Code did not apply as the act of misappropriation of Section 409, Indian Penal Code did not fall within the scope of his official duty.

(16) The facts of the present case are entirely different. The offence committed is not one under section 409, Indian Penal Code but is one under section 218, Indian Penal Code for which the petitioner is being proceeded against. The present case being distinguishable on the facts and dealing with entirely a different offence from the one with which these two Supreme Court decisions dealt, those cases are not analogous and applicable to the present case. As discussed above, the act of preparation of record by the petitioner and so also the act of preparation of incorrect record by him falls as much within the scope of Section 197, Criminal Procedure Code as it does within the scope of Section 218, Indian Penal Code. The petitioner having prepared the incorrect record while acting or purporting to act in the discharge of his official duty as Sub-Divisional Officer, he cannot be proceeded against for prosecution under section 218, Indian Penal Code unless sanction for his prosecution has been obtained under section 197, Criminal Procedure Code. The sanction being a condition precedent for his prosecution and no sanction having been obtained, the petitioner cannot be prosecuted. I accept the recommendation made by the Sessions Judge, though for different reasons, and set aside the order of the trial Court, dated February 6, 1967.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Ranjit Singh Sarkaria, J.

THE STATE OF HARYANA,—*Appellant.*

versus

DEV DUTT GUPTA AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 289 of 1968.

May 21, 1969.

Constitution of India (1950)—*Article* 311(2)—*Officiating Government servant found unsuitable for the higher post—Reversion to the substantive rank—Such reversion—Whether casts a stigma on the Government servant amounting to 'reduction in rank'—Probationer Civil servant—Whether can claim substantive appointment by virtue of the probationary period being over.*

Punjab Service of Engineers, Buildings and Roads Branch (Recruitment and Conditions of Service) Rules (1942)—*Rules* 3(b) *and* 4—*Officiating*

Sub-Divisional Officers not being Assistant Executive Engineers—Whether governed by the Rules.

Punjab Re-organisation Act (XXXI of 1966)—Section 88—Whether a repealing and re-enacting provision within the meaning of section 24, General Clauses Act—Order of reversion of a Government servant in joint Punjab passed on 28th October, 1966—Order not communicated before 1st November, 1966 or otherwise appropriately published—Such order—Whether becomes ineffective.

Held, that an order which reverts an officiating Government servant to his substantive rank on the express ground of his being found unsuitable for the higher post in which he was officiating, cannot *per se* be called a penal order casting a stigma, amounting to his 'reduction in rank' within the contemplation of Article 311(2) of the Constitution, if the reference to his being found unsuitable has been made pursuant to any statutory rule governing the conditions of his employment, or, in the absence of such statutory rule, in accordance with any condition, covenant or term of his employment, which may be contained either in an express contract of his service or a like instrument, or implied from the very nature of his employment. It is, however, open to Government servant to show that though in form the order of reversion purports to have been passed in terms and conditions of his employment, yet in substance and reality, his reversion is a punitive action amounting to 'reduction in rank' within the meaning of Article 311(2) of the Constitution. If the order of reversion of the officiating Government servant, overstepping the requirements of the terms and conditions of the employment, goes out of the way to indelibly brand or stigmatise the employee, using such epithets "undesirable", "dishonest", "incorrigible", which will have the effect of permanently debarring him from employment or future promotion, it will be a punitive order.

(Paras 54, 55 & 56)

Held, that in the absence of anything in the Service Rules warranting that course, expressly or by necessary implication, the civil servant cannot by virtue of the probationary period being over, claim to have a substantive appointment. Where a person is appointed to a higher post in an officiating capacity, he does not acquire any legal right to hold that post for any period whatsoever and, if his work on the higher post on which he is officiating is found to be unsatisfactory, his reversion to his substantive post would not amount to 'reduction in rank' within the meaning of Article 311(2) of the Constitution. (Para 41)

Held, that it is clear from the scheme and language of various provisions of Punjab Service of Engineers, Buildings and Roads Branch (Recruitment and Conditions of Service) Rules, 1942, read as a whole, that 11 posts of Sub-Divisional charge may be held by Assistant Executive Engineers, the converse proposition that all Sub-Divisional Officers are Assistant Executive Engineer and, as such, member of the Service, is not true. It is obvious from the definition of 'Assistant Executive Engineer' given in Rule 3(b) of the Rules that all officers lower in rank than that of an Executive Engineer, who can be called 'Assistant Executive Engineers', must be officers borne

on the cadre of the service. The definition of 'the service' given in clause (*m*) of Rule 3 is not helpful. The words 'in the service', therefore, are to be assigned a meaning, which is consistent with the scheme and other provisions of the 1942 Rules. A definite clue to the ranks or grades in this service is furnished by Rule 4. According to it, there are only four grades of the service, namely, Chief Engineer, Superintending Engineer, Executive Engineer and Assistant Executive Engineer. The proviso puts the matter beyond all doubt when it says that normally, all first appointments to the service shall be to the post of Assistant Executive Engineer. Hence the officiating Sub-Divisional Officers are not governed by the 1942 Rules. (Paras 32 and 34)

Held, that mere splitting up of the territories of Punjab into four successor States would not *ipso facto* result in the abrogation or repeal of the laws which were immediately in force before the appointed day in those territories. There is nothing in the Punjab Re-organisation Act, not even in section 88, which expressly or by necessary intendment repeals the laws which were in force immediately before the appointed day in the territories of the former Punjab. Those laws derived their force *de hors* the Act. The first part of section 88 is merely clarificatory of any doubts which might arise as a result of the organisation of Punjab, while the latter part of this section is merely an adaptative provision, to the effect, that the territorial references in any such law to the State of Punjab shall continue to mean the territories within that State immediately before the appointed day. Thus, read as a whole, section 88 merely dispels doubts as to the continuity of the laws which were in force before the appointed day in the former State of Punjab, until the competent legislature or authority of the successor States, effects any changes in those laws. Hence the Act, particularly section 88 is not a repealing and a re-enacting provision within the meaning of section 24 of General Clauses Act. (Para 71)

Held, that an administrative order takes effect from the date it is communicated to the person concerned or is otherwise publicised in the appropriate manner. If an order of reversion of a Government servant in joint Punjab is passed on 28th October, 1966, but is communicated after 1st November, 1966, the appointed day on which the former State of Punjab ceased to exist and four successor States were created, the order is ineffective, inoperative and still-born, because it is neither communicated nor publicised in the appropriate manner before 1st November, 1966.

(Para 77)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice R. S. Narula, dated the 20th March, 1968 passed in Civil Writ No. 2457 of 1966.

B. S. GUPTA, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA), for the Appellant.

K. P. BHANDARI AND I. B. BHANDARI, ADVOCATES, for the Respondents.

JUDGMENT.

SARKARIA, J.—These are 15 appeals under Clause 10 of the Letters Patent, preferred by the States of Punjab and Haryana. For the sake of convenience, they may be divided into two bunches. The first bunch is constituted by L.P.As 286, 289, 368, 340, 374, 375, 376, 377; 378; 379; 380; 502 and 511 of 1968. The second bunch consists of L.P.As 327 and 328 of 1968. The main questions of law and fact being common, this judgment will dispose of all the fifteen of them.

(2) In the first bunch, L.P.As 289, 368 and 286 are directed against one judgment, dated March 20, 1968, of a learned Single Judge by which he allowed writ-petitions 2457 of 1966, 2458 of 1966 and 2436 of 1966, filed under Articles 226/227 of the Constitution by Dev Dutt, Dasaundhi Ram and Balbir Singh, respectively, and the other seven appeals (LPA Nos. 374 to 380 of 1968) are directed against another judgment, dated March, 28, 1968, of the same learned Judge, by which he allowed writ-petitions 647, 1886, 136, 507, 506, 134 and 515 of 1967 made by Jagdish Singh, R. R. Bhanot, Surat Singh, Shamsher Singh, Bakhtawar Singh, Jodh Singh and Kartar Singh Kang, respectively, under Articles 226/227 of the Constitution. Letters Patent Appeal 340 of 1968 is directed against the judgment, dated March 21, 1968, and Letters Patent Appeals 502 and 511 of 1968 are directed against the orders, dated July, 26, 1968, of the same learned Single Judge, by which he allowed writ petitions 2574 of 1966, 1337 of 1967 and 878 of 1967, made by Sarmukh Singh, Gurcharan Singh Bhamra and Gurbux Singh Bhamra.

(3) The respondents in the first bunch of appeals were promoted and appointed on officiating basis as Sub-Divisional Officers in the Punjab Public Works Department (Buildings and Roads Branch) on various dates from March 1, 1956 to January 9, 1963. Excepting the names and dates of their promotion, the other material facts in all these 13 appeals are identical.

(4) Before his promotion, Dev Dutt respondent in L.P.A. 289 and Kartar Singh, respondent in L.P.A. 380 were working as Planning Assistant/Draftsman, while the remaining 11 respondents were Overseers (now called Sectional Officers).

(5) By means of the impugned order of October 28, 1966, all these respondents were reverted to their original rank as Sectional

Officers or Draftsmen, as the case may be. Copy of the impugned order is Annexure 'B' to writ-petition 2457 of 1966, made by Dev Dutt. (All references to Annexures are to those annexed to their respective petitions). These orders of their reversion were challenged by the respondent-writ-petitioners, *inter alia,* on the ground that they were governed by the Punjab Service of Engineers, Buildings and Roads Branch (Recruitment and Conditions of Service) Rules, 1942 (hereinafter called 'the 1942 Rules'), Rule 12(3) of which delimited the maximum period of their probation to 3 years, and that on successful completion of that period they, in terms of the aforesaid Rule, became automatically confirmed as Members of that Service, and, as such, were holding the posts in their own right, and, therefore, could not be reverted without compliance with the provisions of Article 311(2) of the Constitution and the other statutory Rules relating to disciplinary matters. This is the only point which appears to have been pressed before the learned Single Judge, who has held that on promotion as officiating Sub-Divisional Officers, the petitioners came to be governed by the 1942 Rules and on the expiry of the maximum period of probation described in Rule 12, the respondent-petitioners would be deemed to have become permanent members of the Service and, consequently, the impugned orders not having been passed after compliance with the provisions of Article 311 of the Constitution, were bad in law. In annulling the impugned orders, reliance was placed on the dictum of the Supreme Court in the *State of Punjab* v. *Dharam Singh* (1), It was on this short ground that the learned Single Judge allowed the writ-petitions of all the 13 respondents in these appeals (constituting the first bunch).

(6) The first question, therefore, that falls to be determined is, whether these 13 respondents on promotion as Sub-Divisional Officers were governed by the 1942 Rules. For an answer to this question, it will be useful to notice the material provisions of the 1942 Rules.

(7) The 1942 Rules were published on March 11, 1942, in the Punjab Government Gazette. They were framed by the Governor of Punjab in exercise of his powers under section 241 of the Government of India Act, 1935, for 'regulating recruitment to the Punjab Service of Engineers (Buildings and Roads Branch) and prescribing conditions of service of persons appointed thereto'.

(1) A.I.R. 1968 S.C. 1210,

Rule 3 says :—

"In these rules unless there is anything repugnant in the subject or context,—

(a) "apprentice engineer" means a qualified person selected for practical training after consultation with the Commission;

(b) "Assistant Executive Engineer" means all officers in the Service of rank lower than that of Executive Engineer;

(c) "direct appointment" means an appointment made otherwise than by promotion in the Service or transfer of an official already in the service of the Crown;

(d) "division" means a charge in the department extending over one or more civil districts normally held by an Executive Engineer;

(e) "engineering subordinate" means a Sub-Engineer, Upper Subordinate or Overseer of the Subordinate Engineering Service in the Buildings and Roads Branch;

(f) "Executive Engineer" means an officer holding a superior post in an officiating or substantive capacity and who is appointed to a divisional charge;

(g) . . . . . .

(h) "superior post" means a post of not less importance than a divisional charge;

(i) "temporary engineer" means an engineer in the service of a State Railway or of the Public Works Department of the Central Government or a Provincial Government whose appointment is non-pensionable and who is not a member of any regular service;

(j) . . . . . .

(k) . . . . . .

(l) "the old service" means the Punjab Service of Engineers (Old) in the Buildings and Roads Branch;

(m) "the Service" means the Punjab Service of Engineers in the Buildings and Roads Branch."

(8) Rule 4, which is in Part II, captioned "Recruitment", reads :—

"Subject to any rules or orders made by the Secretary of State or the Governor-General with reference to the prior claims of the members of the Indian Service of Engineers, members of the Service shall be eligible for appointment to all grades of the Service, viz., Chief Engineer, Superintending Engineer, Executive Engineer and Assistant Executive Engineer :

Provided that—

(a) all first appointments to the Service, except as hereinafter provided, shall be to the post of Assistant Executive Engineer;

(b) appointment to the selection grade of Executive Engineer or to the posts of Superintending Engineer or Chief Engineer shall be made by strict selection, and no member of the Service shall have any claim to such appointment as of right."

(9) Rule 5 prescribes the qualifications of the persons to be appointed to the Service. Its material part is in these terms :—

"No person shall be appointed to the Service . . . unless he—

(a) . . . . . .

(b) . . . . . .

(c) possesses one of the University degrees or other qualifications prescribed in Appendix A, provided that in the case of officers belonging to the old service of apprentice engineers and temporary engineers already in the service of the Crown, Government may, on the recommendation of the Chief Engineer, Buildings and Roads Branch, waive the requirements of this rule;

(d) has, in the case of a candidate for direct appointment on the advice of the Commission passed such competitive examination or such other test as the Commission may prescribe for appointment to the Service; and

(e) . . . . . ."

(10) Rule 6 deals with the method of appointment. It provides :—

"Subject to the provisions of Rules 4 and 5, appointment to the Service shall be made . . . . after consultation with the Commission, by any of the following methods :—

(1) by direct appointment in India in accordance with Rule 7;

(2) from officers belonging to the old service and engineering subordinates, in accordance with Rule 8;

(3) from apprentice engineers . . . . ;

(4) from temporary engineers . . . . ;

(5) . . . . . .

(6) . . . . . .

Provided that—

(a) no officer belonging to the old service, no engineering subordinate and no apprentice engineer or temporary engineer shall be appointed to the Service unless he has been declared by the Chief Engineer to be fit for such appointment; and

(b) appointment to the Service of officers belonging to the old service, or of engineering subordinates or of apprentice engineers or temporary engineers shall be made by selection and no such officer, subordinate, apprentice engineer or temporary engineer shall be entitled to such appointment as of right."

(11) The next relevant provision is in Rule 8, which reads:—

"When appointment is to be made from the officers belonging to the old service or engineering subordinates to any post in the Service, the Commission shall—

(a) consider the claims of candidates nominated by Government;

(b) thereafter advise in respect of each candidate nominated by Government whether his qualifications are sufficient and whether his record proves him to have the requisite character and ability for appointment to the Service; and

(c) arrange the candidates in order of preference."

(12) Rule 11 in Part III captioned "Conditions of Service", says :—

"11(1) The cadre of the Service shall consist of 17 superior posts, of which not more than two may be on selection grade rates of pay, and a training reserve of 10 posts for those posts, and in addition 11 posts for sub-divisional charges, i.e., in all a cadre of 38 posts. This cadre includes a leave and deputation reserve of 6 posts. Government shall have full powers to increase or reduce these numbers as it deems necessary . . . . Note: One post for sub-divisional charge, (i.e., Assistant Executive Engineer) shall be filled in an officiating capacity in respect of the temporary post of Superintending Engineer (Roads) and Secretary, Communications Board.

(2) . . . . . ."

(13) The most important rule is 12, which reads as below:—

"12(1)(a) Members of the Service promoted from the old service will not be on probation.

(b) Members of the Service recruited from persons already serving the department (other than members of the old service) and such apprentice engineers as have had two years apprenticeship or more shall be on probation for one year or less.

(c) All other members recruited to the Service shall be on probation for two years.

(2) If the work or conduct of any member of the Service, during the period of probation is, in the opinion of Government, not satisfactory Government may at any time dispense with his services if recruited direct, or revert him to his former post if recruited otherwise.

(3) On the conclusion of the period of probation of any member, Government may confirm such member in his appointment, or if his work has, in the opinion of Government, not been satisfactory, Government may dispense with his services if recruited direct, or revert him to his former post if recruited otherwise, or may extend his period of probation by such period as it may deem fit, and on the expiry of such extended period of probation may pass such orders as it could have passed on the expiry of the first period of probation, provided the total period of probation shall not exceed three years.

(4) Government shall not be bound to assign any reason for terminating an officer's appointment under this rule."

(14) Rule 14 says that no Assistant Executive Engineer shall be promoted to the substantive rank of Executive Engineer unless he is declared by the Government to be fit for the charge of a division, etc.

(15) Rule 15(4) provides that members of the Service—other than those holding the posts of the Chief Engineer and Superintending Engineer, specified in sub-rules (1), (2) and (3)—shall be entitled to pay at the ordinary rates shown in Appendix D. There is a proviso to this rule, which says:—

"Provided that—

(a) pay on the junior scale shall be drawn by a member holding charge of less importance than a division;

(b) except as provided in clause (e) below, an officer holding a charge of not less importance than a division shall draw pay on the senior scale at the stage which

corresponds to the pay drawn in the junior scale of Rs. 475 whichever is more ;

* * *"

Rule 18 is also material. It says:—

"Members of the Service, provided that they have not already done so, shall be required to pass such examinations and within such periods as are prescribed in the Punjab Public Works Department Code, provided that Government may extend the periods within which any member is required to pass such examinations, or may exempt any member from passing any or all such examinations."

(16) Rule 21 makes it clear that in matters relating to discipline, punishments and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1940.

(17) Appendix D, referred to in Rule 15, indicates that the junior-scale of pay would be Rs. 300—25—700, while the senior-scale is Rs. 475—25—700—30—1,000.

(18) By Notification No. 1994-BRI/60/9268, dated March 8, 1960, published in the *Punjab Government Gazette* of March 18, 1960, the Governor of Punjab, in exercise of his powers under Article 309 of the Constitution, framed Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads Branch) Rules, 1960 (hereinafter called 'the 1960 Rules'), regulating the recruitment and conditions of service of persons appointed to the Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads Branch). These Rules came into force on the date of their publication (March 18, 1960) in the official Gazette.

(19) Rule 24 of these Rules expressly repeals the 1942 Rules. Proviso to this rule reads:—

"Provided that the repeal shall not affect any action taken or any orders passed under the provisions of the rules hereby repealed and the action taken or orders passed shall be deemed to have been taken or passed under the corresponding provisions of these rules."

Rule 2(5) defines "Class II Service" as 'the Punjab Service of Engineers, Class II, in the Buildings and Roads Branch,

and includes, for purposes of promotion to and fixation of seniority in the Class I Service, Temporary Assistant Engineers when a suitable Class II Officer is not available'. Sub-rule (2) of Rule 2 says that "Assistant Executive Engineer" means 'a member of the Service in the junior-scale of pay'.

(20) Rule 2(14) defines "Service" as 'Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads Branch)'.

(21) Rule 3 describes the strength of the Service. Rule 3(2) defines a 'cadre post' as a permanent post in the Service.

(22) Rule 5 provides that recruitment to the Service shall be made by any one or more of the following methods:—

(a) by direct appointment.

(b) by transfer of an officer already in the service of a State Government, or of the Union;

(c) by promotion from Class II Service.

(23) Sub-rule (2) of Rule 5 lays down that recruitment to the Service shall be so regulated that the number of posts filled by promotion from Class II Service shall not exceed fifty per cent of the number of posts in the Service, excluding the posts of Assistant Executive Engineers. There is a proviso to this sub-rule, which says that till such time as an adequate number of Assistant Executive Engineers, who are eligible and considered fit for promotion, are available, the actual percentage of officers promoted from Class II Service may be larger than fifty per cent.

(24) By a Notification, dated the 11th February, 1965, the Governor of Punjab, in exercise of his powers under Article 309 of the Constitution, framed Punjab Service of Engineers, Class II, P.W.D. (Buildings and Roads Branch) Rules, 1965 (hereinafter called the 'Class II 1965 Rules'), which came into force from February, 1965, the date of their publication in the *Punjab Government Gazette*.

(25) Rule 2(3) defines "Assistant Engineer" as an Officer incharge of a Sub-Division and includes an officer holding a post of equivalent responsibility in the P.W.D., B. & R. Branch. Clause (6) of the same

rule defines "Class I Service" as the Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads Branch), P.W.D. (Irrigation Branch) and P.W.D. (Public Health Branch).

(26) Rule 3 says that the Service shall be constituted at the commencement of these rules, or as soon thereafter as possible, in the manner laid down in Appendix G.

(27) Rule 4(1) provides that the Service shall comprise of such number of posts of Assistant Engineers as may be specified by Government from time to time.

(28) Rule 6 prescribes the sources from and the proportions in which recruitment is to be made to the Service. Sub-rule (5) reads—

> "(5) No person, except to the extent provided under sub-rule (4)—
>
> (a) who is not a substantive member of the P.W.D. (Buildings and Roads Branch), Class II Service or a member of P.S.E. (B. & R.) Class I Service in the Junior-Scale on the date of enforcement of these rules : or
>
> (b) who is not considered suitable for appointment to the Service as provided in rule 7 read with Appendix 'G' shall hold the post of a Sub-Divisional Officer, even in an officiating capacity, unless he is declared, within a period of six months from the date of enforcement of these rules, as suitable for appointment to the Service under the provisions of these rules."

Rule 9 lays down that a Committee consisting of Chairman of the Punjab Public Service Commission, or, where the Chairman is unable to attend, any other member of the Commission representing it, Secretary, P.W.D., Buildings and Roads Branch, and Chief Engineers of P.W.D., Buildings and Roads, shall be constituted. Sub-rule (4) says that the Committee shall prepare a list of officials suitable for promotion to the Service. The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority. Sub-rule (8) says that the list so prepared shall be forwarded to the Commission by the Government. The Commission may make changes in the list and forward the list it considers suitable, to the State Government. Appointment to the Service shall be

made by Government from the list in the order in which names have been placed by the Commission.

(29) The material part of Appendix 'G', referred to in Rule 3, reads—

"**Appendix 'G'**

(*See* Rule 3).

1. On the date of commencement of these rules, the Service shall comprise of :—

(a) Officers who are holding the posts of Assistant Engineers in a substantive capacity in Class II Service, as *it existed immediately before* the commencement of these rules (hereinafter referred to as the existing Class II Service);

(b) Officers who are not holding the posts of Assistant Engineers in a substantive capacity but who were selected by direct recruitment with the approval of the Commission for the post of Temporary Assistant Engineers ; and

(c) Officers who are not holding the posts of Assistant Engineers in a substantive capacity but who were selected, with the approval of the Commission, from the members of P.W.D. (B. & R.) Sectional Officers (Engineering) Service or Draftsmen and Tracers Service for *officiating as Sub-Divisional Officers or Assistant Engineers.*

(d) Notwithstanding anything to the contrary contained in clauses (b) and (c) above, Officers who are temporary Assistant Engineers or officiating Sub-Divisional Officers on the date of commencement of these rules but have not been declared, with the approval of the Commission, as fit for the existing Class II Service will not be deemed to be members of the Service constituted under these rules, even though they have been appointed as Temporary Assistant Engineers or officiating Sub-Divisional Officers, with the approval

of the Public Service Commision. On being declared by the Commission as suitable for appointment to the Service in accordance with these rules they shall become members of the Service as provided in paragraph 2.

2. The Officers, who according to clause (d) of paragraph 1 above are not members of the Service on the date of commencement of these rules but are declared fit for appointment to the Service in accordance with the procedure laid down in rule 9 shall be deemed to be members of the Service to the extent of the number of vacancies which exist at the time they are declared fit for appointment to the Service and the officers who cannot be absorbed on the existing vacancies shall be appointed against sanctioned ex-cadre posts.

* * * * * * *."

(30) In the return filed in *Balbir Singh's case* (L.P.A. 286 of 1968), the respondent-State has taken up the position that the 1942 Rules did not govern the case of the petitioners, for the simple reason that the aforesaid Rules applied to Class I Service consisting of Assistant Executive Engineers and higher ranks only. It is further pleaded that the petitioners were never admitted to the Punjab Service of Engineers, Class II, in view of Rule 6(5)(b) of Class II 1965 Rules read with paragraph 1(d) of Appendix 'G' of the said Rules, as the Punjab Public Service Commission did not consider them suitable. They were, therefore, reverted to their substantive rank in accordance with the terms and conditions of their Service and not by way of punishment.

(31) A comparative study of the 1942 Rules, 1960 Rules and Class II 1965 Rules would show that officiating Sub-Divisional Officers, not being Assistant Executive Engineers, were not governed by the 1942 Rules. None of the respondents pleaded in his writ-petition that he was holding the rank of Assistant Executive Engineer in any capacity. The learned Single Judge has, however, held that the definition of 'Assistant Executive Engineer' given in Rule 3(b) of the 1942 Rules, apparently includes 'Sub-Divisional Engineers'. The learned counsel appearing for the appellant-State has assailed the correctness of that interpretation. It is emphasised that the learned Single Judge has overlooked the significance of the words 'in the

Service' appearing in that definition. The correct meaning of these words, says the counsel, is to be found in Rule 4, which makes it clear that there is no rank or grade in the Service below that of an Asistant Executive Engineer. It is maintained that such Sub-Divisional Officers, who were not Assistant Executive Engineers, were not members of the Service to which the 1942 Rules applied.

(32) There appears to be a good deal of force in the contention of the learned counsel for the appellant-State. The definition of 'Assistant Executive Engineer' given in Rule 3(b) will bear repetition. It reads:—

> " 'Assistant Executive Engineer' means all Officers *in the Service* of rank lower than that of Executive Engineer."

Obviously, it means that all officers lower in rank than that of an Executive Engineer, who can be called 'Assistant Executive Engineers', must be officers borne on the cadre of the Service. The definition of 'the Service' given in clause (m) of Rule 3 is not helpful. The words 'in the Service', therefore, are to be assigned a meaning, which is consistent with the scheme and other provisions of the 1942 Rules. A definite clue to the ranks or grades in this Service is furnished by Rule 4. According to it, there are only four grades of the Service, namely, Chief Engineer, Superintending Engineer, Executive Engineer and Assistant Executive Engineer. The proviso puts the matter beyond all doubt when it says that normally, all first appointments to the Service shall be to the post of Assistant Executive Engineer.

(33) It was canvassed on behalf of the respondents that Rule 11 of the 1942 Rules and the note appended thereunder show that there were at the commencement of these Rules, 11 posts of Sub-Divisional charges in a cadre of 38 posts and that an officer holding a Sub-Divisional charge held the same rank as that of an Assistant Executive Engineer within the meaning of these Rules. It was pointed out that the definition of 'engineering subordinate' given in Rule 3(e) does not include a Sub-Divisional Engineer or an Assistant Engineer, and, that once it is held that a Sub-Divisional Officer, being an officer lower in rank than that of an Executive Engineer, does not fall within the definition of 'engineering subordinate', he would automatically fall within the definition of 'Assistant Executive Engineer' given in Rule 3(b).

(34) I am afraid, this contention cannot be accepted. While it is clear from the scheme and language of the various provisions of 1942 Rules, read as a whole, that 11 posts of Sub-Divisional charge may be held by Assistant Executive Engineers, the converse proposition that all Sub-Divisional Officers are Assistant Executive Engineers and, as such, members of the Service, is not true. When these Rules were promulgated in 1942, Punjab was a vast province. There were a large number of Sub-Divisions in this P.W.D. Department. Only 11 of such posts were included in the Punjab Service of Engineers governed by these Rules. Again, the cadre of this superior service comprised 38 posts, in all.

(35) There are two other circumstances which strengthen the conclusion that the 1942 Rules did not govern the case of the respondents. The first is that the junior-scale in the Service, as given in Appendix 'D' was Rs. 300—25—700, while the respondents were appointed officiating Sub-Divisional Officers in the scale of Rs. 250—25—750. The *second* is that the 1942 Rules were expressly repealed by Rule 24 of the 1960 Rules *in toto*. The re-enacted 1960 Rules apparently did not apply to the respondent-petitioners, who could not, by any reckoning, be called members of Class I Service. 1960 Rules gave a statutory definition of Class II Service. Though this definition is not very specific, there is a clear indication in it that Class II Service included Assistant Engineers, i.e., officers lower in rank than Assistant Executive Engineers. The language of Rule 24 of 1960 Rules, particularly its proviso, indicates that these Rules are at once repealing and re-enacting provisions, governing the recruitment and conditions of the *same* Service to which 1942 Rules were applicable. While the definition of Class II Service and the language of the repealing Rule 24 in the 1960 Rules strengthens the conclusion that the 1942 Rules were not applicable to Assistant Engineers or Sub-Divisional Officers, who were not holding the rank of Assistant Executive Engineer or a higher rank, it also shows that the 1942 Rules had ceased to exist with effect from March 18, 1960.

(36) For the purpose of this discussion, it may be convenient to divide the respondents into three categories:—

(a) Those who were promoted subsequent to the repeal of the 1942 Rules ;

(b) those who were promoted within three years preceding such repeal ; and

(c) those who were promoted more than three years prior to such repeal.

(37) Respondents Dev Dutt, Dasaundhi Ram, Balbir Singh, Jagdish Singh, Surat Singh, Kartar Singh, Sarmukh Singh, and Gurbax Singh in L.P. As 289, 368, 286, 374, 376, 380, 340 and 511 were promoted on 15th December, 1962, 30th August, 1960, 30th July, 1960, 30th July, 1960, 12th August, 1960, 9th January, 1963, 25th May, 1961 and 10th May, 1963, respectively. They fall within the first category. By no stretch of imagination, could they claim the protection of anything in the 1942 Rules, which were repealed before their promotion.

(38) Respondents R. R. Bhanot, Jodh Singh and Gurcharan Singh in L.P. As 375, 379 and 502 were appointed as officiating Sub-Divisional Officers on 10th December, 1959, 5th November, 1959 and 17th December, 1957, respectively, and, as such, fall within the second category. Assuming—but not holding—that they were governed by the 1942 Rules, then also on the date of the repeal of those Rules, they had not completed the maximum period of probation, and, therefore, could not acquire the substantive status of Sub-Divisional Officer merely by the efflux of their maximum period of probation fixed by Rule 12(3).

(39) Respondents Shamsher Singh, Bakhtawar Singh in L.P. As 377 and 373 having been promoted on 22nd October, 1956 and 1st March, 1956, respectively, fall within the third category. Both of them, were promoted in the erstwhile Patiala and East Punjab States Union. It has not been shown that in PEPSU there were any statutory rules governing their conditions of service and appointments as Sub-Divisional Officers. On the date of the impugned orders they had put in more than ten years service as officiating Sub-Divisional Officers. Their case is certainly a hard one. However, for the purpose of the law point involved, that will not make any difference, because, as already held, the 1942 Rules did not govern the case of any of the respondents in any of the three categories.

(40) The question is, whether, in such a situation, the respondents were entitled to the protection of Article 311(2) of the Constitution. This will further resolve itself into the issue: whether the reversion of the respondents to their substantive rank of Overseer/Draftsman amounts to a "reduction in rank" within the contemplation of Article 311(2) of the Constitution. It was pointed out by their

Lordships of the Supreme Court in *Parshotam Lal Dhingra* v. *Union of India*, (2), that two tests should be invoked for determination of this issue. They are:—

(1) Whether the Government servant had a right to hold the post or the rank, and

(2) whether he had been visited with evil consequences.

If either of these tests is satisfied, it must be held that the Government servant has been punished and his reversion amounts to reduction in rank within the purview of Article 311 of the Constitution.

(41) Applying the first test to the facts of the cases in hand, it is clear that the respondent-petitioners in all these thirteen appeals were appointed purely on an officiating basis. Since the 1942 Rules did not govern their appointments on officiating basis, they continued to hold those posts in officiating capacity, only, till their reversion. Even if it is assumed for the sake of argument, that they were appointed on probation, then also they will not get a right to hold those posts merely by efflux of time. In that event, the principle laid down by the Supreme Court in *Sukhbans Singh* v. *State of Punjab* (3), and reiterated in *State of Punjab* v. *Sukh Raj Bahadur* (4), will apply. It is to the effect, that in the absence of anything in the service Rules warranting that course, expressly or by necessary implication, the civil servant cannot, by virtue of the probationary period being over, claim to have a substantive appointment. It is also well settled that where a person is appointed to a higher post in an officiating capacity, he does not acquire any legal right to hold that post for any period whatsoever and, if his work on the higher post on which he is officiating is found to be unsatisfactory, his reversion to his substantive post would not amount to reduction in 'rank' within the meaning of Article 311(2). The first test, therefore, goes against the respondent-petitioners.

(42) As regards the second test, the contention of the learned counsel for the respondent-petitioners is, that their reversion will not only entail loss of emoluments and postponement of future

(2) 1958 S.C.R. 828.

(3) A.I.R. 1962 S.C. 1711.

(4) A.I.R. 1968 S.C. 1089.

chances of promotion, but the impugned order, on the face of it, carries a stigma inasmuch as it declares that the respondents are "not suitable" for appointment to P.S.E. Class II Service. On account of this stigma, it is urged, the impugned order operates as a punishment and amounts to 'reduction in rank' within the meaning of Article 311(2) of the Constitution. In support of this contention, reference has been made to the *State of Punjab* v. *Gopi Kishore Prasad,* (5), *Jagdish Mitter* v. *The Union of India,* (6), *State of Punjab* v. *Darshan Singh,* (7); and *Shashi Bhushan Paul* v. *The State of Punjab,* (8).

(43) On the other hand, the learned Advocate-General appearing for the appellant State, contends that the discharge of a probationer or reversion of an officiating Government servant to his substantive rank merely on the ground of unsatisfactory work or unfitness for the higher post, in accordance with the terms and conditions of his service, never amounts to a punishment. It is emphasised that in the present cases, after the enforcement of Class II, 1965 Rules on February 19, 1965, applicable to the respondent-petitioners, the latter could be retained or absorbed permanently in Class II Service, only on the recommendation of the screening committee and the State Public Service Commission in accordance with Rule 9, read with paragraphs 1(d) and 2 of Appendix 'G'. It is added that, consequently, the Government consulted the State Public Service Commission, who advised that the respondent-petitioners were not suitable for absorption in Class II Service. The impugned order simply shows that the respondent-petitioners have been reverted in accordance with the contract of their service. Stress is laid on the fact that in the absence of any statutory rules to the contrary, the very employment of a person in an officiating capacity implies that he will be confirmed or retained only if, after trial, he is found suitable for the post. In these circumstances, it is maintained that the impugned order does not operate as a punishment, much less does it carry a stigma. Reliance for this has been placed upon the dictum of the Supreme Court in the *State of Orissa* v. *Ram Narayan Das,* (9).

(5) A.I.R. 1960 S.C. 689.

(6) A.I.R. 1964 S.C. 449.

(7) 1968 S.L.R. 734.

(8) 1969 S.L.R. 221.

(9) A.I.R. 1961 S.C. 177.

(44) It appears that the contention of the learned Advocate-General on this point must prevail. The material part of the impugned order reads as follows :—

> "The President of India, in consultation with the Public Service Commission, *does not consider the* following officiating Sub-Divisional Officers of Punjab P.W.D. (B & R Branch), *suitable* for appointment to P.S.E., Class II (B & R Branch), and accordingly they are reverted as indicated below with immediate effect . . . . . ".

It does not seem necessary to over-burden this judgment with a discussion of all the cases cited at the bar, because the latest pronouncement of their Lordships of the Supreme Court in *Union of India* v. *R. S. Dhaba,* (10), furnishes a complete answer to the contention of the respondent-petitioners. The facts in *R. S. Dhaba's* (10), case were that he was a permanent Upper Division Clerk in the Income-tax Department and was promoted as Inspector of Income-tax in an officiating capacity on October 25, 1951. On April 8, 1953, he was "promoted to officiate until further orders as Income-tax Officer, Class II, Grade III". On May 22, 1964, he was reverted from his officiating position of Income-tax Officer by an order, the relevant part of which, reads as follows:—

> " . . . . . Shri R. S. Dhaba, officiating Income-tax Officer, Class II . . . . . having *been found unsuitable* after trial to hold the post of Income-tax Officer, Class II, is hereby reverted as officiating Inspector, Income-tax, with immediate effect."

(45) It was contended on behalf of R. S. Dhaba before the Supreme Court that his order of reversion was made by way of punishment and the provisions of Article 311(2) were attracted. It was said that the Commissioner, in making the impugned order, was largely influenced by the complaints against the respondent about his honesty, while coming to the conclusion that he was not suitable for the post of Income-tax Officer. This contention was repelled by their Lordships with these observations :—

> "We are unable to accept the argument of Mr. Sen that the order of reversion is punitive in character and that the procedure of Article 311(2) of the Constitution is applicable to this case. In the order of reversion, dated May 22, 1964, there is nothing to show that a stigma was

(10) 1969 Cur. L.J. 461.

attached to the respondent. No reference is made to the imputation on the integrity of the respondent and the only reason given is that the respondent was found unsuitable to hold the post of Income-tax Officer, Class II. It is well-established that a Government servant who is officiating in a post has no right to hold it for all time and the Government servant who is given an officiating post holds it on the implied term that he will have to be reverted if his work was found unsuitable. In a case of this description a reversion on the ground of unsuitability is an action in accordance with the terms on which the officiating post is held and not a reduction in rank by way of punishment to which Article 311 of the Constitution could be attracted . . . . ."

(46) The principle enunciated by the Supreme Court in *R. S. Dhaba's case* (10) is fully applicable to the facts of the cases before us. The recital in the impugned order, 'that the President, in consultation with the Public Service Commission, did *not* find the respondent-petitioners *suitable* for appointment to the P.S.E., Class II Service', was made only to show that these reversions were being made in accordance with the terms and conditions governing the employment of the respondent-petitioners, and not arbitrarily.

(47) Besides the case of *Parshotam Lal Dhingra* v. *Union of India,* (2), their Lordships of the Supreme Court in *R. S. Dhaba's case,* (10), referred to the decisions of that Court in *Champaklal Chimanlal Shah* v. *The Union of India,* (11), *The State of Bombay* v. *F. A. Abraham,* (12), *I. N. Saksena* v. *State of Madhya Pradesh,* (13), and *Jasbir Singh Bedi* v. *Union of India,* (14).

(48) In *F. A. Abraham's case* (12), the respondent, who held the substantive post of an Inspector of Police, had been officiating as a Deputy Superintendent of Police. He was reverted to his original rank without being given any opportunity of being heard in respect of the reversion. His request to furnish him with reasons of his reversion was refused. Later, a departmental enquiry was held behind his back in respect of certain allegations of misconduct made against him, but these allegations were not proved at the enquiry. The Inspector-General of Police, however, thereafter, wrote to the Government that the respondent's previous

(11) (1964) 5 S.C.R. 190.
(12) (1962) 2 Supp. S.C.R. 92.
(13) A.I.R. 1967 S.C. 1264.
(14)1968 S.C.N. 47.

record was not satisfactory and that he had been promoted to officiate as Deputy Superintendent of Police in the expectation that he would turn a new leaf but the complaint made in the confidential memorandum was a clear proof that the respondent was habitually dishonest and did not deserve promotion. The order of Abraham's reversion was maintained by the Government. He then filed a suit challenging the order. The suit was decreed up to the High Court. On further appeal, the Supreme Court reversed that decree and dismissed the suit. It was observed by their Lordships of the Supreme Court that a person who is given an officiating post to test his suitability, to be made permanent later, holds it on the implied term that he would have to be reverted if he was found unsuitable. A reversion in such a case on the ground of unsuitability is an action in accordance with the terms on which the officiating post was being held and is not a reduction in rank by way of punishment. It was further observed that the departmental enquiry held in that case did not prove that the respondent was reverted by way of punishment, because the Government had the right to consider the suitability of the respondent to the post, to which he had been appointed to officiate.

(49) The facts of the instant cases are similar to that of *R. S. Dhaba's case* (10), In the present cases also, the respondent-petitioners were appointed to officiate as Sub-Divisional Officers on the understanding that if they were found unsuitable for the higher post, they would revert to their substantive rank. Though at the time of their promotion as officiating Sub-Divisional Officers, they were not governed by the 1942 Rules or any other statutory rules on the subject, yet on the coming into force of the Class II, 1965 Rules, the question at once arose of their permanent absorption in Class II Service, as constituted under those Rules. Obviously, thereupon, the Government, in accordance with paragraphs 1(d) and 2 of Appendix 'G', read with Rule 9 of Class II 1965 Rules, consulted the Public Service Commission, who found that the respondents were unsuitable for permanent absorption in Class II Service. The Government accepted that advice and passed the impugned order in terms of the implied condition of the respondents' employment by following the procedure laid down in the statutory Rules of 1965.

(50) Before concluding the discussion on this point, it will be proper to refer to the Division Bench decision of this Court in *State*

of Punjab v. *Darshan Singh,* (7). Darshan Singh was employed temporary Inspector of Shops and Commercial Establishments in a leave reserve vacancy. On September 29, 1960, the Labour Commissioner wrote to Darshan Singh that there had been a number of complaints about his work and conduct from different quarters, that, on inspection, the Chief Inspector had found violations of the provisions of the Punjab Shops and Commercial Establishments Act, 1958, in his jurisdictional area, and that on account of his doubtful integrity and inefficient work he was considered unfit for retention in Government service any more. The respondent was asked to give his written reply to this letter, which he did on October, 6, 1960. By another communication of December 7, 1960, the Labour Commissioner withdrew the earlier letter of September 29, 1960. He then on December 15, 1960, made this order—

> "*Since your work and conduct,* during the period you have worked as Shop Inspector in this Department, *has not been found satisfactory,* your services are hereby terminated in accordance with the terms and conditions of your employment as contained in the appointment letter issued to you with this office letter No. 9953, dated 27th May, 1957, with effect from the date your substitute reaches Kotkapura to take over the charge from you."

(51) The question for consideration in that case was, whether the underlined words in the above order (in italics in this report) cast a stigma on the servant and thus gave the order a penal complexion, converting it to one of dismissal from service. My Lord the Chief Justice speaking for the Division Bench, after discussing the effect of the Supreme Court decision in *Ram Narayan Das's case* (9), *and Jagdish Mitter's case* (6), answered this question in the affirmative, in these terms:

> "It has been admitted on both sides in the present case that to the respondent no rule like Rule 55-B as in *Ram Narayan Das's case* (9) has any application. The letter written by the Labour Commissioner to the respondent asking him to explain his conduct was not pursuant to any such rule. It was withdrawn without any probe into the allegations made in it. Its effect was then reproduced in the order terminating the service of the respondent when it said that his work and conduct were

not found satisfactory, thus justifying termination of his service. Now, anybody reading this order of termination of the service of the respondent would reach the immediate conclusion that the respondent is not a person who is entitled to employment, because not only his work but his conduct also was not found satisfactory. This attaches a stigma to him and casts an aspersion against his capacity for work as also against his conduct. This case would have come within the *ratio* of *Ram Narayan Das's case* (9), but for the fact that the latter case proceeded under rule 55-B of the Civil Service (Classification, Control and Appeal) Rules, and no such rule is applicable in the present case, a distinction which was drawn by their Lordships when considering *Ram Narayan Das's case* (9) in *Jagdish Mitter's case* (6)."

Darshan Singh's case (7), is clearly distinguishable from those before us. Firstly, in that case the impugned order was preceded by a letter of the Labour Commissioner, dated September 29, 1960, in which charges of doubtful integrity and inefficiency had been levelled. It was in the wake of that letter that the impugned order was passed on December 15, 1960. The impugned order had to be construed in the light of the letter of September 29, 1960, because the two were intimately connected as cause and effect and both these documents had been communicated to the Government servant concerned. Secondly, the impugned order in that case was not made pursuant to the requirements of any statutory Service Rule or the implied or express terms and conditions of the employment. It went out of the way in casting an aspersion not only against the capacity of the servant for work, but also his conduct. Thus, on the peculiar facts of that case it was quite clear that the impugned order had been passed by way of punishment. Furthermore, that was not a case of reversion of an officiating Government servant to his substantive rank on the ground of his being found unsuitable for the higher post.

(52) The cases before us appear to be in line with another Division Bench judgment of this Court in *State of Punjab and others* v. *Appar Apar Singh*, (15). In that case, Appar Apar Singh was a substantive member of the Punjab Education Service Class II. He was promoted to officiate in Class I Punjab Education Service

(15) A.I.R. 1967 Pb. 139.

as Principal of a Government College on May 9, 1963. He held that position till the impugned order was passed on April 28, 1964, reverting him to his substantive rank in Punjab Education Service Class II. Some allegations of misconduct were made against Appar Apar Singh by some members of the staff and *vice versa*. An enquiry was made. The Enquiring Officers reached a conclusion that there was substance in one of the charges. The result was that the impugned order reverting Appar Apar Singh to his substantive rank was passed, because he was found unfit to hold the responsible post of the Principal of the College. Writ petition filed by Appar Apar Singh under Article 226 of the Constitution was allowed by a learned Single Judge of this Court on the ground that the order of his reversion operated as a punishment and as it was passed without complying with the provisions of Article 311(2) of the Constitution, it could not be sustained. The State went in appeal. After discussing the case-law on the point, D. K. Mahajan, J., speaking for the Letters Patent Bench, laid down the law on the point as follows:—

> "A person officiating in higher rank has no right to that post. He can be reverted from it without assigning any reason . . . . . if the reversion is not by way of punishment but because the person reverted is not found suitable to hold the post, *per se* it will not amount to punishment though a stigma does attach by reason of the reversion that he was found unfit to hold a higher post. In each case, one has to look into the totality of circumstances leading to reversion in order to determine whether the order of reversion has been passed by way of punishment or otherwise."

(53) I am in respectful agreement with the above observations. Indeed, we are bound by that decision.

(54) From a conspectus of the cases cited at the bar or discussed above, it can safely be deduced that an order, which reverts an officiating Government servant to his substantive rank on the express ground of his being found unsuitable for the higher post in which he was officiating, cannot *per se* be called a penal order casting a stigma, amounting to his 'reduction in rank' within the contemplation of Article 311(2) of the Constitution, if the reference to his being found unsuitable has been made pursuant to any statutory rule governing the conditions of his employment (such as

in *Ram Narayan Das's case*, (9), *ibid, H. P. Singh* v. *U. P. Government and another* (16) and *Ranendra Nath Banerjee* v. *Union of India and another* (17), or, in the absence of such statutory Rule, in accordance with any condition, covenant or term of his employment, which may be contained either in an express contract of his service or a like instrument, or implied from the very nature of his employment. Instances of cases of the latter description are furnished by *R. S. Dhaba's case* (10), ibid, *Appar Apar Singh's case* (15), ibid, and *F. A. Abrahim's case*, (12), ibid. It may be noted that in principle there is no distinction between the termination of the services of a Government servant under the terms of a contract governing him and the termination of his services in accordance with the terms and conditions of his service contained in any statutory Service Rules. (*See* the observations in *Hartwell Prescott Singh* v. *U. P. Government*, (18).

(55) However, on the facts of each case it is open to the servant to show that though in form the order of reversion purports to have been passed in terms and conditions of his employment, yet in substance and reality, his reversion is a punitive action amounting to 'reduction in rank' within the meaning of Article 311(2) of the Constitution. Illustrations of such cases are furnished by *Madan Gopal* v. *State of Punjab*, (19), *Gopi Kishore's case* (5), and *Darshan Singh's case* (7), ibid.

(56) If the order of reversion of the officiating Government servant, overstepping the requirements of the terms and conditions of the employment, goes out of the way to indelibly brand or stigmatise the employee, using such epithets "undesirable", "dishonest", "incorrigible", which will have the effect of permanently debarring him from employment or future promotion, it will be a punitive order. Such was the case in *Jagdish Mitter* v. *Union of India* (6).

(57) It is not the respondents' case that the impugned order is a disciplinary action taken consequent upon any formal departmental enquiry into charges of corruption, misconduct, etc. It is a simple administrative order purporting to be in accord not only with the requirements of Class II 1965 Rules, but also with the

(16) A.I.R. 1957 S.C. 886.
(17) A.I.R. 1963 S.C. 1552.
(18) A.I.R. 1957 S.C. 886 at page 887.
(19) A.I.R. 1963 S.C. 531.

implied term of their officiating employment, viz., that they would be reverted to their substantive rank in case they were found unsuitable for holding the higher post. Thus, the second test also goes against the respondent-petitioners and the conclusion is inescapable that their reversion to their original rank did not amount to reduction in rank and consequently Article 311(2) of the Constitution was not attracted.

(58) It is further contended on behalf of the respondents that the requirements of Rule 9 of the Class II, 1965 Rules were not complied with inasmuch as no Committee contemplated by that rule to do preliminary screening and for preparing the list was ever constituted, nor were the respondents ever heard by any such Screening Committee. It is urged that for this reason, also, the impugned order was bad in law.

(59) This plea has not been taken by the respondents in their writ-petitions, nor was it agitated before the learned Single Judge. We, therefore, refuse to entertain it for the first time at this stage.

(60) Another argument addressed on behalf of the respondents was that the President who passed the impugned order never applied his mind to determine the suitability or otherwise of the respondents, but as is apparent from the recital in the impugned order, he mechanically adopted the recommendation of the Public Service Commission. For this reason also, maintains the counsel, the impugned orders are liable to be struck down.

(61) In the first place, this plea also has not been specifically taken up in the writ-petitions; nor was the point raised at the time of arguments before the learned Single Judge. It cannot, therefore, be allowed to be agitated for the first time in appeal. Secondly, the impugned order (Annexure B, e.g., in *Dev Dutt's case*) has been passed in the name of the President of India under the signature of the Secretary to the Government of Punjab (Punjab State being at the relevant time under the President's Rule). That is to say, this order was substantially in accordance with the form envisaged by clauses (1) and (2) of Article 77 of the Constitution. Under Clause (2) of that Article, therefore, its validity could not be called in question on the ground that it was not an order made by the President. A presumption of correctness will attach to the recital in the impugned order that it was the President who in consultation with the Public Service Commission, did not consider the respondents suitable for appointment to P.E.S.,

Class II (Buildings and Roads Branch). This contention is therefore, overruled.

(62) Another peculiar feature of these cases is, that the impugned orders were passed on 28th October, 1966, but they were communicated after 1st November, 1966, i.e., the appointed day on which the former State of Punjab ceased to exist and four successor States of Punjab, Haryana, Union Territory of Chandigarh and the Transferred Territory came into being. With effect from 1st November, 1966, all the respondent-petitioners had been provisionally allocated to the successor States. The question is: whether the impugned orders remained ineffective and still-born by reason of their not having been communicated to the respondents before 1st November, 1966. Though this point had not been raised before the learned Single Judge, yet, as it was purely a question of law apparent on the face of the record requiring no additional material for its determination, we allowed the learned counsel on both sides to address arguments on this point.

(63) On the authority of a Division Bench judgment of this Court in *The State of Punjab and another* v. *Resham Singh and others* (20), which, in turn, followed the decision of the Supreme Court in *Bachhittar Singh* v. *State of Punjab and another* (21), and *State of Punjab* v. *Amar Singh Harike* (22), the learned counsel for the respondents has contended that the answer to this question must be in the affirmative.

(64) Mr. B. S. Dhillon, the learned Advocate-General for the appellant-State contends that the answer to this question must be in the negative; that *Resham Singh's case* (20) needs reconsideration by a larger Bench, because it had overlooked the material provisions of the State Reorganisation Act, 1956, and some provisions of the General Clauses Act. The argument is that the Punjab Reorganisation Act, 1966 (hereinafter called the '1966 Act') is at once a repealing and a re-enacting provision so far as the laws in force immediately before the appointed day in the territories comprised in the erstwhile State of Punjab were concerned. The argument proceeds. that in these circumstances, the impugned orders issued under the enactments repealed and re-enacted could

(20) L.P.A. 198 of 1968 decided on 5th September, 1968.
(21) A.I.R. 1963 S.C. 395.
(22) A.I.R. 1966 S.C. 1313.

be continued and given effect to by the successor States to whom the various respondents were allocated. Reference has been made in this behlaf to the provisions of Section 88 of the 1966 Act and Section 24 of the General Clauses Act (X of 1897). In *Resham Singh's case* (20), ibid, Mr. Dhillon, submits, the point which is now being urged was not raised. We are told that an application for grant of special leave to appeal from the judgment of the Letters Patent Bench was also made and the same has been dismissed by the Supreme Court. In the grounds of appeal annexed to that application, also, says Mr. Dhillon, this point was not raised much less was it canvassed before the Supreme Court. In support of his contentions, the learned Advocate-General has cited *Hasan Nurani Malak* v. *S. M. Ismail, Assistant Charity Commissioner, Nagpur and others* (23), *G. Ekambarappa and others* v. *Excess Profits Tax Officer, Bellary,* (24), *District Registrar and another* v. *M/s. Popular Automobiles Trichur* (25) and *Manilal R. Pandya* v. *Chimanlal Parshotamdas and another* (26).

(65) Mr. Dhillon, has read out the grounds of appeal which had been filed in the Supreme Court with the application for the grant of special leave. It is clear therefrom that this plea founded on Sections 6 and 24 of the General Clauses Act was not at all taken up before the Supreme Court. There appears to be no bar, therefore, to the consideration of this point by us.

(66) In reply, it has been contended on behalf of the respondents that the 1966 Act cannot be said to be a repealing and re-enacting provision; that Section 88 of that Act simply ensures continuance of the laws which were in force immediately before the appointed day in the existing State of Punjab in the territories of the successor States. Even if Section 88 of the 1966 Act were not there, all the laws prevailing before the appointed day in the former Punjab would continue to be in force in the territories of the successor States unless repealed by the competent Legislature. It is stressed that in any case, Section 24 of the General Clauses Act will not apply, because the laws which are alleged to have been repealed were not Central Laws or regulations but were mostly State Acts; that on parity of reasoning, Section 22 of the Punjab

(23) A.I.R. 1967 S.C. 1742.
(24) A.I.R. 1967 S.C. 1541.
(25) A.I.R. 1967 Kerala 240.
(26) A.I.R. 1968 Gujrat 80.

General Clauses Act, 1898; will not be applicable, because the repealing and re-enacting Act is a Central Act passed by Parliament and not a Punjab Act.

(67) It is further canvassed on behalf of the respondents that Sections 89 and 90 cannot be invoked for the simple reason that the impugned orders were purely administrative orders and did not fall within the definition of 'law' given in 1966 Act.

(68) Before dealing with the rival contentions, it will be useful to notice here briefly the relevant provisions of the 1966 Act. The material provisions of the 1966 Act are:—

"88. *Territorial extent of laws.*—The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

89. *Power to adapt laws.*—For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression "appropriate Government" means—

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law,—

(i) in its application to a State, the State Government; and

(ii) in its application to a Union territory, the Central Government.

90. *Power to construe laws.*—(1) Notwithstanding that no provision or insufficient provision has been made under section 89 for the adaptation of law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may for the purpose of facilitating its application in relation to the State of Punjab or Haryana, or to the Union territory of Himachal Pradesh or Chandigarh constitute the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

(2) Any reference to the High Court of Punjab in any law shall, unless the context otherwise requires, be construed, on and from the appointed day, as a reference to the High Court of Punjab and Haryana.

95. *Effect of provisions of the Act inconsistent with other laws.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

69. Section 96 gives the President the power to remove difficulties in giving effect to the provisions of that Act.

(70) Section 97 gives the Central Government power to make rules to give effect to the provisions of that Act.

(71) For determining whether the 1966 Act, particularly its Section 88, is a repealing and re-enacting provision within the meaning of Section 24 of the (Central) General Clauses Act (corresponding to Section 22 of the Punjab General Clauses Act), the test to be applied is, whether all the laws in force in the territories of the former State of Punjab immediately before the appointed day stood automatically repealed or abrogated but for the provision made in Section 88 of the 1966 Act. It appears to me that the result of this test would be in the negative. Section 88 appears to have been introduced as a matter of abundant caution. In my opinion, mere splitting up of the territories of Punjab into four successor States would not *ipso facto* result in the abrogation or repeal of the laws which

were immediately in force before the appointed day in those territories. There is nothing in the 1966 Act, not even in Section 88, which expressly or by necessary intendment repeals the laws which were in force immediately before the appointed day in the territories of the former Punjab. Those laws derived their force *de hors* the 1966 Act. The first part of Section 88 is merely clarificatory of any doubts which might arise as a result of the reorganisation of Punjab, while the latter part of this section is merely an adaptative provision, to the effect, that the territorial references in any such law to the State of Punjab shall continue to mean the territories within that State immediately before the apointed day. Thus, read as a whole, Section 88 merely dispels doubts as to the continuity of the laws which were in force before the appointed day in the former State of Punjab, until the competent legislature or authority of the successor States effects any change in those laws.

(72) In the view I take, I am fortified by some observations of their Lordships of the Supreme Court in *Lachhman Dass* v. *State of Punjab* (27). The appellant firm in *Lachhman Dass's case* (27), owed a sum of over Rs. 2 lakhs to the Patiala State Bank. Since this loan was not paid, the Bank took steps to realise the same in accordance with the provisions of the Patiala Recovery of State Dues Act. After issuing notice under the relevant provisions of that Act and exchange of some correspondence with the firm, the Managing Director of the Bank on January 27, 1956, issued a certificate under Section 7 of that Act, that a sum of Rs. 4,98,589-1-6 was due from the firm and asked the Deputy Commissioner, Patiala, to recover the same as arrears of land revenue. The firm moved the High Court under Article 226 of the Constitution, challenging the validity of the Act and of the proceedings taken thereunder on various grounds. The High Court dismissed the writ petition, but granted a certificate for appeal to the Supreme Court. The firm also filed a petition under Article 32 of the Constitution. Three contentions were raised before the Supreme Court. Contntion No. 1, which only is material for this discussion, was as follows:—

> "The proceedings taken under the Act for determining the amount payable by the appellants and for recovering the same are illegal as the Act had ceased to be in force on the material dates."

(27) A.I.R. 1963 S.C. 222.

(73) A few more facts of *Lachhman Dass's case* (27) may be noted. The new State of Pepsu came into existence on August 20, 1948, as provided under the Covenant. The Ruler of Patiala became its Raj Pramukh and on the same date he promulgated an Ordinance No. 1 of 2005 (Bk) which provided *inter alia* that "all Laws in force in the State of Patiala on that date shall apply *mutatis mutandis* to the territories of the said State and with effect from that date all laws in force in such Covenanting State immediately before that date shall be repealed". By force of this Ordinance, the impugned Act became the law of the Pepsu Union. Under Article X of the Covenant, this Ordinance would have expired on February 20, 1949, and so on February 15, 1949, the Raj Pramukh promulgated another Ordinance No. 16 of 2005 (Bk) in terms similar to the Ordinance No. 1 of 2005.

(74) Article X of the Covenant provided that the Ordinances to be promulgated by the Raj Pramukh were to be in force for a period of only six months. It was expected that the Constituent Assembly would in the meantime be convened and a regular Constitution drawn up. But that did not materialise and so on April 9, 1949, all the Rulers met again and drew up a Supplementary Covenant, whereby Article X was amended by omitting the words "for the space of not more than six months from its promulgation". The result of this was that the laws which had been brought into force by Ordinance No. 16 of 2005 (Bk) including the impugned Act, would not lapse on August 20, 1949, but continue to be in force until repealed by fresh legislation. It was argued by the appellant firm that the Supplementary Covenant was void, and that the jurisdiction of the civil Court to entertain that question was barred by Article 363 of the Constitution. In other words, the argument was that if the Supplementary Covenant was void, they were not liable under the said Act, because it was inoperative by reason of Article X in the Covenant. In support of this contention, they referred to the decision of the Supreme Court in *Bholanath J. Thaker* v. *State of Saurashtra* (28). Their Lordships accepted the first part of argument that the Supplementary Covenant was void. The argument from the other side was that even if the Supplementary Covenant was void, the respondent-State was merely enforcing a right under the existing laws which continued to be in force until they were repealed by the appropriate legislature. Their Lordships accepted

(28) A.I.R. 1954 S.C. 680.

this argument after referring to *Bholanath's case* (28), in these terms:—

"There (in *Bholanath's case*) (28), a Judicial Officer of the erstwhile Wadhwan State, had filed a suit questioning the validity of an order of the State of Kathiawar, which had been formed as the result of the merger of a number of States including Wadhwan, whereby his services were prematurely terminated. The question was whether the action was barred by Article 363. This Court held that the Officer had a right to continue in service under a law of Wadhwan enacted before the date of merger, that the Covenant was relied on only for showing that that right was at all times subsisting, and that Article 363 was not a bar to the maintenance of such a suit. The *ratio* of the decision is to be found in the following observation:

"There was no dispute arising out of the Covenant and what the Appellant was doing was merely to enforce his rights under the existing laws which continued in force until they were repealed by appropriate legislation." In other words the dispute related to a right which arose independent of, and was affirmed in the Covenant, and, therefore, Article 363 had no application. That is not the position here. The liability of the appellants to pay to the Bank the amounts determined in accordance with the impugned Act is one which arises *de hors* the Covenant, and it is sought to be got rid of only by recourse to Article X. The dispute is, therefore, one arising directly on a provision in the Covenant, and Article 363, will apply.

"But even if the appellants are right in their contention that Ordinances 1 and 16 of 2005 (Bk), ceased to be in operation after the expiry of six months from the date of their promulgation, they can derive no advantage from it, because what those Ordinances did was to extend the operation of all Patiala laws to the territories which had formed part of the other Covenanting States. *So far as the territories of the erstwhile State of Patiala are concerned, its laws continued to be in force proprio vigore* and not by force of Ordinances 1 or 16 of 2005 (Bk). Therefore, even if the

> Ordinances lapsed on August 20, 1949, as contended for the appellants, that would not affect their liability under the impugned Act, as they come from the territory of the erstwhile State of Patiala, and would in any event be governed by it."

(75) The crucial words in the quotes above are those that have been underlined (in italics in this report). Unlike the formation of Pepsu, the States of Haryana, Punjab, Union Territory of Chandigarh and the Transferred Territory, i.e., the four successor States, have been carved *out of* the territories of the former State of Punjab as it existed before 1st November, 1966. On the parity of reasoning, the laws in force in these territories immediately before 1st November, 1966 will continue to be in force *proprio vigore* until modified or repealed by appropriate legislation. Thus construed, the 1966 Act particularly Section 88, is not a repealing and a re-enacting provision.

(76) Assuming—but not holding—that 1966 Act is a repealing and a re-enacting provision then also Section 24 of the General Clauses Act will not be attracted for the simple reason that while 1965 Act is a Central enactment, the most of the laws said to have been repealed and re-enacted by it were Punjab laws. Similarly, Section 22 of the Punjab General Clauses Act cannot be called in aid because 1966 Act is not a Punjab Act.

(77) Now I take up the alternative argument of the learned Advocate-General, viz., that by the application of Sections 89 and 90 of 1966 Act, the impugned orders passed by the former State of Punjab should be considered as the orders passed by the respective successor States to whom the petitioner—respondents have been allocated. This argument also does not appear to be tenable, for the simple reason that the impugned orders are purely *administrative orders* and not *laws* within the meaning of Section 2(g) of the 1966 Act. There is neither any question of adaptation nor of their construction. The main question is, whether they were effective orders. The pronouncements of the Supreme Court in *Bachhittar Singh's case* (21), ibid, and *Amar Singh Harika's case* (22), ibid, followed in *Resham Singh's case* (20), ibid, have firmly established the rule that an administrative order takes effect from the date it is communicated to the person concerned or is otherwise publicised in the appropriate manner.

(78) The decision in *Manilal R. Pandya's case* (26), ibid, relied upon by the learned Advocate-General, is of no assistance. There, the draft of the proposed Prevention of Food Adulteration Rules was published by the State Government of Bombay when the city of Ahmedabad was also a part of the State of Bombay. After bifurcation of the State of Bombay into the two States of Maharashtra and Gujrat, the State Government of Gujrat made and published the Prevention of Food Adulteration Rules without changing the substance of the rules published in the draft by the then State Government to which the State Government of Gujrat was, in essence, the successor in relation to the territory comprised in that State. Chimanlal respondent in that case was prosecuted for an offence under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954. The City Magistrate acquitted him on the ground that the Gujrat Prevention of Food Adulteration Rules, 1961 were not valid as they were not previously published as required by Section 24 of the said Act, and that the publication of the draft rules by the former Government of Bombay before bifurcation could not be considered to be a compliance with the requirement of prior publication. In revision, the learned Judges reversed this reasoning, holding that what Section 23(1) of the General Clauses Act required was that the publication of the draft rules had to be made by the authority which had the power to make rules at the date of such publication and that it did not also require that the previous publication must be made by the authority finally making the rules. It was further held that this was a fit case where Section 89 of the Bombay Reorganisation Act should be applied. The construction to be placed on the phrase "The State Government" was that it should mean with regard to acts done before the appointed day, the Government of Bombay and with regard to things done from the appointed day, the Government of Gujrat or the Government of Maharashtra as respects the territories falling within the respective States. The purpose for which the requirement of previous publication was introduced in Section 24, had been complied with by the previous publication of the draft rules by the Government of Bombay. Hence, the Gujrat Prevention of Food Adulteration Rules, 1961, were validly made.

(79) In the instant cases, there is no question of the application of Section 23 of the General Clauses Act. Here, the question is, whether Section 24 of the General Clauses Act or its principle will apply. Nor is there any question of the construction or adaptation of any law or order having the force of law.

(80) It is not necessary to encumber this judgment by discussing the other rulings cited by the learned Advocate-General. Suffice it to say that the facts of those cases were not at all parallel to those of the instant cases. In conclusion, therefore, respectfully agreeing with the Division Bench judgment of this Court in *Resham Singh's case* (20) indeed, by which we are bound—, we would hold that the impugned orders in Letters Patent Appeals 286, 289, 368, 340, 374, 375, 376, 377, 378, 379, 380, 502 and 511 of 1968 remained ineffective and inoperative, because they were not communicated to the respondents or publicised in the appropriate manner before 1st November, 1966. On this short ground, the impugned orders stand annulled and the appeals fail. In view of the knotty law points involved, we would make no order as to costs.

(81) The second bunch of appeals before us consists of L.P. As. 327 and 328 preferred by the State of Punjab against tht judgments, dated March 25, 1968 and March 21, 1968, respectively, of the learned Single Judge, by which he accepted Writ Petitions 66 of 1967 and 176 of 1967 filed by Bhagwan Singh Chawla and Sushil Kumar Khullar, respectively. The only factual difference between the cases of these respondents and the 13 respondents in the first bunch of appeals, is, that these two were directly appointed as temporary Assistant Engineers in the Public Works Department (Buildings and Roads Branch), Punjab, on terms and conditions contained in the communication, dated May, 12, 1960 (Annexure 'A' to Writ Petition 176 of 1967). Its material part reads as follows:—

> ".....I am directed by the Governor of Punjab to offer you (the post of Temporary Assistant Engineer in the Punjab, P.W.D., B. & R., Branch), on the following terms/ conditions:—
>
> 1. *Tenure of post*:—
>
> (i) The appointment will be temporary.
>
> (ii) The service will be terminable by one month's/three months' notice in writing by Government to you/you to Government. Should Government desire to terminate your services/you leave service, without notices, Government/you will have to pay you/ Government an amount equal to your one month's/ three months emoluments in lieu of one month's/ three months' notice or the amount equal to your

emoluments for the period by which the notice falls short of one month/three months. In case of misconduct, inefficiency, neglect or failure of duty, service will be terminable after giving you an opportunity to represent in the matter. Government, however, reserve the right to terminate your services in case your work during the period of your apprenticeship happens to be unsatisfactory....."

II. *Pay*—

.....You will be given pay at Rs. 250 in the scale of Rs. 250—25—550/25—750.

III. *Leave*—

IV. *Status of post.*—Post will be of gazetted status.

V. *Probation.*—You will be on probation for three months after the completion of training."

(82) Sushil Kumar Khullar in L.P.A. 328 of 1968 accepted this offer and joined the post. On his completion of 6 months' training, Punjab Government on January 17, 1961, issued the notification (Annexure B) appointed him alongwith five other persons (with whose case we are not concerned) as a Temporary Assistant Engineer (Apprentice Engineer) in the Public Works Department, B. & R. Branch. His three months' period of probation commenced on December 3, 1960 and completed on March 3, 1961.

(83) Bhagwan Singh Chawla, respondent-petitioner in L.P.A. 327 of 1968, was appointed as Temporary Assistant Engineer on completion of his six months' training period in the same scale of Rs. 250—750 with effect from December 3, 1960. Similar terms and conditions were offered and had been accepted by him. His period of probation was also fixed at 3 months, which was to commence after the completion of his training. On 28th October, 1966, the President of India, in consultation with the Punjab Public Service Commission, passed an order terminating the services of both the respondents (Bhagwan Singh Chawla and Sushil Kumar Khullar), expressly on the ground of their being found unsuitable for appointment to the P.S.E., Class II (B. & R. Branch). These orders of the President were impugned in the writ-petition by Bhagwan Singh Chawla and Sushil Kumar Khullar more or less on the same grounds in which the respondents in the first bunch of 13 appeals had challenged their orders of reversion.

(84) The only ground that appears to have been pressed before the learned Single Judge was, that in matters of appointment they were governed by the 1942 Rules, and on the completion of the **maximum period of 3 years' probation fixed** by Rule 12 of those Rules, they automatically became permanent members of Punjab Service of Engineers, B. & R. Accepting this contention, the learned Single Judge allowed the petitions and quashed the impugned orders. Hence these L.P. As. by the State of Punjab.

(85) The points canvassed before us in these appeals are also the same which have been discussed above in the first bunch of 13 appeals. The reasons given in the foregoing part of this judgment will, therefore, apply *mutatis mutandis* to the cases of these respondents, also, in these appeals. In these cases also, the impugned orders terminating the services of Sushil Kumar Khullar and Bhagwan Singh Chawla were passed on October 28, 1966, but were communicated to them on or after 1st November, 1966. Though we have reversed the finding of the learned Single Judge with regard to the applicability of the 1942 Rules to the cases of the respondents, yet on the ground, that the impugned orders not having been communicated before 1st November, 1966 remained ineffective and still-born, we maintain the annulment of the impugned orders in these two cases, also, and in the result, dismiss the appeals with no order as to costs.

MEHAR SINGH, C.J.—I agree.

REVISIONAL CIVIL

Before Mehar Singh, C.J. and P. C. Jain, J.

RAM PARSHAD,—*Petitioner.*

versus

RAGHBIR SINGH,—*Respondent.*

Civil Revision No. 928 of 1967.

May 21, 1969.

East Punjab Urban Rent Restriction Act (III of 1949) Section 4—Application for fixation of fair rent—No evidence produced by the parties answering requirements of section 4(2)(a) and 4(2)(b)—Rent Controller—Whether has jurisdiction to fix fair rent.

Held, that it is apparent from the language of section 4 of East Punjab Rent Restriction Act, 1949 that when one of the parties, whether the landlord