legal authority, and that

(4) A.I.R. 1965 S.C. 491.

necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not ."

(12) The learned counsel for Respondents 2 and 3 has, however, relied upon the judgment of a learned Single Judge of the Calcutta High Court in *Sashi Bhusan Ray* v. *Pramatha Nath Bandopadhyay and others* (5), paragraph 44 at page 915 of which is as under :—

"44. Even if doubts as to the petitioner's *locus standi* were overlooked, the other important question in this case is whether the Court will at all intervene in the matter by reason of the fact that Dr. Bandopadhyay has resigned. Counsel for the respondents relied on the statement of law in Ferris" Extraordinary Legal Remedies on two questions, first as to whether the office of Principal is a public office in regard to which the Court will intervene and secondly, whether the right has abated by reason of the resignation of Dr. Bandopadhyay. In regard to public office at page 166 in Ferris the law is stated to be that a public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public for the term and by the tenure prescribed by Law. In other words, it implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for a public purpose embracing the ideas of tenure, duration, emolument and duties. Relying on this statement of law counsel for the respondents rightly contended that the office of the Principal of the University Law College is not a public office and it was neither an executive nor a legislative nor a judicial function."

In my opinion, this judgment, does not help the learned counsel for the respondents as, in the instant case, the office is statutory and is an office in a local authority which deals with the public. The local authority also exercises a portion of sovereign powers and the Secretary is the principal functionary of the local authority. Section 125

(5) 70 Cal. W.N. 892.

of the Act provides that a Panchayat Samiti and Zila Parishad shall be deemed to be local authority for the purposes of any law for the time being in force. Zila Parishad is, thus, a "State" as defined in Article 12 of the Constitution.

(13) On the basis of the judgments referred to above, I hold that the office of the Secretary of a Zila Parishad is a public office and a petition for the issuance of a writ of *Quo Warranto* lies against the incumbent of that office in case it is alleged that he is not qualified to hold it or he has usurped it."

(14) The circumstances which led to the appointment of respondent 4 as temporary Secretary of the Zila Parishad, Rohtak, are that on the resignation of Shri Hardwari Singh, the Zila Parishad recommended the name of respondent 4 for temporary appointment. That recommendation was accepted by the State of Haryana and by Notification, dated November 26, 1966, respondent 4 was appointed Secretary, Zila Parishad, Rohtak, for a period of six months on temporary basis from the date he took over the charge of the post at the rate of Rs. 375 per mensem in the scale of Rs. 250—25—400/25—600/25—750 plus such allowances as are admissible under the rules. It appears that the appointment was made by the Chairman, Zila Parishad and was sent to the Government for approval because the copy of the order by the Governor of Haryana appointing respondent 4 as Secretary on temporary basis was sent to the Chairman, Zila Parishad, with the following endorsement :

> "The bye-laws framed by the Zila Parishad are subordinate to the Punjab Panchayat Samitis and Zila Parishads Act, 1961 and the rules framed thereunder. Under rule 11 of the Punjab Zila Parishads (Appointment of Secretaries) Rules, 1965 read with section 88(2) of the Act *ibid*, powers even to make temporary appointment of Secretaries, Zila Parishads, rest in Government and not in the Chairman, Zila Parishad. He should not have acted beyond his powers. This may be noted for future guidance.
>
> A regular proposal under rule 10 of the Punjab Zila Parishads (Appointment of Secretaries) Rules, 1965 may please be sent immediately so that arrangement for permanent posting with the approval of Public Service Commission could be made."

(15) The Chairman of the Zila Parishad entered into correspondence with the Government in order to press for the amendment of the rule so that the employees of the Zila Parishad should become eligible for appointment as Secretary of that Zila Parishad. According to rule 10, the employees of a Zila Parishad can compete for the appointment of a Secretary in direct recruitment and no employee of a Zila Parishad is entitled to be promoted as a Secretary in that Zila Parishad. There is an anomaly because an employee of another Zila Parishad can be appointed the Secretary but not an employee of the same Zila Parishad. However, the Government has not amended the rule so far and till the rule is amended, it has to be observed. It appears that respondent 4 was allowed to continue in service even after the expiry of the period of 6 months mentioned in the order of the Governor of Haryana, dated November 26, 1966 and in a letter the Financial Commissioner, Development and Secretary to Government, Haryana, Development and Panchayat Departments, to the Chairman, Zila Parishad, Rohtak, dated April 20, 1968, it was pointed out that the continuance of respondent 4 as Secretary, Zila Parishad, Rohtak, after 31st October, 1967, was in contravention of the statutory rules and any payment of salary and allowances to him for holding this post would be irregular. It was further pointed out that the person(s) responsible for this irregular payment are liable to be surcharged under section 117 of the Panchayat Samitis and Zila Parishads Act, 1961. The charge of the Zila Parishad, Rohtak, should be handed over to the Block Development and Panchayat Officer, Rohtak, immediately as ordered in endorsement No. 502-5ECDII-68/1562, dated January, 19, 1968. In spite of this letter, respondent 4 was allowed to continue and the charge was not handed over to the Block Development & Panchayat Officer. After some correspondence between the Chairman of the Zila Parishad and the Government, a letter was written by the Financial Commissioner and Secretary to Government, Haryana, Development and Panchayat Departments, to the Chairman, Zila Parishad, Rohtak, dated August 13, 1968 (a copy of which is Annexure R-II to the return) reading as under :—

"Subject : Appointment of Secretary, Zila Parishad, Rohtak.

Reference : Your memo No. 180/ZPR, dated the 12th July, 1968, to the address of Development Minister, Haryana.

Government agree to the appointment of Shri H. S. Balhra as Temporary Secretary, Zila Parishad, Rohtak, after giving one day's break after every six months."

(16) To say the least, I am surprised to read the contents of this letter. Government and the officer who wrote this letter were fully aware of the fact that under rule 11, the appointment of a Secretary on temporary basis could not exceed six months. The continuance of Respondent 4 after October 31, 1967 was taken exception to in the earlier letter written by the same officer on 22nd April, 1968 a mention of which has been made above (a copy of which is at Annexure 'P-6' of the replication). Under rule 11, the appointment cannot be made for more than 6 months and the Government itself suggested that this rule could be followed by giving a break of one day after every six months. This suggestion was nothing short of a fraud on the statutory rules framed by the Government and it is distressing to note that the Government should itself suggest the colourable evasion of those rules. It has also been brought out in the petition and admitted in the return that the Haryana Public Service Commission had pointed out that Respondent 4 was not a qualified person to hold the office of the Secretary of the Zila Parishad. In spite of that objection by the Commission no steps were taken to remove Respondent 4 from that office and to appoint a duly qualified person in his place. It has also to be borne in mind that under rule 11 the temporary appointment of a Secretary can be for a period of not more than six months in all and not six months at a time. To suggest that respondent 4 could be continued as a temporary Secretary by giving one day's break after every six months was in violation of rule 11 and not in accordance therewith. The learned counsel for the State and the Zila Parishad have pointed out in arguments the helplessness of the Government to make the appointment in accordance with the Rules because the Zila Parishad failed to make a proposal in accordance with sub-rules (3) and (4) of rule 10 and also failed to make recommendation of a duly-qualified person to hold the office of Secretary on temporary basis under rule 11. I do not think that the Government is so helpless in the matter as to be entirely dependent on the Zila Parishad for the appointment of a Secretary. Sub-rule (5) of rule 10 authorises the Government to make the appointment through the Public Service Commission by advertisement. The Government could ask the Zila Parishad to send a proposal of duly qualified persons for the post of a Secretary within a period of two months or so, and informing it that if no proposal was received within the time stated, the Government would move the Public Service Commission to fill up the vacancy under rule 10(5). In this manner the appointment of a permanent Secretary could be made within a period of 6 months. In fact, in the letter, dated November 26, 1966, the Government did

ask the Zila Parishad to send up the names under rule 10 but did not follow it up properly. It is quite evident that nobody realized that the appointment of a temporary Secretary could not be continued beyond six months and that the person to hold that office should be a duly-qualified person in accordance with rule 5 and 6 of the rules. The result has been that an un-qualified person has held this office for nearly three years and even now before me his appointment has been sought to be justified. It means that the Government itself is not willing to enforce the rules framed by it. If the Government felt any helplessness and considered that an amendment of the rules was necessary as suggested by the Chairman of the Zila Parishad, it should have taken steps to amend the rules. But if it did not follow that course, the rules as existed should have been strictly enforced and not relaxed or waived as has been done in the instant case. Surely it was not open to the Government to suggest ways and means to perpetrate a fraud on the statutory rules as framed by itself. It is admitted that respondent 4 did not possess the academic qualifications prescribed in rule 6 and was above the age of 40 years when he was appointed as temporary Secretary in November, 1966.

(17) For the reasons given above, this petition is accepted with costs and writ of *quo warranto* is, therefore, issued directing respondent 4 to vacate his office and a writ of *mandamus* is at the same time, issued against respondent 2, the Zila Parishad, Rohtak, requiring it to remove respondent 4 from the office of officiating Secretary, Zila Parishad, Rohtak, and a direction is also issued to the State of Haryana and the Zila Parishad, Rohtak, Respondents 1 and 2, to make the appointment of the Secretary of the Zila Parishad, Rohtak, in accordance with the Act and the rules in the light of the observations made above. Counsel's fee Rs. 200 to be paid by Respondents 1 and 2 equally.

R. N. M.

APPELLATE CIVIL

Before Prem Chand Pandit and C. G. Suri, JJ.

RAM PIARI,—*Appellant.*

versus

PIARA LAL,—*Respondent.*

First Appeal from Order No. 32-M of 1967

September 10, 1969

Hindu Marriage Act (XXV of 1955)—Section 25—Grant of alimony under—Existence of un-satisfied decree for restitution of conjugal right—Such decree—Whether a bar to such grant—Arrears of alimony—Date from which payable—Court—Whether has discretion to fix.