(13) Faced with this situation, Mr. Goel sought to argue that after she was allowed to be reinstated, it would be deemed that she completed the period of probation on August 17, 1983 and as her services were terminated after a long time, i.e. with effect from December 6, 1983, therefore the ratio in *Hari Singh Mann's case* (supra) will not be applicable to the facts of the present case and she would be deemed to have been confirmed in August, 1983. I do not find any substance in this contention too. Her services had already been terminated on January 29, 1982 and on her representation she was reinstated on June 8, 1982 on express condition that the period of probation would be extended by as many days as she availed leave on loss of pay since joining the service of the Bank. She accepted that condition and re-joined service. Now, she is estopped to raise a plea that she completed her probationary period in August, 1983.

(14) For the aforesaid reasons, I accept the appeal, set aside the judgment and decree of the trial Court and decree the suit of the appellant.

In the circumstances of the case, I, however, leave the parties to bear their own costs throughout.

S.C.K.

Before S. P. Goyal and I. S. Tiwana, JJ.

DHARAMPAL AND OTHERS,—*Petitioners.*

versus

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

Civil Writ Petition No. 4000 *of* 1986.

November 27, 1987.

Contract Act (IX of 1872)—*Section* 5—*Offer of appointment—Withdrawal of offer before its acceptance—Effect of such withdrawal.*

Held, that a proposal or an offer can be revoked at any time before the communication of its acceptance is complete as against the proposer. Once an offer of appointment issued in favour of the petitioners had been revoked or withdrawn before their communication or actual acceptance by them, no right came into being in their favour by virtue of the said offers of appointment.

(Para 4)

Petition under Articles 226/227 of the Constitution of India praying as under:—

(i) That the records of the case may kindly be called for.

(ii) That after a perusal of the record and hearing upon the counsel for the parties this Hon'ble Court may kindly be pleased to grant the following reliefs:—

(a) Issue a suitable writ, order or direction quashing the order of cancellation of appointment orders (copy Annexure P-4); and

(d) directing the respondents to give effect to the appointment orders already given to the petitioners (Annexures P-1, P-2 and P-3).

(iii) That any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued.

(iv) That any other relief to which the petitioners may be found entitled by this Hon'ble Court in the facts and circumstances of the case may kindly be granted.

(v) That the requirement of filing the certified copies of annexures filed with this petition may kindly be dispensed with.

(vi) That the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter.

(vii) That the costs of this petition may kindly be awarded in favour of the petitioners and against the respondents herein as they have been put to avoidable expense at their hands.

It is further prayed that during the pendency of the writ petition, respondent No. 3 may be restrained from filling up the posts which were advertised and for which selections were made in the month of May 1986 till such time the persons who have already been selected are appointed to those posts and it is only after this list is exhausted that further recruitment may be made.

And further directing respondent No. 3 to give effect to the appointment orders issued to the petitioners and/or staying the operation of the order cancelling the appointment orders.

Any other interim relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued.

J. K. Sibal, Advocate with R. K. Handa, Advocate, *for the Petitioners.*

B. S. Malik, Addl. A.G. Haryana, J. L. Gupta, Senior Advocate with R. S. Chahar, Advocate, *for the Respondents.*

JUDGMENT

I. S. Tiwana, J.

(1) "Whether an offer of appointment which stands withdrawn before its acceptance by a person gives rise to a right enforceable through a writ of mandamus under Article 226 of the Constitution of India" is the prestinely legal question which comes to the fore in this set of 11 petitions (CWP Nos. 4000/86, 3466/86, 4472/86, 6613/86, 5987/86, 764/87, 6611/86, 6612/86, 5434/86, 604/87, and 6906/86). It arises in the following manner :—

In response to an advertisement published in the "National Herald" on 11th April, 1986, for filling up 320 vacancies of different ranks, such as Managers, Field Officers, Junior Accountants, Land Valuation Officers, Clerks and Peons, by respondent No. 3, i.e., the Haryana State Cooperative Land Development Bank Ltd., Chandigarh, the petitioners along with many others, (as per the stand of the respondent about 20,000 persons) applied for their selection and appointment against some of these posts. As a result of the interviews that followed, the petitioners were not only selected for the posts applied for but letters of appointment were also issued in their favour by the Managing Director of the bank who admittedly was the appointing authority. It is the conceded case of the respondents that out of the total number of 50 petitioners in these petitions, two had joined in response to the appointment orders issued in their favour and two of them were already serving the bank as *ad hoc* appointees. The others could not join their respective jobs as the offers of appointment issued to them were cancelled before these could be accepted by them. At the moment, we are concerned with these petitioners only. With regard to those who had either joined their jobs in response to the appointment letters issued in their favour or were already in the service of the bank as *ad hoc* appointees,

and were, thus, taken to have joined under the freshly issued appointment orders, the stand of the bank is that the orders withdrawing their appointments shall be withdrawn subject to the rights of the bank under the appointment letters. In the light of this stand of the bank, we dismiss the petitions of those petitioners who had either joined the service of the bank in response to the letters of appointment issued in their favour as a result of the above-noted selection or were already serving the bank and have, thus, been taken to have joined the service in response to the letters of appointments issued in their favour as infructuous.

(2) What has been highlighted in these petitions is that the letters of appointment issued in favour of the petitioners were suddenly cancelled or withdrawn on 6th June, 1986, without any cause or assigning any reason therein. According to them, this was not only arbitrary but was the result of legal *mala fides,* as the Council of Ministers headed by Shri Bhajan Lal had "resigned on 4th June, 1986, and a new government headed by Shri Bansi Lal had come into office. It was on account of this change in the government that the offers of appointment sent to the petitioners were withdrawn at the instance of the government in order to accommodate their own men. This stand, however, has strongly been refuted by the government as well as the bank, i.e., respondent No. 3. The stand of the government is two-fold. Firstly, though the new Cabinet had been sworn in on 5th June, 1986, yet Shri Piara Singh remained minister-in charge of the Department of Cooperation in both the governments, i.e., the one headed by Shri Bhajan Lal and the new Cabinet headed by Shri Bansi Lal. As such, there was no change in the government so far as the Department of Cooperation was concerned. Secondly, the Registrar, Cooperative Societies, Haryana, had issued instructions (Annexure R1), in the light of a communication dated 1st May, 1986 from the Finance Department, to the Haryana State Cooperative Land Development Bank, i.e., respondent No. 3, directing the latter not to fill up the posts in question "without the concurrence of PE & IC (FD),—*Vide* his letter dated 2nd June, 1986, the Registrar also requested the government in the Cooperative Department to take up the matter with the Finance Department for

its concurrence to the filling up of these vacancies. While the matter was still pending it came to his notice that the bank was proceeding further in the matter of making appointments and he issued a letter on 6th June, 1986, giving directions to the Managing Director of the bank "not to fill up the post advertised in the National Herald dated 11th April, 1986". These directions, according to him, had no connection whatsoever with the change in the government. As a matter of fact, the Registrar had passed the above-noted order on the file on 25th May, 1986.

The stand of the bank is as follows.

On 2nd May, 1986, the predecessor of the present Managing Director, has passed an order saying that for various reasons it was not possible for him to conduct the interviews of such a large number of candidates (about 20,000). He, therefeore, appointed Shri J. S. Bishnoi, a Class I Officer of the State Government, who was on deputation with the bank and was working against one of the posts of Assistant Secretaries, to do the job for him. He also gave the option to Mr. Bishnoi "to take the services of the other officers not below the rank of the Manager of the bank" for this purpose. Mr. Bishnoi carried out the job for the appointing authority, i.e., the Managing Director, and is stated to have conveyed his opinion with regard to the selection of various candidates in the form of a prescribed proforma. This communication of opinion was also based on the result of the interviews held by certain other subordinate officers. What further became available from the records was that—(i) there was no authenticated merit list prepared by anyone. In fact, Mr. Bishnoi had not even signed any list attached with his letters ; (ii) no concrete record of the interview proceedings was prepared. Some of the————certificates issued by the individual officers who conducted the interviews said "They/I have told my views/observations/assessments and performance of the candidates to Shri Bishnoi": (iii) It appeared that the interviews had not been conducted by the person authorised by the Managing Director, i.e., Shri Bishnoi ; (iv) It was not available anywhere as to what criteria had been followed by the various persons who conducted the interviews to determine the merit or *inter se* seniority of the candidates who appeared before them ; (v) A sample checking disclosed that certain persons who had not even applied for the posts had been selected (their names are mentioned in para 11 of the written statement); (vi) Some of the selected candidates had not submitted their applications within the prescribed time, i.e., the last date fixed in the advertisement (details

are stated in para 12 of the written statement); (vii) Some of the candidates selected had submitted their applications even much before the date of advertisement (instances mentioned in para 13 of the written statement); (viii) Applications which were not duly completed by attaching the postal orders of requisite amount and which in the normal course should have been rejected, were accepted and the candidates were interviewed and selected (instances are given in para 14 of the written statement). (ix) Some of the selected candidates even did not fulfil the minimum qualifications prescribed for that post (details given in para 15 of the written statement). Above all this, the scrutiny of the record further revealed that at some places more than 1,000 candidates were interviewed on a particular day. It was in the light of all these facts that the managing director felt that the interviews alleged to have been held were only a farce, and, therefore, the selections or the orders of appointment issued were not legally valid or sound. He, therefore, decided that—(i) the appointment orders issued in the light of the above-noted selections be withdrawn ; (ii) the posts be readvertised ; (iii) selections be made afresh ; (iv) the persons who had applied in response to the advertisement dated 11th April, 1986, may be considered, and need not apply for various posts again without their being required to submit fresh applications. This decisions of the managing director was later approved by the Board of Administrators of the bank in their meeting held on 6th November, 1986, at 5.00 PM.

(3) It deserves to be noticed here that at the initial stages when these cases came up for hearing before a learned Single Judge of this Court, it was maintained on behalf of the respondents that as the bank was only a Co-operative Society registered under the Co-operative Societies Act, and was not a 'State', it was not amenable to the writ jurisdiction of this Court in view of Article 12 of the Constitution of India. The stand of the petitioners before the learned Judge was that Society, i.e., the bank had completely been taken over by the State Government, and an official of the Government was running its affairs as a managing director, therefore, the objection raised on behalf of the respondents was totally devoid of merit. As the learned Judge felt that the controversy raised was of some consequence and was likely to effect not only the decision of these petitions but many others, which according to the learned judge, were in the pipeline, he thought it proper to refer these petitions to a larger Bench for their disposal. This is how the matter is before us. Since after hearing the learned counsel for

the parties for some time we formed the opinion that in case the answer to the above-noted question, as noticed in the opening part of this judgment, is against the petitioners then the controversy as pointed out by the learned Single Judge need not be gone into. We have chosen to confine this judgment to that question alone.

(4) It has firmly been ruled by a Constitution Bench of the Supreme Court in *Roshan Lal Tandon* vs. *Union of India and others* (1), that the origin of every government service is contractual, and an element of offer and its acceptance is involved in every such case. It is only after appointment to a post that the government servant acquires a status and his rights and obligations are no longer determined by consent of both the parties, i.e., the employer and the employee, but by the statute or the statutory rules which may be framed. It is only thereafter that the matter can be unilaterally dealt with by the government. This statement of law, to our mind, applies to every other employment including the one where a co-operative society is the employer as in the instant case. Further it is well settled in the light of section 5 of the Contract Act that a proposal or an offer can be revoked at any time before the communication of its acceptance is complete as against the proposer. In the face of these established propositions of law we are satisfied that once the offers of appointment issued in favour of the petitioners had been revoked or withdrawn before their communication or actual acceptance by them, no right came into being in their favour by virtue of the said offers of appointment. It is not the case of any of the petitioners that the offer of appointment issued in his favour was still there or subsisting and he was not allowed to join the post. The above-noted conclusion of ours appears to be well supported by two decisions of the Final Court, namely *State of Haryana* vs. *Subhash Chander Marwaha and others* (2) and *Jatinder Kumar and others* vs. *State of Punjab and others* (3). The former was a case under the Punjab Civil Service (Judicial Branch) Service Rules. The State Government had published an advertisement to the effect that the Haryana Public Service Commission will hold an examination for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). Forty candidates obtained more than 45 per cent marks in that examination. The State Government, however, appointed the first seven candidates only to the

(1) 1967 S.L.R. 832.
(2) 1973(2) S.L.R. 137.
(3) A.I.R. 1984 S.C. 1850.

service. The reason for not making the appointments beyond that number was that the High Court had previously intimated to the State Government, candidates getting less than 55 per cent marks in the examination should not be appointed as Subordinate Judges in the interest of maintaining high standards of competence in matters of judicial service. Candidates at Nos. 8, 9 and 13 of the list who expected to be appointed in the light of the vacancies advertised challenged the said action of the State Government on the ground that it could not resort to pick and choose in the sense that only 7 candidates out of 40 had been appointed and since they had also come up to the prescribed standard they were entitled to be appointed to the service in view of the number of vacancies notified. As against this, the stand of the government was that the rules did not oblige them to fill up all the vacancies. It was open to them to appoint the first seven candidates in the interest of maintaining high standards of competence in the judiciary. Negativing the stand of the petitioners, the Supreme Court observed that "it is not disputed that the mere entry in the list of the name of a candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled in does not also give him a right to be appointed..... One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment." In the face of these observations, the petitioners cannot reasonably be heard to say that the mere issuance of the orders of appointment which were nothing but offers of appointment conferred any right on them even though the same had been withdrawn before their acceptance by them. To our mind, the non-issuance of the appointment order at all and the issuance of an offer of appointment which is withdrawn before its acceptance by the person to whom it is made cannot have different legal implications. In other words, the issuance of an offer of appointment which is withdrawn before its acceptance is as good or bad as the non-issuance of the appointment order at all. In the later-mentioned case, their Lordships were even more categoric in saying, "the process of selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by the mandamus." While laying down so, the learned judges relied upon their earlier judgments in *A. N. D. Silva* vs. *Union of India* (4), and *Subhash Chander Marwaha's case* (supra).

(4) 1962 S.C. 1130.

(5) It is, however, contended by Mr. J. K. Sibal, the learned counsel for the petitioners, that firstly, the Supreme Court in its latest pronouncement in *Neelima Shangla* vs. *State of Haryana* (5), has deviated from the ratio of the above-noted judgments, and secondly, as an abstract proposition of law, a legal right comes to vest in a person when an employer has taken a conscious decision to appoint him to a particular post and has sent an offer to him in that regard. Subsequent withdrawal of that offer even though prior to its acceptance, according to the learned counsel, does not make any difference. This type of right is enforceable through a writ of mandamus. To sustain this latter part of his submission, he relies on *Arya Chandra Kumar* vs. *The State* (6), *E.S.M. Casteline* vs. *State of Karnataka* (7), *Dr. Chetan Motriam Oberai* vs. *The State of Maharashtra* (8), *A. Manik Rao* vs. *The Director, Defence, Metallurgical Research Laboratory, Hyderabad* (9) and *S. P. Tripathi* vs. *Union of India* (10). We, however, do not feel the necessity of discussing these judgments individually in any great detail in view of the fact that in none of these, the basic principle as enunciated by the Supreme Court in *Roshan Lal Tandon's case* (supra) that the origin of every government service is contractual, and an element of offer and its acceptance is involved in every such case has either been noticed or adverted to. We further fail to see as to how an offer of employment sent by the employer which stands withdrawn before its acceptance creates a right in favour of the person sought to be employed. It is not the case of these petitioners by any chance that the withdrawal of the offers of appointment issued in their favour was in any way inviolative of any statute or statutory rules. We, therefore, repel this part of the submission of Mr. Sibal.

(6) So far as reliance on *Neelima Shangla's case* (supra) by Mr. Sibal is concerned, we find that the alleged conflict between the ratio of this judgment and that of the earlier two decisions of the the Supreme Court, i.e., *Subhash Chander Marwaha's* case (supra) and *Jatinder Kumar's* case (supra) is more imaginary than real. As a matter of fact, the ratio in *Subhash Chander Marwaha's* case was

(5) 1986(3) S.L.R. 389.
(6) 1973(1) S.L.R. 744.
(7) 1980(2) S.L.R. 612.
(8) 1982(3) S.L.R. 734.
(9) 1985(1) S.L.R. 165.
(10) 1986(1) S.L.R. 299.

noticed by their Lordships in *Neelima Shangla's* case and was not deviated from. *Neelima Shangla* was a case where the petitioner ranked at serial No. 24 as a result of the competitive test for selection and appointment to the Haryana Civil Service (Judicial Branch) to fill up the 54 vacancies in the service. The Haryana Public Service Commission, however, chose to recommend 26 candidates only, and these included 17 from the general category to which the petitioner belonged. The claim of the petitioner before the court was that 32 candidates in order of merit from the general category should have been selected for appointment and that the Service Commission had illegally withheld the names of all the successful candidates from the Government and the High Court. She contended that had rules 8 and 10 of the above-noted Rules been adhered to by the Commission she would have been selected for appointment. The relevant parts of these rules are as follows:—

> "8. (*Part C*) No candidates shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers including the *viva-voce* test.
>
> (*Part D*) There is no limit to the number of names borne on the High Court Register but ordinarily no more names will be included than are estimated to be sufficient for the filling of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of an examination."
>
> "10(i) (*Part C*) The result of the Examination will be published in the Haryana Government Gazette."

(7) The stand of the Government of Haryana before the Court only was that "they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the Public Service Commission". It was not their case that they did not want to appoint more than 17 candidates from the general category or did not intend to fill in all the vacancies which had been advertised. As a matter of fact, what transpired from the records was that even before the Public Service Commission had sent its truncated list to the Government, the High Court had already informed the government that there were more vacancies which were required to be filled in. The government not knowing

the fact that the names of several candidates who were qualified had been withheld from the government by the Commission wrote to the latter to hold a fresh competitive examination. It was in the light of these facts, and after examining the scheme of the Rules that their Lordships observed:

> "It appears that the duty of the Public Service Commission is confined to holding that written examination, holding the *viva-voce* test and arranging the order of merit according to marks among the candidates who have qualified as a result of the written and the *viva-voce* tests. Thereafter the Public Service Commission is required to publish the result in the Gazette and, apparently, to make the result available to the Government. The Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the names of any qualified candidates. The duty of the Public Service Commission is to make available to the Government a complete list of qualified candidates arranged in order of merit. Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the Register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55 per cent is the minimum qualifying marks, in the interests of higher standards, they would not appoint any one who has obtianed less than 60 per cent of the marks. Some thing of that nature happened in the *State of Haryana* vs. *Subash Chander Marwah.*"

It was in view of this conclusion and the stand of the State Government that it was unable to select and appoint the petitioner, as only a few names had been sent to them by the Public Service Commission that the Court directed the Government to include the name of the petitioner in the 1984 list of candidates selected for appointment as Subordinate Judges in the Haryana Judicial Service and forward the same to this Court for inclusion in the High Court Register maintained under rule I-Part D of the Rules. It is, thus, patent that the

petitioner was granted the relief in the light of the violation of the rules, more particularly rules 8 and 10, by the Haryana Public Service Commission. Otherwise the Court opined that "it is open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that though 55 per cent is the minimum qualifying marks in the interest of higher standards, they would not appoint anyone who has obtained less than 60 per cent marks." This is precisely what had happened in *Subhash Chander Marwaha's* case (supra). In that case, no violation of any rule was involved. In the instant cases also, as has already been indicated, no violation of any rule has been pointed out. What to talk of violation of any rule, the learned counsel for the petitioners has not even made a reference during the course of his arguments to any rule governing the service which concededly are there, i.e., Service Rules of the Haryana State Co-operative Land Development Bank Limited, known as Staff Service Rules.

(8) In the light of the discussion above, the answer to the question posed in the opening part of this judgment has obviously to be in the negative, and we hold that once an offer of appointment is withdrawn before its acceptance, no legal right comes to vest in the would-be-appointee which can be enforced through a writ of mandamus. These petitions, thus, are devoid of merit and are dismissed but with no order as to costs.

S.C.K.

FULL BENCH

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

SAKTU RAM,—*Petitioner.*

versus

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

Civil Writ Petition No. 264 *of* 1986.

May 5, 1988.

Punjab Gram Panchayat Act (IV of 1953)—*Section* 102—*Complaint against Sarpanch—Preliminary inquiry ordered—Suspension*