the real brother of the husband of the vendor. The parties led evidence on the issue whether the plaintiff had got the superior right of pre-emption. After the evidence had concluded and arguments were proceeding it was discovered that the plaintiff and not his father Amir Singh was the brother of the vendor's husband. Thereupon an application for amendment of the plaint under Order 6, rule 17, Code of Civil Procedure, was made and it was stated therein that it was by a sheer clerical error that wrong description of the relationship had been given in the plaint. This application was contested by the vendees, *inter alia*, on the ground that it was very much belated and the period of limitation for filing the suit had long expired with the result that a valuable right had accrued to them. The trial Judge, however, allowed the amendment. In upholding the order Pandit, J., took the view that when the relationship of the plaintiff was proved and that constituted a ground for pre-emption it could not be said that any new ground for claiming pre-emption was being introduced by the proposed amendment or that the defendants were being taken by surprise.

(9) For all these reasons, I find that the amendment of the plaint was rightly allowed and since the Courts below have found that the plaintiff has a superior right of pre-emption under clause Thirdly of section 15(1)(b) of the Punjab Pre-emption Act, the decree under appeal must be upheld. The appeal is consequently dismissed. In the circumstances of the case, I leave the parties to bear their own costs.

K.S.K.

FULL BENCH

Before R. S. Narula, H. R. Sodhi and C. G. Suri, JJ.

TUHI RAM SHARMA,—*Appellant.*

Versus

PRITHVI SINGH AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 85 of 1970
With
Civil Misc. No. 4749 of 1970
October 26, 1970

Punjab Civil Services Rules, Volume I, Part I—Rules 2.9, 2.35, 2.59, 3.11, 3.12, 3.13, 3.14, 3.15 *and* 3.16—*Interpretation and scope of—Lien of a Government servant on a permanent post—Whether can be automatically suspended—Suspended lien—Whether can be terminated without the*

consent of the Government servant—Cases falling under Rule 3.14—Competent authority—Whether has the option not to suspend the lien of a Government servant—Permanent post in the original cadre as mentioned in Rule 3.14(a)(2)—Whether must be of a transitory nature—Suspended lien—Whether can revive.

Haryana Agricultural Service Class II Rules (1947)—*Rule 7—Promotion of an Agricultural officer—Non-procuring the advice of Public Service Commission before such promotion—Whether makes the promotion invalid—Aggrieved party—Whether can claim relief in writ proceedings—State Government—Whether at liberty not to consult the Commission—Advice of the Commission—Whether to be obtained before the appointment.*

Constitution of India (1950)—*Article* 320(3)—*Requirement of Articles* 320(3)(a) *and* 320(3)(b)—*Whether distinct.*

Held, per majority (Narula and Sodhi, JJ, Suri, J. Contra.) that there is no rule in the Punjab Civil Services Rules which provides for automatic suspension of lien of a Government servant on any permanent post. Such a lien can only be suspended by a specific order of the competent authority in the circumstances enumerated in the clause (a) or clause (b) of rule 3.14 of the Rules. Once the lien of a Government servant on a permanent post has been suspended in the circumstances given in this rule, it cannot be terminated without his written consent. (Para 12).

Held, that the deliberate use of the word "unless" in the beginning of rule 3.13 relating to the suspension of lien under rule 3.14 shows that the competent authority may or may not actually suspend the lien of a Government servant even in a case which squarely falls under rule 3.14. Rule 3.13 seems to enumerate the circumstances excepted from the operation of rule 3.12 by the opening words of the latter rule. What it seems to mean is that though the previous lien would cease in normal cases by operation of rule 3.12 it would still not cease in cases enumerated in clauses (a) to (e) of rule 3.13. (Para 13)

Held, that the permanent post outside the original cadre of a Government servant to which reference is made in sub-clause (2) of clause (a) of rule 3.14 must be either in the same service, if there are more than one cadres in the service, or in a different service, but must in either event be a substantive appointment as a temporary measure. This interpretation is irresistible as rules 3.14(b) and 3.14(a)(2) must be reconciled by being read in a harmonious manner. This is also apparent from a reading of sub-clauses (1) and (3) of clause (a) of rule 3.14 the other members of the family with which sub-clause (2) resides. A duty is enjoined on the competent authority to suspend the lien of a Government servant on the permanent post held by him substantively only if he is appointed in a substantive capacity to a post of a transitory nature or to a permanent post for a transitory period. If this were not so, no appointment would remain outside the scope of rule 3.14(a). This view is further strengthened by reference to rule 3.14(d). No distinction is made in clause (d) between the suspension of a Government servant's lien under clause (a) or clause

(b) of that rule. Cases enumerated in clause (b) are of a still more transitory nature than those mentioned in clause (a) of rule 3.14. Clause (d) of rule 3.14 leaves no doubt that the appointment in substantive capacity to a permanent post referred to in clause (a) (2) of that rule must be such an appointment as may come to an end otherwise than in the normal course so as to compel the Government servant concerned to revert to the post on which his lien might have been suspended and to compel reversal of all arrangements made in connection with his earlier permanent post. A lien suspended under rule 3.14(a) (2) can revive only if a Government servant loses his substantive appointment to the subsequent permanent post.

(Para 14)

Held, (per Suri, J. Contra.) that suspension of a lien is only an initial step in the proceedings which can ultimately lead to the termination of the lien on the first post of a Government servant who has not been appointed substantively to another post. Rule 3.15(b) and the note under the rule then make the position further clear. The ultimate termination of the lien can take place only after certain formalities have been gone into. The taking of these steps would naturally consume some time and clauses (d) and (e) and the notes to rule 3.14 provide that during the period of transition the Government servant has the option to get his lien revived and to have the arrangements made for the transitional period reserved. Clause (d) provides that where a Government servant's lien on a post is suspended under clauses (a) and (b) of rule 3.14 the post may be filled substantively and the Government servant so appointed to hold it shall acquire a lien but that the arrangement can be reversed as soon as the suspended lien of the first incumbent revives. Note 2 under clause (d) shows that when a post is filled substantively under that clause the appointment made is only termed 'a provisional appointment' and the Government servant appointed to that post holds only a 'provisional lien' on the post. Clause (e) then makes it further clear that the Government servant's lien which has been or could be suspended under clause (a) revives or is resuscitated as soon as he ceases to hold a lien on a post of the nature specified in sub-clauses (1), (2) and (3) of clause (a) of rule 3.14. The competent authority is supposed to pass orders for the suspension of the lien of the Government servant on his old permanent post which he held substantively if he is appointed in a substantive capacity to another permanent post outside the cadre on which he is borne but this suspension does not take effect automatically and can follow within a reasonable time. (Para 24)

Held, (per Full Bench) that Rule 7 of Haryana Agricultural Service Class II Rules, 1947, is no doubt statutory and has the force of law but the mere transplantation of the requirements of Article 320(3) (b) of the Constitution of India to a statutory rule does not enhance the status of its requirement or makes it any more mandatory. The non-compliance of the requirement of this rule of consulting the Public Service Commission to seek its advice insofar as the cases of promotion are concerned, neither affects the validity of the appointment nor entitles the person aggrieved by such promotion to approach the High Court for relief under Article 226 of the Constitution. This, however, may not be understood to convey that the State Government is not bound to follow its own rules and is at

liberty not to consult the Commission if it so chooses, even in a case where mere consultation is required by the relevant rules. Whenever the advice of the Public Service Commission is required to be obtained in making an appointment, or an order of promotion, it must always be obtained before selecting the candidate for appointment or promotion, and it would not be in conformity with the requirements of the relevant rule if the selection, appointment or promotion is first made and then the case is sent up to the Commission for its approval, though *ad hoc* appointments for less than six months to meet an emergency are usually permitted to be made without the advice of the Commission. (Para 9)

Held, that in the matter of rigour and mandatory nature of sub-clause (b) and sub-clause (c) of clause 3 of Article 320 of the Constitution of India and also in the matter of the effect of non-compliance with the requirements of these clauses, there is not the slightest difference. For matters covered by clause (b) (i.e. appointments, promotions etc.) as well as for matters covered by clause (c) i.e. in regard to disciplinary proceedings, the duty of the concerned authorities is the same as mentioned in the opening part of clause (3) and in the closing part of that clause before the Commission and it enjoins on the Commission a duty to advise the authority concerned on the matter so referred to it. In the matter of the requirement of consultation or the rendering of the advice, no distinction is drawn between the various clauses of cases dealt with in sub-clauses (a) to (e) of clause (3) of Article 320. (Para 8)

Case referred by a Division Bench Consisting of the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice C. G. Suri, on 12th August, 1970 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice R. S. Narula, the Hon'ble Mr. Justice H. R. Sodhi and the Hon'ble Mr. Justice C. G. Suri, finally decided the case on 28th October, 1970.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 30th January, 1970, delivered by the Hon'ble Mr. Justice Bal Raj Tuli in C. W. 967 of 1969.

H. L. SIBAL, SENIOR ADVOCATE (SHRI M. R. AGNIHOTRI, ADVOCATE WITH HIM), for the Appellant.

H. S. DOABIA, AND SHRI T. S. DOABIA, ADVOCATES, for Respondent No. 1.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA WITH SHRI C. B. KAUSHIK, ADVOCATE, for Respondent No. 2.

JUDGMENT

NARULA, J.—The relevant facts leading to the filing of these four connected appeals under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court allowing two writ petitions and setting aside the order appointing Tuhi Ram Sharma

appellant as District Agricultural Officer in the Haryana Agricultural Services Class II may first be surveyed.

(2) Tuhi Ram Sharma (hereinafter referred to Sharma for the sake of brevity) joined service as Agricultural Inspector in the State of Punjab before the partition of the country in 1945. On the partition of the country, he was allocated to the State of East Punjab. Teja Singh, Bhalle Ram and Prithvi Singh joined as Agricultural Inspectors in the Department of Agriculture on different dates between 1950 and 1958. In 1959, Sharma was confirmed as Agricultural Inspector. On May 20, 1961, he was appointed against a temporary post of Block Development and Panchayat Officer in the Development Department of the State. By order Annexure 'A' to Civil Writ 967 of 1969, Sharma was made substantive permanent Block Department and Panchayat Officer with effect from April 1, 1964, the date from which that post had become permanent. From a document which has been filed before us in these appeals, and which was not before the learned Single Judge (Annexure P. 1 attached to Civil Miscellaneous 4749 of 1970), it appears that the Governor of Haryana de-confirmed Sharma as Block Development and Panchayat Officer with effect from February 26, 1969, at his own request. The factum of such de-confirmation without disclosing the date of the order had no doubt been mentioned earlier in paragraph 7 of the return of the State. On March 20, 1969, the Governor of Haryana promoted Sharma (described as "Agricultural Inspector, now working as Block Development and Panchayat Officer") temporarily as District Agricultural Officer in the Haryana Agricultural Service Class II "subject to the approval of the Haryana Public Service Commission" and posted him at Rohtak resulting in the reversion of Prithvi Singh who was working against the post of District Agricultural Officer at Narnaul to the post of Agricultural Inspector, as he was the junior most temporary District Agricultural Officer. A copy of the memorandum, dated March 20, 1969, from the Financial Commissioner Revenue and Secretary to the Government of Haryana in the Agriculture Department to the Director of Agriculture, Haryana, Chandigarh, communicating the order of the Governor of Haryana, is Annexure 'B' to the writ petitions. It was this order of promotion of Sharma from his supposed post of Agricultural Inspector to the post of District Agricultural Officer which was impugned by Prithvi Singh (who had been reverted in consequence of the impugned order) in Civil Writ 967 of 1969, and by Bhalle Ram and Teja Singh in Civil Writ 831 of 1969. As same questions of law had been raised

in both the petitions, those were allowed by the common judgment of B. R. Tuli, J., dated January 30, 1970, on two grounds, viz:—

(i) the impugned promotion had been made in violation of the mandatory requirements of rule 7 of the Haryana Agricultural Service Class II Rules, 1947 (hereinafter called the 1947 Rules) which required appointment being made to the service by promotion "by selection on the advice of Haryana Public Service Commission", inasmuch as Sharma had been promoted without obtaining the advice of the Commission which had to be taken before the selection for promotion was made, and not after having promoted Sharma and

(ii) in view of the binding earlier Division Bench judgment of this Court in *Labhu Ram and others* v. *The State of Punjab and others* (1), it was held that Sharma had on his confirmation as Block Development and Panchayat Officer on October 28, 1966, (with effeffct from April 1, 1964,—*vide* Annexure 'A') in the Development Department of the Haryana State, ceased to be a member of the Haryana Agricultural Service from which post alone he could have been promoted to the post in question, and his lien on the post of Agricultural Inspector automatically stood terminated under rule 3.12 of the Punjab Civil Services Rules. Volume I, Part I.

(3) The learned Single Judge made observations in his judgment to the effect hat but for the earlier Division Bench judgment, he would have been inclined to hold in favour of Tuhi Ram Sharma on the second point mentioned above.

(4) It is in order to get the judgment and order of the learned Single Judge reversed and to have the two writ petitions dismissed that Tuhi Ram Sharma has filed Letters Patent Appeals Nos. 85 and 86 of 1970, and the State of Haryana has filed Letters Patent Appeals 152 and 153 of 1970.

(5) Notice may be taken at this stage of the two applications filed by Sharma after the admission of his appeals. With Civil Miscellaneous 1214 of 1970, in Letters Patent Appeal 86 of 1970, and

(1) 1968 S.L.R. 319.

with Civil Miscellaneous 1215 of 1970, in Letters Patent Appeal 85 of 1970, Sharma filed copies of the order of the Governor of Haryana, dated March 5, 1970, reading as follows:—

> "The Governor of Haryana in consultation with Haryana Public Service Commission is pleased to promote Shri Tuhi Ram Sharma, Agricultural Inspector, as District Agricultural Officer in Haryana Agricultural Service Class II on regular basis and post him as such at Rohtak with effect from 1st April, 1969 (forenoon)."

Mehar Singh, C.J., as he then was) and myself allowed both the abovesaid applications for permission to place the said document on the record of these appeals subject to all just exceptions with notice of the application to the opposite side.

(6) When four appeals came up for hearing before my learned Brother Suri, J., and myself on August 12, 1970, we directed the appeals to be placed before my lord the Chief Justice for constituting a Full Bench of at least three Judges to hear and dispose of the same as the correctness of the earlier Division Bench judgment in *Labhu Ram's case* (1), had been doubted by the learned Single Judge and was being questioned before us by the appellants. After the order of reference Sharma filed Civil Miscellaneous 4749 of 1970, in Letters Patent Appeal 85 of 1970, under Order 41, Rule 27 of the Code of Civil Procedure for permission to place on the record of the Letters Patent Appeal a copy of the order of the Governor of Haryana (Exhibit P. 1 attached to that application) whereby he was "pleased to de-confirm Shri Tuhi Ram Sharma from the post of Block Development and Panchayat Officer with effect from 26th February, 1969, on his own request." Suri, J., and myself gave notice of that application to the opposite side and directed that the application be disposed of by the Bench hearing the appeals. At the hearing of the appeals, no objection was taken to the placing of the copy of the order of the Governor, dated March 5, 1970, and the order of the Governor, dated February 26, 1969, on the record of these appeals. We, therefore, permitted reference being made to the said two documents and hereby make formal order allowing Civil Miscellaneous 4749 of 1970. It is in this perspective that the four appeals have now been heard by this Full Bench.

(7) Mr. Hira Lal Sibal, Senior Advocate who appeared for Sharma and Mr. C. D. Dewan, Additional Advocate-General, Haryana,

appearing for his State, firstly assailed the correctness of the decision of the learned Single Judge on the question of the infirmity in the order of promotion of Sharma to the higher post on account of non-procuring of advance advice of the Haryana Public Service Commission. Rule 7 of the 1947 Rules, which has been held to have been violated in making Sharma's appointment is in the following terms:—

> "Appointment to the service—When a vacancy in the Service is to be filled by direct appointment, Government shall request the Commission to recommend one or more persons for appointment to such vacancy and Government may appoint to such vacancy the person or one of the persons recommended by the Commission or may ask the Commission to make further recommendations; provided that Government shall not appoint an officer directly unless his name is among those recommended by the Commission. Appointments by promotion will be made by selection on the advice of the Commission. A reference to the Commission will not, however, be required in the case of appointment to be made for a period of six months or less."

Rule 6(1) of the 1947 Rules provides that recruitment to the Haryana Agricultural Service Class II shall be made either by promotion from the Subordinate Agricultural Service and the Haryana Fisheries Subordinate Service, or by direct appointment as the Government may in each case decide. Sub-rule (2) of that rule states that appointments to the Service by promotion from the Subordinate Service shall be made by strict selection and no member of the Subordinate Service shall be deemed to have had his promotion withheld by reason of his not being selected for such appointment or to have any claim to such appointment as of right. It is the common case of all concerned that Sharma's appointment to the Service was by promotion from the Subordinate Service and not by direct appointment. Learned counsel for the appellants emphasised the distinction between the nature of requirement of consultation with the Public Service Commission for direct appointment on the one hand, and for appointment by promotion on the other. Whereas the first part of rule 7 (quoted above) contains a *mandatory* proviso prohibiting the Government from making any appointment of an officer directly to the Service "unless his name is among those

recommended by the Commission", there is no such prohibition contained in the second part of the rule relating to appointment by promotion. All that is stated in this connection regarding appointment by promotion is that such appointment "will be made by selection on the advice of the Committee." Besides the exclusion of the case of appointment by promotion as a temporary measure for a period of six months or less from the purview of the necessity of obtaining advice of the Commission, it is significant that for appointment by promotion no recommendation of the Commission is necessary, and there is no prohibition against such appointment without such recommendation. What is required under the rule for appointment by promotion is no more than the requirements of sub-clause (b) of clause (3) of Article 320 of the Constitution which reads:—

> "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—
>
> (a) * * * *.
>
> (b) on the principles to be followed in making appointments of civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
>
> (c) to (e) * * * *
> * * * * * * * * *
>
> and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, as the case may be, the Governor of the State, may refer to them:
>
> Provided that the President as respects the All-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

It has not been contested before us that the question of suitability of candidates for appointment by promotion referred to in sub-clause (b) of clause (3) of Article 320 covers the case of promotion like that impugned in the writ petition. Though the learned Single Judge has not so stated, counsel for the appellants submitted that the learned Judge was possibly led by the positive prohibition against the appointments to the Service without the recommendation of the Commission contained in rule 7 relating to direct appointments. Be that as it may, the fact remains that nothing except the advice of the Commission is required for making appointments by promotion under rule 7.

(8) The appellants then referred to the law laid down by their Lordships of the Supreme Court in *State of U. P.* v. *Manbodhan Lal Srivastava* (2), and subsequently followed in *Major U. R. Bhatt* v. *Union of India* (3), to the effect that Article 320(3)(c) of the Constitution does not confer any right on a public servant so that the absence of consultation or any irregularity in consultation with the Commission should not afford him a cause of action in a Court of law or entitle him to relief under the special powers of a High Court under Article 226 of the Constitution. Special emphasis was laid on the observations of the Supreme Court to the effect that the requirement of consultation with the Commission does not make the advice of the Commission on the relevant matters binding on the Government and in the absence of such a binding character, it is difficult to say how non-compliance with the provisions of Article 320 (3)(c) could have the effect of nullifying the final order passed by the Government. Our pointed attention was again drawn by counsel to the observations in paragraph 12 of the judgment about no remedy against any irregularity in the matter of non-compliance with Article 320(3)(c) being available to a Government servant. Mr, Harbans Singh Doabia, Senior Counsel for the writ petitioners, wanted to wriggle out of the effect of the judgment of the Supreme Court and of the earlier Division Bench judgment of this Court in *J. L. Mair* v. *State of Punjab and others* (4), by submitting (i) that those judgments related to cases of disciplinary proceedings covered by sub-clause (c) and not to cases of appointments or promotions covered by sub-clause (b) of clause (3) of Article 320 of the Constitution and (ii) that though mere non-compliance with the requirements of Article 320(3) may neither be justiciable nor fatal to the order passed

(2) A.I.R. 1957 S.C. 912,
(3) A.I.R. 1962 S.C. 1344.
(4) I.L.R. 1967 (2) Pb. & Hr. 669=1967 S.L.R. 607.

without complying with those provisions, the case is different when the principle of Article 320(3)(b) are brought into a statutory rule and a writ petitioner comes to a High Court complaining of non-compliance with such a rule. We are unable to find any force in either of these two contentions. In the matter of rigour and *mandatory* nature of the requirements of sub-clause (b) on the one hand and sub-clause (c) on the other, and in the matter of the effect of non-compliance with the requirements of those clauses, we are unable to see the slightest difference. For matters covered by clause (b) (i.e., appointments, promotions, etc.), as well as for matters covered by clause (c) (i.e., in regard to disciplinary proceedings), the duty of the concerned authorities is the same as mentioned in the opening part of clause (3) and in the closing part of that clause before the proviso. It requires the authority concerned to consult the Commission and it enjoins on the Commission a duty to advise the authority concerned on the matter so referred to it. In the matter of the requirement of consultation or the rendering of the advice, no distinction is drawn between the various clauses of cases dealt with in sub-clauses (a) to (e) of clause (3) of Article 320. That being so, the distinction sought to be drawn between the present case covered by clause (b) on the one hand and the case of disciplinary proceedings under clause (c) referred to in the judgments of the Supreme Court and this Court is really non-existent.

(9) Nor does the mere transplantation of the requirement of Article 320(3)(b) of the Constitution to a statutory rule enhance the status of the requirement or make it any more *mandatory*. Mr. Doabia referred to the judgment of D. Falshaw, C.J,. and Harbans Singh, J.. (as the learned Chief Justice then was) in *K. L. Nanda* v. *The Secretary to the State of Punjab in Administrative Department of P.W.D.* (5), and argued that so long as the relevant service rule is followed, the Government cannot make an appointment or a promotion without strict conformity with that rule. *K. L. Nanda's case* (5), is of no assistance whatever to us in deciding the point raised by the appellants. In that case the Court was concerned with the rules framed by the Punjab Government under the proviso to Article 309 of the Constitution governing the conditions of service, etc., of the staff of Buildings and Roads, and Public Health Branches of the Public Works Department. Rule 5 of those Rules contains a detailed procedure for direct appointment as well as for appointment

(5) I.L.R. 1964(2) Pb. 30=A.I.R. 1964 Pb. 302.

by promotion from Class II to that Service. The rule requires a Committee consisting of the Chairman of the Public Service Commission and the Secretary, Public Works Department to meet at intervals not exceeding one year to consider the cases of all eligible officers for promotion and to prepare a list of officers suitable for promotion to the senior-scale, on the basis of merit and suitability with due regard to seniority. The names of officers included in that list have to be arranged in order of seniority in Class II Service. The list is subject to annual revision. The list prepared by the Committee is then forwarded to the Government. Rule 5 (11) requires that "appointments to the Service shall be made by Government from this list in the order in which names have been placed by the Commission." No such rule exists in the case of Haryana Agricultural Service Class II. The requirements of rule 5 of the P.W.D. Rules referred to in *K. L. Nanda's case* (5), are directly different from those of rule 7 of the 1947 Rules. The P.W.D. Rule is substantially on the lines of the rules framed for recruitment to the Haryana Civil Service (Judicial) where the Commission holds an examination, prepares a merit list and forwards it to the High Court, and the Government is bound to make appointments from that list in the order in which the names of the candidates are set out therein. If in such a case, the Government chooses to make an appointment contrary to the *mandatory* requirements of the Service Rules, the High Court is bound to interfere. But in the present case, as already stated, there is no such requirement. The simple requirement of consulting the Commission to seek its advice would not, in my opinion, be equal to the kind of requirement under rule 5 of the P.W.D. Rules. There is no doubt that rule 7 is a statutory rule and has the force of law. At the same time, the requirements of the rule being no other than those of Article 320(3)(b), non-compliance with those requirements, insofar as the cases of promotion are concerned, neither affects the validity of the appointment nor entitles the person aggrieved by such promotion to approach this Court for relief under Article 226 of the Constitution. Nothing stated by us in this connection may be understood to convey that the State Government is not bound to follow its own rules and is at liberty not to consult the Commission if it so chooses, even in a case where mere consultation is required by the relevant rules. This aspect of the matter was emphasised by their Lordships of the Supreme Court in *State of U. P.* v. *Manbodhan Lal Srivastava* (2). In this view of the matter it is unnecessary to decide whether the appointment of Sharma in a temporary capacity subject to the approval of the Public Service Commission was an order passed in conformity with rule 7 or not.

I may, however, observe that we are inclined to agree that wherever the advice of the Public Service Commission is required to be obtained in making an appointment, or an order of promotion, it must always be obtained before selecting the candidate for appointment or promotion, and it would not be in conformity with the requirements of the relevant rule if the selection, appointment or promotion is first made and then the case is sent up to the Commission for its approval; though *ad hoc* appointments for less than six months to meet an emergency are usually permitted to be made (as in the present case) without the advice of the Commission. For all these reasons we hold that the learned Single Judge did not come to a correct conclusion while holding that the impugned order of promotion of Sharma suffered from a legal infirmity on account of want of advance consultation with the Commission before making temporary appointment to the Class II Service on March 20, 1969.

(10) This takes us to the second point around which the major part of the controversy has been raked. In order to appreciate the rival contentions of the parties on this point, it appears to be necessary to notice the provisions of rules 2.9, 2.35, 2.59, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16 of the Punjab Civil Services Rules, Volume I, Part I. These rules read as follows:—

"2.9. Cadre means the strength of a service or a part of a service sanctioned as a separate unit.

2.35. Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively.

Note.—In the case of a Government servant who holds no lien on any appointment except that which it is proposed to abolish, the correct practice in deciding the exact date from which the appointment is to be abolished, would be to defer the date of abolition up to the termination of such leave as may be granted.

2.59. Tenure post means a permanent post which an individual Government servant may not hold for more than a limited period.

3.11. (a) Two or more Government servants cannot be appointed substantively to the same permanent post at the same time.

(b) A Government servant cannot be appointed substantively except as a temporary measure, to two or more permanent posts at the same time.

(c) A Government servant cannot be appointed substantively to a post on which another Government servant holds a lien.

3.12. Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

3.13. Unless his lien is suspended under rule 3.14 or transferred under rule 3.16, a Government servant holding substantively a permanent post retains a lien on that post—

(a) while performing the duties of that post;

(b) while on foreign service, or holding a temporary post, or officiating in another post;

(c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay; in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;

(d) except as provided in Note below while on leave other than refused leave granted after the date of compulsory retirement under rule 8.21; and

(e) while under suspension.

Note.—When a Government servant, holding substantively the post of a Chief Engineer of the Public Works Department, takes leave immediately on vacating his post he shall during the leave be left without a lien on any permanent post.

The word 'vacate' as used in this note refers only to vacation as a result of completion of tenure on attainment of Superannuation.

3.14. (a) A competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity—

(1) to a tenure post; or

(a) to a permanent post outside the cadre on which he is borne; or

(3) provisionally, to a post on which another Government servant would hold a lien, had his lien not been suspended under this rule.

(b) A competent authority may, at its option, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien, for a period of not less than three years.

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a Government servant's lien on a tenure post may, in no circumstances, be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

(d) If a Government servant's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall acquire a lien on it: Provided that the arrangements shall be reversed as soon as the suspended lien revives.

"*Note* 1.—This clause shall also apply to a post in a selection grade of a cadre.

Note 2.—When a post is filled substantively under this clause, the appointment will be termed 'a provisional appointment'; the Government servant appointed will hold a provisional lien on the post; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

(e) A Government servant's lien which has been suspended under clause (a) of this rule shall revive as soon as he

ceases to hold a lien on a post of the nature specified in sub-clause (1), (2) or (3) of that clause.

(f) A Government servant's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India or on foreign service or to hold a post in another cadre; Provided that a suspended lien shall not revive because the Government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India or on foreign service or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in sub-clause (1), (2) or (3) of clause (a).

Note.—When it is known that a Government servant on transfer to a post outside his cadre is due to retire on superannuation pension within three years of his transfer his lien on the permanent post cannot be suspended.

3.15. (a) Except as provided in clause (c) of this rule and in note under rule 3.13, a Government servant's lien on a post may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of clause (a) of rule 3.14 the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government servant remains in Government service.

(c) Notwithstanding the provisions of rule 3.14 (a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of compulsory retirement under rule 8.21; or on his appointment substantively to the post of Chief Engineer of the Public Works Department.

Note.—In a case covered by rule 3.14(a)(2) where a Government servant is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne, rule 3.15(b) precludes permanently the termination of his suspended lien unless and until a written request

to this effect is received from him. The result is that it is possible for such a Government servant to stop his suspended lien being removed from the parent cadre indefinitely and, thus cause inconvenience to the parent office such a situation may be met by appropriate executive action being taken by the controlling officer who may refuse his consent to such a Government servant being confirmed or retained in a permanent post outside his cadre unless he agrees to his lien on a permanent post in his parent office being terminated.

3.16. Subject to the provisions of rule 3.17 a competent authority may transfer to another permanent post in the same cadre the lien of a Government servant, who is not performing the duties of a post to which the lien relates; even if that lien has been suspended."

Though no formal orders confirming Labhu Ram and others in the S.V./J.T. cadre (the superior cadre) had been passed, it was claimed on behalf of the State that having served for more than three years in the superior cadre Labhu Ram and others had by operation of the specific rule of probation relevant to that service become automatically confirmed and this had resulted in their acquiring lien on their respective posts in the S.V. cadre. On that basis it was claimed that by operation of rule 3.12 of the Punjab Civil Services Rules Labhu Ram and others had, on their becoming permanent in the S.V. cadre posts, ceased to hold the lien previously acquired by them on their respective posts in the J.V. cadre. The Division Bench, which decided the *case of Labhu Ram and others* (1) gave effect to that plea. It was not claimed by any of the parties in that case that the lien of the writ petitioners had either been suspended by any order passed under rule 3.14, or should be deemed to have automatically been suspended. Learned counsel for both sides appearing before us in the present case conceded that no fault can be found in the judgment of the Division Bench in the *case of Labhu Ram and others* (1) to the extent to which it goes, and there is no dispute about the manner in which rule 3.12 operates, unless any particular case is sought to be brought within any of the exceptions to that rule contained in the other Punjab Civil Services Rules. It is, therefore, unnecessary to refer any further to the Division Bench judgment of this Court (S. B. Capoor, A.C. J. and myself) in the *case of Labhu Ram and others* (1).

(11) Another ground may be cleared at this stage before proceeding to the question of interpretation of the relevant rules.

This relates to the effect of the order of de-confirmation passed by the Governor at the request of Sharma. The argument advanced on behalf of the appellants is that Sharma continued to be a member of the Agricultural Service because he did not cease to hold lien on the post of Agricultural Inspector, which lien had been previously acquired by him on that post because rule 3.15(b) absolutely barred the Government from terminating his lien on the said earlier post so long as Sharma remained in Government service as his case was covered by sub-clause (2) of clause (a) of rule 3.14, inasmuch as he had been appointed in a substantive capacity to the permanent post of Block Development and Panchayat Officer outside Agricultural Service. On the other hand it was contended on behalf of the writ petitioner-respondents that rule 3.12 had operated in this case or the confirmation of Sharma as Block Development and Panchayat Officer in the Development Department on October 28, 1966, with effect from April 1, 1964, and having ceased to be an Agricultural Inspector after April 1, 1964, Sharma could not possibly have been considered for promotion from that post to the post of District Agricultural Officer. Whichever of the contentions may be accepted, the order of the Governor de-confirming Sharma with effect from February 26, 1969, has no effect on the legal aspect of the matter. If rule 3.12 operated in this case at all, it did the mischief either in 1964, or in any case on October 28, 1966, when the order of Sharma's confirmation in the Development Department was passed. If he ceased to hold lien on the post of Agricultural Inspector either in 1964, or on October 28, 1966, there is no provision in any law or rule resuscitating a lion which had once ceased to exist. I am unable to agree with the contention of Mr. Sibal, that the effect of the order of de-confirmation, with effect from February 26, 1969, was that Sharma should be deemed never to have been confirmed in the Development Department, and never to have been appointed in a substantive capacity to the permanent post of Block Development and Panchayat Officer. Nothing done on February 26, 1969, can, therefore, have any effect on the question which faces us.

(12) Coming back to the main question there is no doubt that clause (b) of rule 3.15 prohibits the termination of a lien acquired by a Government servant on any permanent post except on the written request of the Government servant concerned in a case covered by sub-clause (2) of clause (a) of rule 3.14. It is equally clear that rule 3.12 is not absolute in the sense that there are no exceptions to it. The opening words of that rule clearly show that despite what is stated therein, a Government servant on substantive

appointment to any permanent post may not acquire a lien on that post resulting in his ceasing to hold any lien previously acquired by him on any other post if his is a case otherwise provided for in the Punjab Civil Services Rules. The only category in which counsel for the appellants want Sharma to be placed in order to make an exception to the purview of rule 3.12 is the one contained in rule 3.14 (a) (2). It is not the case of the appellants that on appointment to the permanent post of Block Development and Panchayat Officer in substantive capacity by order, dated October 28, 1966. Sharma did not acquire a lien on that post. All that is contended on behalf of the appellants is that despite his having acquired lien on the post of Block Development and Panchayat Officer, he did not cease to hold lien on the post of Agricultural Inspector as his earlier lien must be deemed to have been suspended under rule 3.14(a) (2), which does not leave any option with the Government in that matter. It may be noticed at this stage that it is the common case of both sides that in fact no order suspending Sharma's lien on the post of Agricultural Inspector was ever passed by any authority. It was also conceded by counsel on both sides that there was no rule which provided for automatic suspension of lien of a Government servant on any permanent post and that such lien could only be suspended by a specific order of the competent authority in the circumstances enumerated in clause (a) or clause (b) of rule 3.14. Great emphasis was laid by the appellants on the note given under rule 3.15 of the Punjab Civil Services Rules, Volume I, Part I. I am unable to find any extra support to the case of the appellants on the basis of that note. The note presupposes a suspended lien. Once the lien of a Government servant on a permanent post has been suspended in the circumstances given in rule 3.14(a)(2), it cannot be terminated without his written consent. But in this case it is admitted that Sharma's lien was never suspended either by operation of any rule or by any order of competent authority at any time. The question of terminating a suspended lien never, therefore, arose in this case. For the same reason the question of asking Sharma to give his written request for terminating any suspended lien did not arise.

(13) Various factors clearly indicate that the learned Single Judge was correct in holding that Sharma's lien on the post of Agricultural Inspector had come to an end by operation of rule 3.12. Rule 3.11(b) prohibits the appointment of a Government servant substantively to two or more permanent posts at the same time except as a temporary measure. It is nobody's case that Sharma had been appointed either as Agricultural Inspector as a temporary measure

or had been confirmed as Block Development and Panchayat Officer as a temporary measure. The case did not, therefore, fall within the exception to the mandatory provision of rule 3.11(b). It is only a projection of the same principle that is contained in rule 3.12. The moment a Government servant is appointed to a permanent post in a substantive capacity otherwise than by way of a temporary measure, his lien acquired on some earlier permanent post must automatically cease. Any other interpretation of rule 3.12 would completely nullify the bar created by rule 3.11(b). Secondly, it is clear from rule 3.13 that a Government servant holding substantively a permanent post retains a lien on that post only in the circumstances enumerated in clauses (a) to (e) of that rule unless his lien has been suspended under rule 3.14 or transferred under rule 3.16. Sharma's lien was admittedly never suspended by any order of a competent authority (or in the matter of that by the order of any authority at all) under rule 3.14. Nor was his lien on the post of Agricultural Inspector at any time transferred under rule 3.16. His case, therefore, did not fall within any of the two exceptions enumerated in the opening sentence of rule 3.13. Inasmuch as it is admitted that insofar as the post of Agricultural Inspector was concerned, Sharma's case did not fall within any of the clauses (a) to (e) of rule 3.13, it cannot possibly be argued that despite these facts he continued to retain his lien on that post. The deliberate use of the word "unless" in the beginning of rule 3.13 relating to the suspension of lien under rule 3.14 shows that the competent authority may or may not actually suspend the lien of a Government servant even in a case which squarely falls under rule 3.14. Rule 3.13 seems to enumerate the circumstances excepted from the operation of the rule 3.12 by the opening words of the latter rule. What it seems to mean is that though the previous lien would cease in normal cases by operation of rule 3.12, it would still not cease in cases enumerated in clauses (a) to (e) of rule 3.13.

(14) Thirdly, it is obvious that the permanent post outside the original cadre of a Government servant to which reference is made in sub-clause (2) of clause (a) of rule 3.14 must be either in the same service, if there are more than one cadres in the service or in a different service but must in either event be a substantive appointment as a temporary measure. Reference to such an appointment has been made in *Parshotam Lal Dhingra* v. *Union of India* (6). This interpretation is irresistible as rules 3.14(b) and 3.14(a)(2) must be reconciled by being read in a harmonious manner.

(6) A.I.R. 1958 S.C. 36 at p. 42.

This is also apparent from a reading of sub-clauses (1) and (3) of clause (a) of rule 3.14—the other members of the family with which sub-clause (2) resides. A duty is enjoined on the competent authority to suspend the lien of a Government servant on the permanent post held by him substantively only if he is appointed in a substantive capacity to a post of a transitory nature or to a permanent post for a transitory period. If this were not so, no appointment would remain outside the scope of rule 3.14(a). This view is further strengthened by reference to rule 3.14 (d). No distinction is made in clause (d) between the suspension of a Government servant's lien under clause (a) or clause (b) of that rule. Cases enumerated in clause (b) are of a still more transitory nature than those mentioned in clause (a) of rule 3.14. Clause (d) of rule 3.14 leaves no doubt in my mind that the appointment in a substantive capacity to a permanent post referred to in clause (a) (2) of that rule must be such an appointment as may come to an end otherwise than in the normal course so as to compel the Government servant concerned to revert to the post on which his lien might have been suspended and to compel reversal of all arrangements made in connection with his earlier permanent post. A lien suspended under rule 3.14(a)(2) can revive only if a Government servant loses his substantive appointment to the subsequent permanent post.

(15) Fourthly a reference to clause (e) of rule 3.14 shows that a suspended lien can be revived only on the newly acquired lien on the post referred to under rule 3.14(a)(2) coming to an end. That also lends support to the argument of Mr. Doabia, who appeared for the writ petitioner-respondents that the lien in the new post referred to in rule 3.14(a)(2) must only be of such a character which is capable of ceasing otherwise than by Superannuation. etc.

(16) Lastly it is admitted on behalf of Sharma, that he did acquire a lien on the post of Block Development and Panchayat Officer on his confirmation in that permanent post, by order of the Governor, dated October 28, 1966. This in my opinion, resulted in automatic termination of Sharma's lien on the post of Agricultural Inspector particularly when it is admitted that no order of any competent authority had ever been passed suspending his lien on the post of Agricultural Inspector. The latest date on which his lien on the post of Agricultural Inspector in the Agriculture Department ceased was October 28, 1966. Once that lien had gone, no provision of law could revive it as the said lien had admittedly never been suspended. That being so, Sharma could not possibly have been considered for

promotion from a post which he did not hold at the time when the Governor appointed him to the higher post in that Department by the impugned order Annexure 'B'. In this view of the matter no exception can be taken to the order of the learned Single Judge on the second point. It is significant that probably in order to meet the argument of the type advanced by the appellants that fundamental rule 14(a)(2) which corresponded to rule 3.14(a)(2), and fundamental rule 14-A(b) which corresponded to rule 3.15(b) of the Punjab Rules were deleted by the Central Government in 1967, and by the Punjab Government on July 12, 1967. According to the learned Additional Advocate-General for the State of Haryana, such an amendment has not been made in the State of Haryana. If a corresponding amendment had been made in Haryana also, the very foundation of the present argument of the appellants would have vanished. Since we were given to understand that the original rule has continued in Haryana at all material times, I have dealt with the arguments addressed on this part of the case. In the view I have taken of the interpretation of the relevant rules and the scope of their application, it is unnecessary to deal with the lengthy arguments addressed by Mr. Harbans Singh Doabia to canvass that the word "shall" in the opening part of rule 3.14 should be read in the same sense as the word "may" in accordance with certain well established principles of interpretation of statutes.

(17) Despite the success of the appellants on the first point relating to the effect of non-consultation with the Haryana Public Service Commission, these appeals must fail as the decision of the learned Single Judge on the other point has been affirmed. All these four appeals are, therefore, dismissed, but in the peculiar circumstances of the case, it does not appear to be necessary to burden any of the parties with costs of the other.

H. R. Sodhi, J.—(18) I am in entire agreement with my brother Narula J. and cannot usefully add anything.

C. G. Suri, J.—(19) I regret that my lot is to voice a view which, by the rule of numbers, may lose much of its meaning in this Court.

(20) The facts of the case have been given by my learned brother, Narula, J., and I agree with every word and mark of punctuation in the earlier part of My Lord's judgment in so far as it deals with the question of the necessity of prior approval or consultation with the Haryana Public Service Commission and the

effect of the competent authority's failure to seek this approval in time. I could not, however, bring myself round to agreeing with my learned brother on the second point.

(21) The set of rules placed before us must receive a harmonious construction as if no rule was inconsistent with another and every rule had a place assigned to it in a unified or integrated scheme of things. The Hon'ble Judges of the Supreme Court have held in *Arjan Singh and another* v. *The State of Punjab and others*, (7), that every statute has to be construed as a whole and the construction given should be a harmonious one. No rule can be discarded as unnecessary and no rule may be treated as more important than the other. It can be that the framers of the rules have, to begin with, placed an ideal before us that they have made it clear at the same time that for so many practical considerations like affording security of tenure to Government employees or to meet as far as possible their healthy aspirations at improving their future prospects, it may not always be possible to attain the ideal in its purely utopian form and that the pet conception of the ideal may have to be hedged in with practical considerations to give that abstract ideal a proper shape.

(22) The pertinent rules and definitions have been reproduced in the judgment recorded by my learned brother. Though the expressions 'substantive appointment' or 'the holding of a post substantively' have been frequently used, these expressions have not been defined and one has to be clear in one's mind about the exact meaning of these expressions before one can proceed to interpret the rules. Luckily for us their Lordships of the Supreme Court have explained the meanings of such expressions in *Parshotam Lal Dhingra* v. *Union of India*, (6). According to this ruling the appointment of a Government servant to a permanent post may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a lien on that post. The Government cannot terminate his services except on the happening of certain contingencies which are mentioned in the ruling. A substantive appointment against a permanent post may seem to confer a permanent tenure which could be distinguished from the temporary tenure on appointments on probation or on officiating basis.

(7) 1969 C.L.J. 1.

According to this ruling we cannot visualize a substantive appointment against a permanent post on a temporary basis. The position was summed up by the Hon'ble Judges of the Supreme Court in *Parshotam Lal Dhingra's case*, (6) in the following words :—

> "In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him or proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service."

(23) The heading of the chapter containing the rules can then give us an indication about the main theme and it can guide us in the interpretation of the rules. The heading in the beginning of the set of rules that we are called upon to interpret indicates that these rules deal with 'substantive appointments and liens'. Wherever the rules contemplate a time-lag between a substantive appointment to a second post and the termination of a lien on the first post, the case visualized is obviously of an appointment on substantive basis conferring a permanent lien on the second post. It may appear highly unjust that a permanent lien on the first post could be taken away when the appointment to the second post is only a temporary basis which cannot possibly confer a permanent lien. A Government servant so to say would lose the permanent lien on the first post in the hope of gaining a temporary lien on the second post and the rules could not possibly have contemplated

such an unjust state of things. The obvious meaning of clause (b) of rule 3.11 is that a Government servant can be appointed substantively at the same time to two or more permanent posts; but only as a temporary measure. There is nothing to suggest any where in these rules that this clause would apply only in cases where a Government servant is appointed substantively against a permanent post *on a temporary basis only. Parshotam Lal Dhingra's case,* (6), may appear to be an authority in support of my view that there cannot be any temporary appointment on a substantive basis against a permanent post and least of all could such an appointment, if it was at all possible, have the effect of terminating a permanent lien when all that the Government servant gains as a substitute is a temporary lien. The time-lag provided in the rules is only to enable the machinery for the final termination of the lien on the first post to come into motion and to have its full course and the time-lag has obviously been provided to make arrangements for the transitional period while the machinery is in motion. The duty cast on the competent authority in the beginning of rule 3.14 (a) may be directory or mandatory but in either case the suspension of the lien of the Government servant on a permanent post which he holds substantively does not take place automatically and has to wait for the machinery to set into motion. The Government servant is not to suffer if the competent authority, by inertia, or oversight, fails to pass orders within a reasonable time with regard to the suspension of the lien of the Government servant. Safeguards may appear to have been provided for the benefit of the permanent Government servant at different stages of the process and if the competent authority has failed to give the Government servant the benefit of a safeguard at an early stage of the proceedings, that would not mean that the benefit of the safeguards provided to the Government servant at later stages of the proceedings have also been taken away. An analogous provision that comes to mind in Article 311(2) of the Constitution of India which lays down the procedure for departmental enquiries leading to the dismissal, removal or reduction in rank of a Government servant. Show cause notices are required to be given at two different stages of the departmental inquiry. The statutory rules also provide for the suspension of the Government servant at an initial stage of the departmental inquiry. If the controlling authority fails to pass an order of suspension or omits to give a show cause notice at the first stage of the inquiry can it be said that the Government servant has, for the omission of the controlling authority been deprived of the later safeguard with regard to the service on him of a show-cause

notice and reasonable opportunity of making a representation about the penalty proposed to be awarded against him. The controlling authority's failure to observe the proper procedure in the initial stages of the proceedings cannot operate to the prejudice of the Government servant though in the present case the fact that the State Government has also taken up the employees' cause seem to have created the wrong impression that the master and servant could be equated as one party.

(24) Suspension of a lien is only an initial step in the proceedings which can ultimately lead to the termination of the lien on the first post of a Government servant who has been appointed substantively to another post. Rule 3.15(b) and the note under the rule then make the position further clear. The ultimate termination of the lien can take place only after certain formalities have been gone into. The taking of these steps would naturally consume some time and clauses (d) and (e) and the notes to rule 3.14 provide that during the period of transition the Government servant has the option to get his lien revived and to have the arrangements made for the transitional period reversed. Clause (d) provides that where a Government servant's lien on a post is suspended under clauses (a) or (b) of rule 3.14 the post may be filled substantively and the Government servant so appointed to hold it shall acquire a lien but that the arrangement can be reversed as soon as the suspended lien of the first incumbent revives. 'Revive' and 'resuscitate' are synonymous terms and one cannot escape the application of a particular rule by the use of one synonym rather than the other. Note 2 under clause (d) shows that when a post is filled substantively under that clause the appointment made is only termed 'a provisional appointment' and the Government servant appointed to that post holds only a 'provisional lien' on the post. Clause (e) then makes it further clear that the Government servant's lien which has been or could be suspended under clause (a) revives or is resuscitated as soon as he ceases to hold a lien on a post of the nature specified in sub-clauses (1), (2) and (3) of clause (a) of rule 3.14. The competent authority is supposed to pass orders for the suspension of the lien of the Government servant on his old permanent post which he held substantively if he is appointed in a substantive capacity to another permanent post outside the cadre on which he is borne but this suspension does not take effect automatically and can follow within a reasonable time. What would be a reasonable time would depend on the circumstances of each case and even if we are inclined to be of the view that the competent authority has not taken the

necessary step indicated in the beginning of rule 3.14(a) within a reasonable time, the Government servant is not to be penalized and cannot be deprived of the safeguards provided by the rules as a condition precedent to the termination of his permanent lien on the first post. The learned Single Judge was inclined to give Sharma the benefit of rule 3.15 and the note thereunder and if he felt helpless to do so, it was only because he thought that the Division Bench ruling in *Labhu Ram's case*, (1), was binding on him and prevented him from giving Sharma that benefit. I agree with my learned brothers, however, that Labhu Ram's case has no bearing on the case now before us.

(25) In view of the provisions of clauses (d) and (e) of rule 3.14 the order of deconfirmation (annexure 'P1') passed by the Governor at the request of Sharma is not devoid of all meaning. My learned brothers were inclined to ignore this order as altogether ineffective even before they had proceeded to the question of the interpretation of the relevant rules. Sharma was given certain options under clauses (d) and (e) and the fact that the order of deconfirmation was passed on his request is also significant. So far as I can see there is nothing in the rules which may seem to prevent the competent authority even at this late stage to pass a formal order of suspension of Sharma's lien on his old post and thereby to set in motion the machniery or operation of clauses (d), (e) and (f) of rule 3.14. Sharma has not been guilty of any acts of omission or delay and cannot be made to suffer for some one else's defaults. Before the question of the termination of his lien to the old post is taken up by the competent authority, Sharma has to be given a chance to exercise his rights and options under rules 3.14 and 3.15 and be made to agree in writing to the termination of his lien against the old post whether by persuasion or by executive action indicated in the note under rule 3.15. If the machinery has been slow in moving, Sahrma being not the man at the helm of affairs has to get the benefit of the extra time gained in this manner to decide about his rights and options. Rules 3.14 and 3.15 provide certain safeguards which have to be secured to Sharma, come what may, and even if the competent authority has to put the machinery in proper gear and go in reverse over a part of the distance. The order of deconfirmation passed by the Governor during the pendency of this writ petition was an attempt in the direction indicated and even if it does not conform strictly with the letter of the statute, it is not lacking in true spirit. If the delay in passing an order of suspension of Sharma's lien has not precluded the competent authority from terminating the lien, then in order to

enforce the termination of the lien, he preliminary step of suspension of the lien has to be taken. Rule 3.11(b) says that Sharma could have been appointed substantively to two or more posts at the same time but in this case the period which should have remained short, has been allowed to grow long for no fault of Sharma.

(26) As I have already said earlier, the benefit of these clauses of rule 3.14 cannot be denied to Sharma because the blame for the omission to take a formal step can be laid at the door of the competent authority. The omission of the competent authority cannot have the effect of depriving Sharma of the safeguards provided by the rules. The non-compliance of a procedural formality by the competent authority at the initial stage of the process cannot make Sharma's position worse off than it would have been if the competent authority had observed all the formalities. If Sharma was to adopt a dog in the manger mentality against the spirit of rule 3.12, the note under rule 3.15 suggested the way out of the stalement by appropriate executive action being taken by the controlling officer. Sharma cannot be worse off in the present state of affairs when no formal order of suspension of his lien has been passed by the competent authority than he would have been if orders for the suspension of his lien on the first post had been passed within a reasonable time as required by the opening sentence of rule 3.14(a).

(27) We are not to be guided by the amendments made in their rules by the Governments at the Centre or in Punjab. We cannot force on the Haryana State Government any amendments which they have not decided to make in their rules so far. Any other view would amount to our trying to usurp the powers of delegated legislation of the State Government. The majority view, however, is that amendments or no amendments, the decision must remain unaffected.

(28) In my opinion these four appeals filed under clause X of the Letters Patent should be accepted and C.W. Nos. 831 and 967 of 1969 should be dismissed with costs throughout.

ORDER OF THE COURT

(29) In view of the judgment of the majority all these four Letters Patent Appeals are dismissed though without any order as to costs.

K. S. K.