

STATE OF HARYANA AND OTHERS

v.

RAJINDRA SAREEN

November 22, 1971

[C. A. VAIDIALINGAM AND K. K. MATHEW, JJ.]

Punjab Public Relations Department (Gazetted) Service Rules 1958—Post of Deputy Director (Press) held for more than three years without order of termination of probation being passed—Post held in officiating capacity—Proviso to Rule 10(3) does not apply.

Civil Service—Appointment made co-terminus with post—Termination of appointment while post continues attracts Art. 311(2) of Constitution.

Mala fides—Several incidents cited to show mala fides—Cumulative effect of all allegations must be seen—Considering each incident by itself not proper.

The respondent joined the service of the composite State of Punjab and Haryana on June 22, 1957 as the State's Press Liaison Officer at Delhi in the Public Relations Department of the State. The original appointment was to last till February 28, 1958 but was continued by orders passed from time to time. The respondent went on leave for about six months from November 21, 1959 to May 18, 1960 with permission to act in Pakistan as a Special Correspondent of The Hindustan Times Delhi. On return from leave he was posted in the same service in the post of Deputy Director (Field) from July 19, 1960 to September 19, 1960. Later on he was again posted as Officer on Special Duty which was also an equivalent post, from September 20, 1960 to June 26, 1962. When he crossed the efficiency bar in 1960 his salary was raised with effect from December 24, 1960. He was appointed as Deputy Director (Press) which post was held by him from June 27, 1962 to June 14, 1966. By order dated June 24, 1966 the Governor of Punjab appointed him as State Press Liaison Officer with effect from June 14, 1966 and he was posted to Delhi. This post had been kept in abeyance during the period when he was Deputy Director (Press). On the reorganisation of the composite State of Punjab and its bifurcation into the States of Punjab and Haryana the post of State Press Liaison Officer, Delhi, held by him was allocated to the State of Haryana with effect from November 1, 1966. He was also allotted to the State of Haryana. He remained on deputation with the Punjab Government from December 1, 1966 to March 24, 1967 and again resumed his duty as State Press Liaison Officer, New Delhi, from March 25, 1967 under the Government of Haryana. By order dated October 31, 1968 the Haryana Government terminated his services. The respondent filed a writ petition in the High Court. The High Court rejected the plea of *mala fides* raised by the respondent but allowed the writ petition holding in the respondent's favour that (a) under Rule 10(3) of the Gazetted Service Rules the respondent on completing three years service as Deputy Director (Press) had become a permanent employee of the Government; (b) the appointment of the respondent to the post of State Press Liaison Officer was co-terminus with the existence of the post and the respondent was entitled to continue in the post while it was in existence *i.e.* up to February 28, 1969. On the above grounds the High Court quashed the order dated October 31, 1968. Following the High Court's order the State Government re-instated the appellant but filed an appeal in this Court challenging the High Court's judgment. Apart from the merits, the Court

A had to consider the preliminary objection of the respondent to the effect that in view of the fact that the respondent had been re-instated in service the question of the validity of the original order passed on October 31, 1968 terminating the services of the respondent, did not survive for consideration.

B HELD : (i) The circumstance that the respondent was re-instated in service by the order dated December 5, 1969 could not and does not debar the State from challenging the judgment of the High Court. In fact immediately after passing the order dated December 5, 1969, the State had been taking very active steps to challenge the decision of the High Court. It followed that the State was entitled in the present appeal to challenge the decision of the High Court setting aside the order dated October 31, 1968. The preliminary objection must accordingly be over-ruled. [457 D-E]

C (ii) The approach of the High Court in considering the allegation of *'mala fides'* was not proper. The High Court had taken each allegation by itself and had held that it was not sufficient to establish *mala fides*. The proper approach should have been to consider all the allegations together and find out whether those allegations had been made out and whether those allegations when established were sufficient to prove malice or ill-will on the part of the officials concerned and whether the impugned order was the result of such malice or ill-will. [472 B-C]

D On the facts of the case the plea of *mala fides* alleged by the respondent against the second and third appellants could not be accepted [475 F]

Principles laid down in *S. Pratap Singh v. State of Punjab*, [1964] 4 S.C.R. 733, followed.

E (iii) When the respondent was appointed Deputy Director (Press) the former incumbent of the post R who was promoted as Joint Director, continued to have lien on it under r. 3.14 of the Civil Service Rules. Under r. 3.11(c) of the Civil Service Rules a Government servant cannot be appointed substantively to a post on which another Government servant holds a lien. Therefore on the date when the respondent was appointed as Deputy Director (Press) he could not have been appointed to that post substantively as R was having a lien on the post. The various payslips which are on record also show that the respondent's appointment must have been on an officiating basis as defined in r. 2.42 of the Civil Service Rules. The objections of the Public Service Commission to the respondent's appointments as Deputy Director (Press) were also on record. All these circumstances were against the contentions of the respondent of his having been appointed against a permanent vacancy. [481 A-D]

F The essential requisite for the applicability of r. 10 is that a person must have been appointed against a permanent vacancy. As the respondent had been working in the post of Deputy Director (Press) only in an officiating capacity the question of extending his probation or confirming him under r. 10 of the Gazetted Service Rules did not arise, and if so the question of calculating the total period of probation of three years which is necessary for the application of the Proviso to r. 10(3) did not arise. [482 G]

G The circumstance that with effect from April 1, 1964 the post of Deputy Director (Publicity Material) was made permanent could not help the respondent as he had not been at all appointed in the first instance against a permanent vacancy. The view taken by the High Court, to the contrary, could not be sustained. [484 E]

H *State of Punjab v. Dharam Singh*, [1968] 1 S.C.R. 1, *C.I.T., Mysore v. Indore Mercantile Bank, Ltd.*, [1959] Supp. 2 S.C.R. 256, *Tahsildar*

Singh v. State of U.P., [1959] Supp. 2 S.C.R. 875, *State of Madhya Pradesh v. Lal Bhargavendra Singh*, [1966] 2 S.C.R. 56, *Dr. Deep Kaur v. State of Punjab*, [1967] 1 S.L.R. 34 and *Devi Shanker Parbhakar v. State of Haryana* [1971] 73 P.L.R. 644, referred to.

(iii) No orders had been placed before the Court to show that the appointment of the respondent as State Press Liaison Officer was on a temporary basis and was not co-terminus with the post. On the other hand the Assistant Accounts Officer had issued payslip dated April 22, 1968 which was on record to the Treasury Officer, Delhi stating that the payslip issued in favour of the respondent who was the State Press Liaison Officer, Haryana, New Delhi, on August 31, 1967 may be deemed as operative upto and inclusive of February 28, 1969. It was not disputed that at the time when the said payslip was issued, the duration of the post had been extended upto February 28, 1969. In view of all the circumstances it is reasonable to infer that the appointment of the respondent as State Press Liaison Officer was co-terminus with the continuance of the post. It followed that the State had no power to terminate the services of the respondent when the post itself was continuing. If any action by way of disciplinary proceedings was being taken then the State should have complied with Art. 311(2) of the Constitution which they had admittedly not done in this case. The order of the State Government dated October 31, 1968 terminating the services of the respondent was accordingly held to be illegal. [489 H, 490 A, E, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1543 of 1970.

Appeal from the judgment and order dated September 18, 1969 of the Delhi High Court in Civil Writ No. 851 of 1968.

V. M. Tarkunde, C. D. Dewan, O. N. Mohindroo and R. N. Sachthey, for the appellants.

M. K. Ramamurthi, P. P. Rao and T. V. S. Narasimhachari, for the respondent.

The Judgment of the Court was delivered by

Vaidialingam, J. This appeal by the State of Haryana, the Chief Minister of the State and the Registrar Co-operative Societies, on certificate, is directed against the judgment and order of the High Court of Delhi dated September 18, 1969 allowing Civil Writ No. 851 of 1968 and quashing the order of the State Government dated October 31, 1968 terminating the services of the respondent.

Before we proceed to set out the facts leading up to the filing of the writ petition by the respondent, it is necessary to deal with a preliminary objection to the maintainability of the appeal that has been raised by Mr. M. K. Ramamurthy, learned counsel for the respondent. The objection is that the order dated October 31, 1968 terminating the services of the respondent, which was quashed

A by the High Court and which order again is sought to be cancelled in the appeal has been cancelled by the State on December 5, 1969. In consequence of the latter order, the counsel pointed out, the respondent has been reinstated in service. It is the contention of Mr. M. K. Ramamurthy that in view of the fact that the officer has now been reinstated in service, the question of the validity of the original order passed on October 31, 1968 terminating the services of the respondent no longer survives for consideration in this appeal.

This preliminary objection has been contested by Mr. V. M. Tarkunde, learned counsel for the appellants.

C We are satisfied that the preliminary objection, raised on behalf of the respondent, to the maintainability of the appeal, cannot be sustained for the reasons stated below. The order of termination was passed on October 31, 1968. The respondent filed Civil Writ No. 851 of 1968, before the High Court, challenging the said order. The judgment of the High Court setting aside the said order and allowing the writ petition was rendered on September 18, 1969. It is no doubt true that on December 5, 1969, the State Government passed an order cancelling the previous order of termination dated October 31, 1968 and posted the respondent as Deputy Director (Publicity) at Narnaul. The said order further directed the payment to the respondent full pay and allowances that he would have been entitled, if his services had not been terminated. But there is a very significant recital in the order to the effect that the State is cancelling the previous order dated October 31, 1968, in view of the acceptance by the High Court of the writ petition filed by the respondent. A copy of the order dated December 5, 1969, was also forwarded by the Government to the Assistant Registrar of the High Court of Delhi.

F The State filed on December 19, 1969 an application S.C.A. No. 1 of 1970 in the High Court praying for grant of certificate to enable the State to file an appeal in this Court against the decision in Civil Writ No. 851 of 1968. On the next day, *i.e.* December 20, 1969 the State filed a petition C.M. No. 15 of 1970 in S.C.A. No. 1 of 1970 praying for restraining the respondent from claiming arrears of salary and allowances for the period he was out of service from October 31, 1968 or in the alternative to direct the respondent to furnish sufficient bank guarantee before recovering those amounts from the State. This request was made to enure till the disposal of the application filed by the State for grant of certificate. Both in the petition C.M. No. 15 of 1970 as well as in the affidavit filed in support thereof, it was specifically mentioned that the copy of the judgment of the High Court was received by the Chief Secretary to the Government on November 25, 1969

and that in compliance with the judgment of the High Court, the respondent had been posted as Deputy Director (Publicity) at Narnaul by order dated December 5, 1969. A copy of this order was also annexed to the petition. It was further stated that the amount payable to the respondent being very large, there will be considerable difficulty in obtaining restitution in case the judgment of the High Court is set aside by this Court. After setting out the above facts, the State prayed for a stay of payment of the amounts or the respondent being asked to draw the amounts on furnishing bank guarantee pending the disposal of S.C.A. No 1 of 1970.

The respondent filed counter-affidavits, both to the main application S.C.A. No. 1 of 1970 as well as to the stay petition No. 15 of 1970. In his counter-affidavit to the stay petition he had referred to the decision of the High Court in his favour and to the order dated December 5, 1969 passed by the State reinstating him in service. No doubt, he has averred that this order was passed without any reservation or qualification. He also opposed the said application on merits. In his counter-affidavit opposing S.C.A. No. 1 of 1970, the respondent had again stated that the previous order of termination, which was set aside by the High Court, was cancelled on December 5, 1969 by the State without any reservation or qualification. In view of this the respondent averred that the position in law is that the order dated October 31, 1969 should be considered to have never existed at any time and therefore there was nothing further for the State to agitate in this Court.

After hearing both the parties, the learned Judges of the High Court, who were fully aware of the averments made by the respondent as well as the order dated December 5, 1969, passed by the State, by their order dated February 13, 1970, granted the certificate of fitness. Regarding the stay petition, the High Court has stated that as the respondent herein, has been reinstated and also been paid his full salary and allowances, no further question of staying the payment or directing the respondent to furnish bank guarantee arises for consideration. In this view, while granting the certificate and allowing S.C.A. No. 1 of 1970, the stay petition C.M. No. 15 of 1970 was dismissed.

In view of what is stated above, it is clear that the order dated December 5, 1969 was passed by the State in obedience to the judgment of the High Court setting aside the previous order dated October 31, 1968. It has been specifically stated by the State in the order dated December 5, 1969 as well as in the various affidavits and applications, referred to above, that the State had taken steps to come to this Court against the decision of the High Court of Delhi. The order dated December 5, 1969 read in the context

A in which it was made and taking into consideration the other
circumstances, mentioned above, it will be seen that the State was
not unconditionally cancelling the order dated October 31, 1968
with a view to take back the respondent in service for all times.
If the intention of the State was to cancel the order dated October
31, 1968 and reinstate the respondent in service with all the
B attendant benefits that he will be entitled to, then it was totally
unnecessary on the part of the State to have filed an application
for grant of certificate and also pray for stay regarding payment of
arrears of salary and allowances. The State was bound to comply
with the judgment passed by the High Court. In this case, it must
be stated that the State acted quite properly in so complying with
C the judgment of the High Court when the order dated December
5, 1969 was passed. Therefore, the order dated December 5,
1969 must, in the circumstances, be considered to be a purely
provisional one pending the ultimate decision of this Court. There-
fore, the circumstances that the respondent was reinstated in service
by the order dated December 5, 1969 cannot and does not debar
D the State from challenging the judgment of the High Court. In
fact, immediately after passing the order dated December 5, 1969,
the State has been taking very active steps to challenge the decision
of the High Court. In view of all these above circumstances, it
follows that the State is entitled, in this appeal, to challenge the
decision of the High Court setting aside the order dated October
31, 1968. The preliminary objection, in consequence, is over-
E ruled.

Having disposal of the preliminary objection, we will now
proceed to state the facts leading up to the filing by the respondent
of the writ petition in the High Court. His averments in the writ
petition were as follows :

F He joined the services of the composite State of Punjab on
June 22, 1957 as States Press Liaison Officer in Delhi on a starting
salary of Rs. 600/- p.m. in the grade of Rs. 500-25-650/30-800
in the Public Relations Department of the State. By order dated
June 28, 1957 the Governor of Punjab created a post of State
Press Liaison Officer at Delhi in the scale mentioned above with
G effect from June 22, 1957 till February 28, 1958 in the Public
Relations Department, Punjab and also approved his appointment
to the said post. This order further directed that the expenditure
is to be met from within the budget grant under the head stated
therein for the year 1957-58. A copy of the order was also com-
municated to the Accountant General, Punjab for information. By
H order dated August 1, 1957, dealing with the appointment, post-
ing and transfer, the Governor of Punjab appointed him as State
Press Liaison Officer at Delhi, in the grade mentioned in the order,
in the Public Relations Department. The order further referred

to the fact that the officer has taken charge of his duties with effect from June 22, 1957 afternoon. The creation of the post of the State Press Liaison Officer as well as his appointment to the said post were done simultaneously by one and the same order dated June 28, 1957. In July, 1962, the Governor of Punjab, created the Punjab Public Relations Service and the post of State Press Liaison Officer in Delhi was included in the said service as a cadre post. He went on leave for about six months from November 21, 1959 to May 18, 1960 with permission to act in Pakistan as a Special Correspondent of the Hindustan Times, New Delhi, on a salary of Rs. 1500/- p.m. On return from leave, he was posted in the same service in the post of Deputy Director (Field) from July 19, 1960 to September 19, 1960. Later on, he was again posted as Officer on Special Duty, which was also an equivalent post, from September 20, 1960 to June 26, 1962. When he crossed the efficiency bar in 1960, his salary was raised with effect from December 24, 1960. He was appointed as Deputy Director (Press), which post was held by him from June 27, 1962 to June 14, 1966. By order dated June 24, 1966 the Governor of Punjab appointed him as State Press Liaison Officer with effect from June 14, 1966 and was posted to Delhi. The order states that his appointment in Delhi to his original post is "consequent upon the revival of the State Press Liaison Officer, Delhi." This post of State Press Liaison Officer had been held in abeyance during the period when he was Deputy Director (Press). On the reorganisation of the composite State of Punjab and its bifurcation into the States of Punjab and Haryana, the post of State Press Liaison Officer, Delhi, held by him, was allocated to the State of Haryana with effect from November 1, 1966. He was also allotted to the State of Haryana. He remained on deputation with the Punjab Government from December 1, 1966 to March 24, 1967 and again resumed his duty as State Press Liaison Officer, New Delhi, from March 25, 1967 under the Government of Haryana. He continued to work in the said post till October 31, 1968, on which date the impugned order terminating his services was passed by the State Government.

The respondent claimed that since his appointment in June, 1957, no fault has been found in his work by the successive Chief Ministers and other superior officers, under whom he worked. Even when he was working under the State of Haryana, his duties were to maintain liaison between the State and the press in Delhi and to explain the policies of the State Government to leading public men in Delhi. It was also part of his duty to arrange interviews to the Chief Ministers with the gentlemen of the "fourth Estate" and other authorities and agencies at Delhi. The second appellant was elected on May 19, 1968 as the leader of the Haryana Congress Legislative Party and was due to be sworn in as Chief

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- A Minister of the State at New Delhi on May 21, 1968. The respondent refers to a series of incidents which took place between him and the second and the third appellants. In view of these circumstances, both the Chief Minister and the third appellant, who was the Head of the Department, *mala fide* passed the order dated October 31, 1968 terminating his services with effect from the date of the receipt of the order. The order itself is dated October 31, 1968 passed by the Governor of the State of Haryana terminating the services of the respondent from the date of the receipt of the order. One month's salary in lieu of notice was also ordered to be paid. The respondent was directed to relinquish charge of his post at once on receipt of the order. The order was delivered to the respondent on November 1, 1968.

- D The respondent filed a writ petition in the High Court challenging the order dated October 31, 1968 on various grounds. According to him, the order is one by way of punishment imposed upon him and passed in violation of Art. 311(2) of the Constitution. The order has been passed *mala fide* and vindictively by or at the instance of the Chief Minister, the second appellant, in collaboration with the third appellant, who was the Head of the Department, and both of whom had become hostile and inimical to him without any fault of his. The post of State Press Liaison Officer, which was held by him, being a permanent post included in the Public Relations Service of the State, his appointment enured for the duration of the post and as such the termination of his service on October 31, 1968, when the post was still in existence, was illegal and void. Under the Service Rules, governing the Public Relations Department, in which the post held by him was included, no person appointed to a post shall continue to remain on probation for more than three years. He having worked for over 11 years, is to be deemed to be a permanent employee under the Government of Haryana. On all these grounds, he prayed for quashing the order dated October 31, 1968 as illegal and void.

- G It will be seen from the averments, noted above, that the respondent attacked the order dated October 31, 1968 on the ground that he was a permanent employee of the State having been in the service of the Public Relations Department for over 11 years and as such the termination of his services contravened Art. 311(2) of the Constitution. His further case is that the post of State Press Liaison Officer, which post he was occupying, was a permanent, post included in the Public Relations Service of the State and hence he was entitled to hold the said post so long as the post itself was in existence. He has also attacked the order as one passed *mala fide* by the Chief Minister in collusion and collaboration with the Head of the Department, the third appellant. The point

to be noted is that the respondent rested his case almost entirely on the post, that he was holding, namely, that of State Press Liaison Officer.

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Both the Chief Minister as well as the Head of the Department (third appellant) filed separate affidavits. While the Chief Minister, (second appellant) mainly controverted the allegation of *mala fides* made in the petition against him, the third appellant, apart from controverting the allegation of *mala fides*, also referred to the various other averments made in the writ petition regarding the nature of the right in respect of the post occupied by the respondent. As we have not set out the allegation of *mala fides* made in the writ petition, we are also not referring to the averment made in these two affidavits with regard to those allegations. The question of *mala fides* will be dealt with by us later. But, it must be noted that the Chief Minister, in his affidavit had stated that the decision to terminate the services of the respondent was taken by him on October 29, 1968 and not on October 31, 1968, as alleged by the respondent. After the decision was taken, necessary action was also taken by the Administrative Department in consultation with the Law Department and the order was actually issued on October 31, 1968. He has further stated that after he had taken a decision to terminate the services of the respondent on October 29, 1968, the file did not come to him thereafter, nor did he have any occasion to talk to the Chief Secretary or to the third appellant in connection with the same.

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The Chief Minister has further stated that the respondent was a temporary employee and as such his services could be terminated under the rules without assigning any reason of giving one month's notice or one month's salary in lieu thereof. It is further stated by him that the impugned order is valid and does not contravene Art. 311(2) of the Constitution, as no punishment has been inflicted on the respondent. It has been further stated that the impugned order has been made *bona fide* and for purely administrative reasons.

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The second appellant, who had by then become the Registrar of Co-operative Societies and Deputy Secretary to the Government in the Panchayat Department, very strenuously controverted the allegation of *mala fides* made against him. He further denied that he was in collusion or collaboration with the Chief Minister, resulting in the passing of the impugned order. In his counter-affidavit he has stated as follows :

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The post of State Press Liaison Officer in the Public Relations Department was created by the Punjab Government with effect from June 22, 1957 and it was to last till February 28, 1958. By the gazette notification of July, 1962 the said post was not included

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A in the cadre of Public Relations Service. By the said order no new service was created, nor was the post in question, included in the cadre of post in the Service. Even the initial appointment of the respondent as State Press Liaison Officer was irregular, as it had been made in violation of rules relating to recruitment to Government Service. Though there was only one post of State Press Liaison Officer and the respondent was appointed thereto, the said post was being continued by the Government on annual sanctions. The respondent, as long as he held the said post, was holding the same on purely temporary basis as the post itself was a temporary post and continued from time to time. The respondent's statement that he had been in service for more than 11 years is correct, but his further averment that he has been all these years holding the post of State Press Liaison Officer is not correct. The respondent had gone on leave and on return he joined as Deputy Director in the Public Relations Department. The post of Deputy Director is a cadre post. The Public Service Commission took exception to his appointment to the cadre post of Deputy Director.

D The decision to terminate the respondent's services had been taken by the Chief Minister as early as October 29, 1968, though the orders were passed only on October 31, 1968. As the orders had to be served urgently on the respondent, it was sent for service through a special messenger on November 1, 1968. The respondent was a temporary employee, inasmuch as the post occupied by him was itself temporary, having been created initially for one year and later extended from time to time. The said post was held in abeyance for four years from June 1962 to June 1966, during which period the respondent was occupying the cadre post of Deputy Director. As the Public Service Commission objected to his appointment as Deputy Director, the post of State Press Liaison Officer was revived and the respondent was appointed to that post in June 1966. At no time was he ever made permanent by any order of the Government. His appointment to the post of State Press Liaison Officer was initially made for one year and no special terms or conditions were stipulated. The Government has got absolute power under the Service Rules to terminate the services of a temporary employee on giving one month's notice without assigning any reason. Equally, the Government has got full power to so terminate the services of a temporary employee by giving one month's salary in lieu of notice. The impugned order has been passed *bona fide* and due to administrative reasons. In particular, it is further stated that the allegation of the respondent that the post of State Press Liaison Officer was permanent and that the same was included in the Public Relations Service of the State, is not correct. The respondents further averment that he was appointed to the said post for the duration thereof is baseless. On the other hand, the respondent was a temporary employ-

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ye, whose services could be terminated in the manner in which it has been done. The rules relied on by the respondent are not applicable either to him or to the post held by him. As the respondent was not appointed against any permanent vacancy, rule 10 of the Punjab Public Relations Department (Gazetted) Service Rules, 1958 (hereinafter to be referred as the Gazetted Service Rules) do not apply.

The respondent in his reply affidavit dated February 19, 1969 reiterated that the post of State Press Liaison Officer had been included in the cadre of the Punjab Public Relations Service by the gazette notification No. 6244-IPP-62/14270 dated July 11, 1962 and he also filed a copy of the said notification. He denied the allegation of the appellants that the post, he was holding, was a temporary one and that he was holding the said post on a temporary basis. On the other hand, by a reference to an order bearing on the same, he averred that his appointment was for the duration of the post of State Press Liaison Officer at Delhi and the post having been continued without any break, and his appointment also having been automatically continued against that post without any interruption, he had a right to hold the same so long as the post existed. As the said post had been included in the Gazetted Service Rules, in 1962 he also automatically became a permanent member of the Service under r. 10(3) of the said Rules, which applied to the cadre created by the notification. He further denied that he was holding a temporary post and stated that he was not aware of any orders passed extending the duration of the post on the basis of annual sanction. He was also not aware of any objections raised by the Public Service Commission to his appointment as Deputy Director. As he was not a temporary employee, the State has no power to summarily terminate his services in violation of Art. 311(2) of the Constitution.

It is seen that on February 24, 1969, the High Court permitted the respondent's counsel to inspect the note file titled as "termination of services of Rajindra Sareen" leading to the passing of the impugned order. On the same day, the respondent, along with his counsel, inspected the file in the presence of an officer of the Public Relations Department of the Government of Haryana. After inspection the respondent filed a supplementary affidavit dated March 10, 1969. In this affidavit he refers elaborately to the various notes made by different officers in the said note file and averred that his allegations in the writ petition that the order has been passed *mala fide* by the Chief Minister in collusion and collaboration with the third appellant are fully borne out.

On March 25, 1969 the High Court passed an order directing this supplementary affidavit of the respondent to be placed on

A record without prejudice to the rights of the appellants to object that the note file is not relevant. By the same order the Court gave the appellants time to file their counter-affidavits, if any.

B There is no controversy that the Chief Minister did not file any further counter-affidavit, though allegations of *mala fides* have been repeated by the respondent in his affidavit dated March 10, 1969. The third appellant filed a counter-affidavit on April 12, 1969. He also refers to the order passed by the High Court on March 25, 1969 taking on record the supplementary affidavit filed by the respondent on March 10, 1969 on the basis of the inspection of the note file as per order, dated February 24, 1969. The third appellant very elaborately again controverted the allegations of *mala fides* made against him and the Chief Minister.

C On April 12, 1969 the third appellant again filed an affidavit regarding the copy of the notification dated July 11, 1962 filed by the respondent along with his reply affidavit dated February 19, 1969. The third appellant also averred that the said notification did not make the post of State Press Liaison Officer a cadre post nor did it include the said post in the Punjab Public Relations Service. The applicability of the Gazetted Service Rules to the post held by the respondent was also denied. It was further averred that the post of State Press Liaison Officer, held by the respondent, was an ex-cadre post and his appointment had not been made with the concurrence of the Public Service Commission. The appointment of the respondent to the said post having been made in 1957, his service conditions are not governed by the Gazetted Service Rules, which came into existence only in 1968 and more specially when the said post was not mentioned in the appendix A of the said Rules.

D There was a further reply affidavit filed by the respondent on May 26, 1969 regarding the matter mentioned in the two affidavits dated April 12, 1969 filed by the third appellant. The respondent reiterated his plea that the post of State Press Liaison Officer, New Delhi, is a cadre post and it has been treated as such ever since the notification dated July 11, 1962. He also made certain further allegations against the third appellant to support his plea of *mala fides*. He again pointed out that he was appointed to the post of Deputy Director (Press) in a permanent vacancy. Even assuming that any objections have been raised by the Public Accounts Committee or the State Public Service Commission to his appointment to the post of Deputy Director (Press), they have no bearing when the State had appointed him to the said post.

H Obviously, in view of the conflicting stand taken by the respondent and the third appellant, in several affidavits, referred to above, regarding the effect of the notification dated July 11, 1962, in

respect of the post of State Press Liaison Officer, New Delhi, the Division Bench of the High Court, during the course of the hearing of the writ petition passed an order on July 21, 1969. In the said order the High Court had referred to the fact that the writ petition had been heard on several occasions. But, nevertheless, regarding the point urged by the writ petitioner that he holds the status of a permanent government employee, in view of the fact that the post of State Press Liaison Officer, has been made a cadre post and included in the cadre of Punjab Public Relations Service as per notification dated July 11, 1962, requires, according to the High Court, clarification, specially when the writ petitioner had filed a copy of the gazetted notification. The High Court *prima facie* is of the view that the said notification created a new service entitled Punjab Public Relations Service and that it refers to the various posts in the said Service, one of which is that of the State Press Liaison Officer, New Delhi. The High Court adverted to the contention raised on behalf of the State that the said notification has not created any new Service nor has it made the post in question a cadre post. The High Court, in the circumstances, felt that sufficient material has not been placed before it to enable it to give a finding whether a new Service called Punjab Public Relations Service was created by the notification dated July 11, 1962, and also as to the effect of the notification about the nature of the post of State Press Liaison Officer. In view of these circumstances, the High Court gave an opportunity to the writ petitioner, as well as to the State, to file supplementary affidavits in support of their respective contentions and also to file documents, if any, on which the parties proposed to rely. In particular, the High Court indicated that the counter-affidavits, that may be filed on behalf of the State should include the affidavit of the then Chief Secretary who dealt with the matter at the material time leading up to the issue of the notification dated July 11, 1962. The High Court has also expressed the opinion that if necessary they will have to examine the officer, who was at the material time, the Chief Secretary in the State.

In pursuance of the above direction given by the High Court, the respondent, the third appellant as well as certain officers including the then Chief Secretary filed various affidavits. But it is rather strange that though the directions of the High Court related only to the post of State Press Liaison Officer, the controversy was unfortunately enlarged, in the first instance, in the affidavit filed by the writ petitioner on July 21, 1969 as also in the affidavits filed on behalf of the State, even regarding the nature of the appointment of the writ petitioner to the post of Deputy Director (Press) held by him from June 27, 1962 to June 14, 1966. We are particularly referring to this aspect as a contention

A has been raised by Mr. Tarkunde, learned counsel for the appellants that the writ petitioner has made a shift from the stand originally taken by him in the writ petition which related almost exclusively to the post held by him as State Press Liaison Officer. According to the learned counsel, in the affidavits filed in pursuance of the order of the High Court dated July 21, 1969, the writ petitioner made a further claim that he is entitled to be treated as a permanent government servant in view of his appointment to the post of Deputy Director (Press) which post was occupied by him from June 27, 1962 to June 14, 1966 and on this basis he had laid a claim to have become a permanent employee of the government on the basis of Rule 10 of the Gazetted Service Rules.

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C The High Court has also ultimately granted relief to the writ petitioner on the basis of his appointment to the post of Deputy Director (Press). We understood the counsel to urge that the High Court should not have permitted the writ petitioner to claim permanency on the basis of his having been Deputy Director (Press) during the period mentioned above.

D Mr. Ramamurthy, learned counsel for the respondent, however, drew our attention to the averment made even in the original writ petition as well as to the claim made by the writ petitioner of being a permanent government servant on the basis of Rule 10 of the Gazetted Service Rules. This stand was only clarified by him in his affidavit filed on July 21, 1969. The State also did not raise any objection at any stage before the High Court regarding the averment made by the writ petitioner in the said affidavit. On the other hand, the officers of the State had filed very elaborate and detailed affidavits after July 21, 1969 dealing with the nature of the appointment of the writ petitioner to the post of Deputy Director (Press). The State was well aware of the foundation of the claim of being a permanent government servant even on the basis of the post of the post of Deputy Director (Press) held by the writ petitioner and that explains why no objection, similar to the one that is now being raised before this Court, was raised at any time before the High Court.

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G Though we see considerable force in the contention of Mr. Tarkunde that the original claim made by the writ petitioner has been enlarged by the affidavit filed by him on July 21, 1969, there is nothing on record to show that the State raised any objection in the various affidavits filed by its officers after this date, that the writ petitioner was not entitled to base a claim of being a permanent servant on the basis of his having held the post of Deputy Director (Press) for over four years. On the other hand, they also very elaborately controverted the claim made by the writ petitioner and gave their own versions regarding the nature of the right of the writ petitioner in respect of the said post also. That

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clearly shows that they have also met the claim made by the writ petitioner on the basis of his having been a Deputy Director (Press) in the service of the then State of Punjab. A

It is further seen from the judgment of the High Court that very elaborate arguments were advanced by both the parties even in respect of this post. Therefore, under those circumstances, we are of the opinion that the State cannot have any real grievance that the High Court was not justified in granting any relief to the writ petitioner on the basis of his having held the post of Deputy Director (Press), if he was otherwise entitled to make such a claim. As to whether the High Court's view on the interpretation of Rule 10 of the Gazetted Service Rules in relation to the writ petitioner's appointment as Deputy Director is correct or not, is a totally different matter and that aspect will be considered by us in the later part of the judgment. B
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To resume the narration of facts, the respondent filed an affidavit on July 21, 1969 on the basis of the High Court's order of the same date, referred to earlier. In this affidavit, for the first time, he raised the contention that he was appointed on June 27, 1962 as Deputy Director (Press) which is a permanent post included in the appendix A of the Gazetted Service Rules. His claim was that the order of appointment dated June 6, 1962 made no mention that his appointment as Deputy Director (Press) was on a temporary or officiating basis. He further averred that on the date of his appointment as Deputy Director, the then incumbent of that post Mr. Rajendra Nath had been promoted as Joint Director Public Relations, a new post created by the order dated June 21, 1962. As Mr. Rajendra Nath had been promoted to a permanent post of Joint Director, the respondent claimed that his appointment as Deputy Director on June 27, 1962 was against a permanent vacancy, in a permanent post in the Punjab Relations Service. As he continued in the said post for over 4 years, he had acquired the status of a permanent employee by virtue of Rule 10(3) of the Gazetted Service Rules. The respondent further averred that by the notification dated July 11, 1962 a new service by name Punjab Public Relations Service was created and the post of State Press Liaison Officer was made a cadre post and included in the said Service Cadre. D
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It will be seen from the above affidavit that for the first time he specifically made a claim of having become a permanent government servant by virtue of his having occupied the post of Deputy Director (Press) for over 4 years and for this purpose he relied on Rule 10(3) of the Gazetted Service Rules. H

Mr. E. N. Mangat Rai, I.C.S., who was the Chief Secretary to the Government of Punjab at the time when the notification

A dated July 11, 1962 was issued, filed an affidavit on August 7, 1969. He had set out the circumstances under which the said notification was issued. But he had admitted that the original draft of the notification was not available in the concerned file. According to the Chief Secretary, the notification dated July 11, 1962 did not create any new service but it only changed the name of the service from Punjab Public Relations Department (Gazetted Service) to Punjab Public Relations Service and the notification only classified the posts in the said service into Classes I and II. It added also certain other posts in the service including that of the State Press Liaison Officer. He has further referred to the fact that a particular service may contain posts, both temporary
B as well as permanent and that the post of State Press Liaison Officer was a temporary post.
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Another officer Mr. K. D. Vasudeva, I.A.S., who was the Deputy Secretary, at the time when the above notification was issued, also filed an affidavit dated August 8, 1969. Broadly, he adopted as correct the averments made by the Chief Secretary in his affidavit and reiterated that no new service was created by the said notification and that the post of State Press Liaison Officer was not made a cadre post.
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The third appellant also filed a detailed affidavit on August 8, 1969. He controverted the allegations of the respondent that the latter had been appointed to a substantive vacancy as Deputy Director (Press) and that he had thus acquired the status of a permanent government servant having been in that post for over four years. He averred that the respondent so long as he occupied the post of Deputy Director (Press) held the same only in an officiating capacity. In this connection he relied on the pay slips issued by the Accountant General authorising disbursement of salary to the respondent describing him as an officiating Deputy Director (Press). It was further averred by the said officer that the respondent could not have been appointed as Deputy Director (Press) against a permanent vacancy as Rajendra Nath, who was holding the said post had been promoted as Joint Director, which was a temporary post. The post of Joint Director, which was created on temporary basis on June 21, 1962 continued to be so till September, 1968. During the period when Rajendra Nath was working in the temporary post of Joint Director he was retaining his lien on his permanent post, namely, Deputy Director (Press), to which the respondent was appointed on June 27, 1962.
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The third appellant further averred that in the year 1962 there were only two permanent posts of Deputy Directors; one incharge of Press and another of field. The post of Deputy Director (Press) was then held by Rajendra Nath on permanent basis since September 3, 1958 and he was promoted as Joint Director, which was a
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temporary post. The post of Deputy Director (field) was occupied by Mrs. A. Mardhekar since March 2, 1960. Therefore, in June 1962, when the respondent was posted as Deputy Director (Press) there was no permanent vacancy in the said post. In view of these circumstances, it was further averred that the appointment of the respondent was only on a purely officiating or temporary basis and he was not entitled to invoke Rule 10 of the Gazetted Service Rules.

Dealing with the post of State Press Liaison Officer, the third appellant, adopted the stand taken by the Chief Secretary that the notification of July, 1962, did not create any new service and that, it did not also make the post of State Press Liaison Officer a cadre post. He further averred that the respondent cannot claim to have become a permanent government servant by having occupied the post of State Press Liaison Officer, which was a temporary post. In fact he further averred that the notification dated July 11, 1962 was not in accordance with the proposals made by the Director or the decision taken by the Government.

Mr. R. S. Verma, I.A.S., Deputy Secretary to the Government of Haryana, Public Relations Department, filed an affidavit dated August 27, 1969. In this affidavit he has stated that he has examined the files connected with the posts included in the cadre shown in Appendix A of the Gazetted Service Rules. He has referred to the fact that though the post of Administrative Officer is shown in the said Appendix as a cadre post, that post continued to be temporary till September 25, 1964, on which date it was made permanent. Regarding the notification dated July 11, 1962, he again referred to the fact that the post of State Press Liaison Officer had all along been temporary and it was held in abeyance from June 1962 till June 1966 and that there was no order of the Government making the post a permanent one. He has again reiterated that there was no permanent vacancy of Deputy Director (Press) in 1962 when the respondent was appointed as Mr. Rajendra Nath had a lien on the said post. In particular, he has stated that at the time of the appointment of the respondent as Deputy Director (Press) in June, 1962 by notification dated June 6, 1962, there were two other posts of Deputy Directors; one for Deputy Director (Field) and the other for Deputy Director (Publicity Material). The post of Deputy Director (Field) was held by Mrs. A. Mardhekar. The post of Deputy Director (Publicity Material) was a temporary post and it was made permanent only in 1964.

The respondent filed his reply affidavit on August 29, 1969. Naturally he took advantage of the averment contained in the affidavit of Mr. R. S. Verma to the effect that there were three

- A** posts of Deputy Directors, namely, of Press, Field and Publicity Material at the time when he was appointed as Deputy Director (Press) in 1962. He has also taken advantage of the further fact stated by Mr. R. S. Verma that the post of Deputy Director (Publicity Material) was made permanent from April 1, 1964.
- B** Based upon these facts, the respondent pleaded that he having been appointed to the post of Deputy Director (Press) on June 27, 1962, and having completed three years of service on June 27, 1965 in the said post, he became a permanent employee of the Government as Deputy Director in the Punjab Public Relations Service, under the proviso to Rule 10(3) of the Gazetted Service Rules. He relied on this rule in support of his plea that at any
- C** rate, there was a clear permanent vacancy in the third permanent post of Deputy Director, with effect from April 1, 1964, in which vacancy he could be confirmed on June 27, 1965, having completed three years of service as Deputy Director. In particular, he relied on the proviso to Rule 10(3) of the Gazetted Service Rules. He further averred that the fact that Mr. Rajendra Nath
- D** had a lien on the post of Deputy Director (Press) is of no consequence so far as he was concerned as he could be made permanent in the third post of Deputy Director, namely, Deputy Director (Publicity Material).

E We have elaborately referred to the various affidavits filed on behalf of the State as well as by the respondent as full particulars regarding the claim made by the respondent and the stand taken on behalf of the State has been fully dealt with in those affidavits.

F Before the High Court it was conceded by the learned counsel appearing for the State that if the plea of *mala fides* alleged against the Chief Minister and the third appellant herein, was accepted, the impugned order should be quashed straightaway. Therefore, the High Court considered the question regarding the impugned order being vitiated by *mala fides*, in the first instance.

G So far as the Chief Minister was concerned, the respondent had alleged four incidents which caused misunderstanding between him and the Chief Minister and, therefore, the order was passed by him in collusion with the third appellant *mala fide*. But so far as the fourth incident was concerned, that related to the respondent's alleged failure to arrange for publication of a declaration made by Shri Nijalingappa, the Congress President, at Faridabad on October 30, 1968, assuring his support to the Ministry headed by the second appellant. According to the respondent, the Chief

H Minister was greatly upset over the absence of the declaration of Shri Nijalingappa in the Delhi newspapers on October 31, 1968. In view of this the Chief Minister rushed to Chandigarh the same day and passed the order removing him from service.

The Chief Minister denied this allegation and has stated that the decision to terminate the service of the respondent, had been taken by him even as early as October 29, 1968 and that the formal order was issued by the concerned Department on October 31, 1968. This statement of the Chief Minister has been accepted by the High Court and therefore, the allegation of *mala fides* regarding this fourth incident is groundless, because whatever may or may not have happened on October 31, 1968 between the respondent and the Chief Minister, the decision to terminate his services had been taken as early as October 29, 1968.

The respondent then relied on three other incidents, in which, according to him, he had come into conflict with the Chief Minister. The High Court has considered the explanation given by the Chief Minister. Though the High Court has stated that the explanation given by the Chief Minister is disingenuous and that it is prepared to place more reliance on the version as spoken to by the respondent, ultimately the High Court has held that the plea of *mala fides* is not established. In coming to this conclusion, it has no doubt taken each incident by itself and recorded a finding against the plea of *mala fides*.

Regarding the third appellant, there was only one incident, which, according to the respondent, brought him into conflict with the third appellant who was then Head of the Department. Even here, the High Court is of the view that there is a substratum of truth in the version of the respondent regarding the incident, which must have prejudiced the mind of the third appellant. But, according to the High Court that incident by itself does not lead to the conclusion that the third respondent has colluded with the Chief Minister in passing the impugned order. On the above grounds, the High Court rejected the plea of the respondent that the impugned order has been passed *mala fides*.

The High Court then considered the claim of the respondent that he had become a permanent member of the Service by virtue of his appointment as Deputy Director (Press) with effect from June 27, 1962. The High Court relied on the Proviso to Rule 10(3) of the Gazetted Service Rules and is of the view that inasmuch as even according to the State, the third post of Deputy Director (Publicity Material) had become a permanent post on April 1, 1964, the respondent on completion of three years of service from June 27, 1962, had become a permanent Deputy Director and as such a permanent employee of the Government. It is the further view of the High Court that the fact that at the time when the respondent was appointed as Deputy Director (Press) on June 27, 1962, Mr. Rajendra Nath, who had been promoted as Joint Director, had a lien on his former post, was not relevant

- A as the third post of Deputy Director (Publicity Material) was available and to that post the respondent had acquired, a right at the end of three years from June 27, 1962. As he had become a permanent employee of the Government, the termination of his services was in violation of Art. 311(2) of the Constitution.
- B Regarding the claim of the respondent that his appointment to the post of State Press Liaison Officer is co-terminus with the existence of the post, the High Court is of the view that as the post itself was being renewed from year to year, the respondent can, at the most be held entitled to continue in that post till February 28, 1969. According to the High Court the State has no power to terminate the services of the respondent, when the post
- C was still in existence.

For the above reasons, the High Court quashed the order dated October 31, 1968.

- D From the facts stated above, as well as the findings of the High Court, the following questions arise for consideration in the appeal : (1) whether the impugned order is vitiated by *mala fides*; (2) whether the respondent became a permanent Government servant on his appointment as Deputy Director (Press) with effect from June 27, 1962 on the expiry of three years, namely, June 27, 1965; and (3) the nature of the right that the respondent had as State Press Liaison Officer.
- E We are aware that if once the respondent is able to establish that the impugned order is vitiated by *mala fides*, on the part of the second and the third appellants, no further question will arise. Therefore, though the finding of *mala fides* is in favour of the appellants, we permitted Mr. Ramamurthy, learned counsel for the respondent, to canvass the correctness of the finding
- F recorded against his client on this question by the High Court. Though we are not satisfied with the approach made by the High Court in dealing with the allegation of *mala fides* made by the respondent, ultimately, after going through the entire materials placed before us and after hearing the contentions of the learned counsel on both sides, we are of the opinion that the conclusion
- G arrived at by the High Court is correct. It is not possible to accept the plea of the respondent that the impugned order has been passed *mala fide* by the second appellant, in collusion with or in collaboration with the third appellant. Nor are we satisfied that the said order has been passed by the second appellant, actuated by malice and ill-will against the respondent. But we
- H must say that the record does show that certain incidents have happened, which must have resulted in some misunderstanding between the respondent on the one hand, and the Chief Minister and the third appellant on the other. Certain incidents have been

placed on record which will show that the respondent may have incurred the displeasure of the second appellant. But that circumstance, by itself, cannot lead to the conclusion that the impugned order has been passed *mala fide*. A

Why we are saying that the approach made by the High Court in this regard in considering the allegation of *mala fides* is not proper is that the High Court has taken each allegation by itself and has held that it is not sufficient to establish *mala fides*. The proper approach should have been to consider all the allegations together and find out whether those allegations have been made out and whether those allegations when established, are sufficient to prove malice or ill-will on the part of the official concerned, and whether the impugned order is the result of such malice or ill-will. We are emphasising this aspect because in certain cases even a single allegation, if established, will be so serious to lead to an inference of *mala fides*. But, in certain cases each individual allegation, treated separately, may not lead to an inference of *mala fides*; but when all the allegations are taken together and found to be established, then the inference to be drawn from those established facts may lead to the conclusion that an order has been passed *mala fide*, out of personal ill-will or malice. The incidents, referred to by the respondent, due to which the Chief Minister is alleged to have acted *mala fide*, in passing the impugned order, in our opinion, taken individually or collectively, cannot lead to the conclusion that the order has been passed out of malice or ill-will. Even accepting that the incidents took place in the manner alleged by him, it is not possible to hold that the Chief Minister has acted with malice when passing the impugned order. The allegations made by the respondent, as well as the denial of those allegations by the Chief Minister and the third appellant are dealt with by us in the later part of the judgment. B
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We have already referred to the fact that the respondent had made four allegations against the Chief Minister, on the basis of which he alleged that the impugned order had been passed *mala fide*. We have also referred to the fact that the fourth incident relating to the non-publication of the declaration made by the Congress President Sri Nijalingappa on October 31, 1968. The respondent's allegation was that the Chief Minister was anxious that the statement made by Sri Nijalingappa regarding his support to the Ministry headed by the second appellant should be published in all the daily newspapers in Delhi on the morning of October 31, 1968, itself and when the news item was not so published, he got annoyed. It is the further case of the respondent that in view of the fact that the Chief Minister was very much annoyed, he rushed to Chandigarh and had the order of termination passed forthwith. So far as this is concerned, the Chief F
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- A Minister's statement that he had already taken the decision to terminate the services of the respondent on October 29, 1968, has been accepted by the High Court. If so, the incident mentioned above, which took place later, even if true, could not have influenced the Chief Minister.
- B We will now refer to the three other allegations made by the respondent against the Chief Minister. The first allegation was that he had incurred the displeasure of the Chief Minister in connection with a Press Conference the Chief Minister had in Delhi after assuming office. In that conference, according to the respondent, the Chief Minister made a statement that personally he was not convinced that the interest of the State of Haryana required
- C inclusion of Chandigarh in that State. The respondent appears to have suggested that such a statement should not appear in the Press, as it will have very serious political repercussions. The second appellant, though he resented the advice of the respondent, agreed to have that observation to be deleted by the Press correspondent. This incident took place sometime in early June, 1968.
- D The Chief Minister has denied this incident. The second cause for unpleasantness of the Chief Minister, according to the respondent, arose on his close association with Mr. G. L. Nanda. According to the respondent, the Chief Minister had told him, after assuming office that Mr. G. L. Nanda is his Guru and that he should act in Delhi according to Mr. Nanda's advice. But, later on by about
- E August, 1968, the relationship between Mr. Nanda and the Chief Minister became strained, but the respondent, however, was friendly with Mr. Nanda. This association with Mr. Nanda was resented by the Chief Minister. The Chief Minister has stated that he had always held Mr. Nanda in high esteem and that he had no occasion to become unfriendly with Mr. Nanda in his personal relationship. He has further stated that he had no occasion to find fault with
- F the respondent for being friendly with Mr. Nanda. The third allegation made against the Chief Minister was that on or about June 23, 1968, the Chief Minister had a talk with him from Srinagar on telephone and the former desired an appointment for him with the Editors of the Statesman and the Times of India, New Delhi, in order to explain to them that their correspondents
- G at Chandigarh were not very friendly to the Government, headed by him. According to the respondent, he requested the Chief Minister not to adopt this course as it will only irritate the Press. The Chief Minister got annoyed and ended the conversation abruptly saying "do as you like". The Chief Minister has denied having had any such talk on the telephone with the respondent.
- H The respondent, no doubt, made an application to the High Court for having the necessary records produced from the Telephone Department and also to summon the Chief Minister for cross-examination. We have gone through the application. According

to the averments made in the said application, the respondent wanted to cross-examine the Chief Minister, not only about the telephone conversation but also on other matters. However, the High Court did not consider it necessary to order that application as in its opinion the allegations were not such, even if true, to make out a case of *mala fides*.

From the above three incidents, the respondent desires the Court to draw an allegation of *mala fides* against the Chief Minister.

Mr. Ramamurthy, learned counsel for the respondent, very strenuously pressed that these allegations, which have been accepted by the High Court though in a qualified manner as true, taken along with the remarks made by the Chief Minister in the note file, will clearly show that he has acted *mala fide*. So far as the note file is concerned, that is being discussed a little more elaborately when we deal with the allegation of *mala fide* against the third appellant. But in the note file, the Chief Minister has, no doubt, expressed his views about the quality of the work turned out by the respondent, which he as Chief Minister was certainly entitled to do, in his official capacity.

So far as the three incidents, referred to above, are concerned, in our opinion, none of them, either considered separately or all of them considered cumulatively, will establish any personal prejudice or malice on the part of the Chief Minister against the respondent. The last incident referred to above is the telephone talk stated to have taken place on June 23, 1968, but the order terminating the services of the respondent was passed only on October 31, 1968, in respect of which the decision was taken on October 29, 1968. We are satisfied that the plea of *mala fides* alleged by the respondent against the Chief Minister has not been made out by the respondent.

So far as the third appellants concerned, the position of the respondent is still worse. The respondent does not allege any personal ill-will against him. His allegation is that the third appellant was taking decision against him so as to conform to the opinion formed by the Chief Minister out of prejudice against the respondent. As we have already pointed out that the respondent has referred to only one incident and that related to the displeasure alleged to have been shown by the third appellant at the time of passing the Travelling Allowance bills of the respondent. According to the respondent, the third appellant did not like the manner in which he answered some of the queries relating to the bills and therefore he initiated a note on October 24, 1968, on the basis of which a final order terminating his services was passed by the Chief Minister. It was this note that the High Court allowed the respondent to inspect by its order dated February 24, 1969. The

A respondent has filed a further affidavit and the third appellant has also denied the statements made by the respondent. The main attack against the note file titled "termination of the services of Rajindra Sareen" is that when considering a claim made by the respondent for a higher allowance, the third appellant had no power to suggest the termination of the post held by the respondent as well as the termination of his services.

B The third appellant has filed a very elaborate affidavit detailing the circumstances under which the note dated October 24, 1968 was prepared by him. From the various matters referred to in his affidavit, it is clear that the Public Service Commission had raised objections to the appointment of the respondent as Deputy Director (Press) and the Public Accounts Committee had also criticised the Government for appointing the respondent to the said post. C The Public Accounts Committee had again desired the Government to give a fuller explanation regarding the circumstances under which the respondent was appointed as Deputy Director as also in respect of the various benefits granted to him. Therefore, when D a claim was made by the respondent for a higher allowance, the third appellant, who was then the Head of the Department, had been directed to look into all these matters for the guidance of the Government. It was under those circumstances that the third appellant had prepared the note dated October 24, 1968. Any observations made in the note by the third appellant, who was the E Head of the Department or the Chief Minister regarding their views about the performance of the respondent, in the post held by him, were all within their powers and jurisdiction in their official capacity. Therefore, the allegation of *mala fides* alleged against the third appellant has also to be rejected. Unfortunately, the High Court has not gone into the several aspects in the manner indicated F above. We must also state that in coming to the conclusion that the plea of *mala fides* alleged by the respondent against the second and the third appellants cannot be accepted, we have borne in mind the principles laid down by this Court in *S. Pratap Singh v. The State of Punjab*⁽¹⁾.

G The second point that has to be considered relates to the claim of the respondent of having become a permanent government servant on the expiry of three years of his continuing in the post of Deputy Director (Press) with effect from June 27, 1962. The learned counsel for the state invited our attention to the definition of certain expressions contained in the Punjab Civil Services Rules (hereinafter to be referred as the Civil Services Rules) which came H into force from April 1, 1953. The counsel also drew our attention to the provisions of Rule 10 of the Gazetted Service Rules and pointed out that when the respondent was appointed as Deputy

(1) [1964] 4 S.C.R. 733.

Director (Press) on June 27, 1962, Rajendra Nath, who was holding that post, had been promoted to the temporary post of Joint Director and Rajendra Nath had a lien on the post of Deputy Director (Press). Therefore, he contended that the respondent cannot be considered to have been appointed against a permanent vacancy, in order to attract the provisions of Rule 10 of the Gazetted Service Rules. He referred us to the pay slips issued by the Accountant General, describing the respondent as an officiating Deputy Director, as well as the objections that were being raised by the Public Service Commission and the Public Accounts Committee to the respondent being posted as Deputy Director (Press). The fact that in 1964 the post of Deputy Director (Publicity Material) was made permanent will not entitle the respondent to invoke the provisions of the Proviso to Rule 10(3) of the Gazetted Service Rules.

Mr. Ramamurthy, learned counsel for the respondent, on the other hand, contended that under Rule 9 (b) of the Gazetted Service Rules, one of the mode of recruitment to the post of Deputy Director is by transfer of a person already in the service of the State or of the Union. It is admitted by Mr. R. S. Verma that the appointment of the respondent to the post of Deputy Director (Press) was by transfer. The counsel pointed out that there is no controversy that the respondent was at that time already in service of the Government. The Government, which is the appointing authority under Rule 6 of the Gazetted Service Rules, appointed the respondent as Deputy Director (Press). That post was a permanent post and included in the cadre in Appendix A of the Gazetted Service Rules, and it is a cadre post. In view of all the circumstances, he urged that the appointment of the respondent as Deputy Director must be considered to be an appointment against a permanent vacancy under Rule 10(1) of the Gazetted Service Rules. Even on the basis that Mr. Rajendra Nath had a lien on the post of Deputy Director (Press), he urged that even according to the State, the post of Deputy Director (Publicity Material) had been made permanent on April 1, 1964. Under the Proviso to Rule 10(3) of the Gazetted Service Rules, the total period of probation cannot exceed three years, if there is a permanent vacancy in the post. The respondent had completed three years of service as Deputy Director (Press) on June 27, 1965 and as there was on that date a permanent post of Deputy Director (Publicity Material), the respondent has become a permanent member of the Service.

We are not inclined to accept the contentions of Mr. Ramamurthy. We have already held that the plea of the respondent that he became a permanent Government servant on his holding the post of Deputy Director (Press) for three years, was raised

A more or less for the first time only when he filed his affidavit on July 27, 1969. But, again as already stated, both parties have joined issue on this point and invited a decision by the High Court. We have also very extensively referred earlier to the pleas set up by the respondent and on behalf of the State in the various affidavits, and, therefore, it is not necessary for us to cover the ground over again. The stand taken by the respondent is clear and that is that he has become a permanent Government servant on his completing three years as Deputy Director (Press) and that claim is based on the Proviso to Rule 10(3) of the Gazetted Service Rules. It is necessary now to refer to the definitions of certain expressions contained in the Civil Services Rules. These Rules have been issued by the Governor under the Proviso to Art. 309 of the Constitution and have come into force from April 1, 1953.

Rule 2.9 defines "cadre" as the strength of a service or a part of a service sanctioned as a separate unit. Rule 2.42 defines the expression "Officiate" as follows :

D "2.42. Officiate. A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. A competent authority may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien."

E The expression "Permanent post" under Rule 2.46 means :

"A post carrying a definite rate of pay sanctioned without limit of time."

The expression "Probationer" is defined in Rule 2.49 as follows:

F "Probationer means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department. This term does not, however, cover a Government servant who holds substantively a permanent post in a cadre and is merely appointed "on probation" to another post."

Under the heading "Substantive Appointment and Lien" Rule 3.11 (c) states as follows :

G "3.11(c) A Government servant cannot be appointed substantively to a post on which another Government servant holds a lien."

H Rule 3.14 gives power to a competent authority to suspend the lien of a Government servant on a permanent post in the circumstances mentioned therein.

Now coming to the Gazetted Service Rules, they have also been framed by the Governor under the Proviso to Art. 309 of the

Constitution. They have been framed for regulating the recruitment and conditions of service of persons appointed to the Punjab Public Relations Department (Gazetted) Service. A

Rule 2 defines the expression "Direct Appointment" as follows :

"Direct appointment" means an appointment made otherwise than by promotion within the Service or by transfer of any official already in the service of the Government of a State or of the Union." B

Clause (c) defines "Service" as the Punjab Public Relations Department (Gazetted) Service. C

Part II deals with the Posts and Qualifications. Rule 3 dealing with the number and character of posts is as follows :

"(3) *Number and Character of posts* : The Service shall comprise the posts shown in Appendix 'A' to these rules : Provided that nothing in these rules shall affect the right of Government to make additions to or reductions in the number of such posts whether permanently or temporarily." D

Appendix 'A' referred to in the said Rules enumerates various posts. The post of Deputy Directors (Press) and Deputy Director (Field) are included in the said Appendix. But it must be noted that under Rule 3 the right of the Government to make additions or reduction in the number of posts, enumerated in Appendix 'A' whether permanently or temporarily is preserved. E

Part III deals with "Appointment". Rule 6 provides that all appointments to posts in the Service shall be made by the Government. Rule 8 deals with qualifications of persons recruited to the Service by direct appointment. Rule 9 deals with the method of recruitment and cl. (b) deals with recruitment in the case of Deputy Directors. In this case we have already mentioned that Mr. R. S. Verma, in his affidavit has accepted that the respondent was appointed to the post of Deputy Director (Press) by transfer. Rule 10 on which very strong reliance has been placed on behalf of the respondent is as follows : F

"(10) Probation.—(1) Members of the Service, who are appointed against permanent vacancies, shall, on appointment to any post in the Service, remain on probation for a period of two years in the case of members recruited by direct appointment, and one year in the case of members recruited otherwise : G

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A Provided that the period of Service spent on deputation or on a corresponding or a higher post may be allowed to count towards the period of probation fixed under this rule.

B (2) If the work or conduct of any member during his period of probation is, in the opinion of appointing authority, not satisfactory, the appointing authority may dispense with his services or revert him to his former post if he has been recruited otherwise than by direct appointment.

C (3) On the completion of the period of probation of any member the appointing authority may confirm such members in his appointment or, if his work and conduct have, in the opinion of the appointing authority, not been satisfactory, dispense with his services or revert him to his former post if he has been recruited otherwise than by direct appointment or extend the period of probation and thereafter pass such orders as it could have passed on the expiry of the original period of probation.

D Provided that the total period of probation including extensions, if any, shall not extend three years if there is a permanent vacancy against which such member can be confirmed."

E There is no controversy that the post of Deputy Director (Press) is a permanent cadre post. The respondent was an officer on Special Duty from September 20, 1960 to June 26, 1962. On June 6, 1962, the respondent, who was an officer on Special Duty was posted by way of transfer as Deputy Director (Press) Chandigarh in place of Mr. Rajendra Nath. By the same order F Mr. Rajendra Nath, who was then Deputy Director (Press) was posted by way of transfer as State Press Liaison Officer, Delhi. On June 21, 1962 the Government created one post of Joint Director in the Public Relations and Tourism Department at New Delhi till February 28, 1963. The same order directed that the post of State Press Liaison Officer, New Delhi, shall be held in G abeyance. On July 30, 1962 the Governor passed an order appointing the respondent as Deputy Director (Press) with effect from June 27, 1962. By the same order Mr. Rajendra Nath, who was then holding the post of Deputy Director (Press) was appointed as Joint Director, Public Relations Department, Delhi, which post was created temporarily by order dated June 21, 1962.

H The third appellant as well as Mr. R. S. Verma have both stated in their affidavits, referred to earlier, that Mr. Rajendra Nath when he was promoted to the temporary post of Joint Direc-

tor at New Delhi, had his lien on his permanent post, namely, Deputy Director (Press). This statement has not been contradicted by the respondent. On the other hand, the stand taken by him is that in spite of Mr. Rajendra Nath having a lien on the post, he has become a permanent Government servant when he held the post of Deputy Director (Press) continuously for three years, especially when there was another permanent post of Deputy Director (Publicity Material). There is no controversy that the post of State Press Liaison Officer, New Delhi, was kept in abeyance from June 27, 1962 to June 14, 1966, corresponding to the period when the respondent was Deputy Director (Press). The post of Joint Director, created temporarily by order dated June 21, 1962 was made permanent only in September, 1968. On August 8, 1962 the Governor again passed an order that the three posts of Deputy Director (Press), Deputy Director (Field) and Deputy Director (Publicity Material) and certain other posts mentioned therein, are inter-changeable. But the post of Deputy Director (Publicity Material) was only a temporary post when the respondent was appointed as Deputy Director (Press); and it was made permanent only on April 1, 1964. But Mr. Rajendra Nath continued to have his lien on the post of Deputy Director (Press) till September, 1968 when the post of Joint Director was made permanent. Admittedly, there is no order passed by the competent authority suspending the lien of Mr. Rajendra Nath under Rule 3.14 of the Civil Services Rules. Under Rule 3.11(c) of the Civil Services Rules, a Government servant cannot be appointed substantively to a post on which another Government servant holds a lien. Therefore, on the date when the respondent was appointed as Deputy Director (Press), he could not have been appointed to that post substantively as Mr. Rajendra Nath was having a lien on the said post.

There is no controversy that with effect from April 1, 1964 the post of Deputy Director (Publicity Material) was made permanent. It is no doubt true that the respondent had completed three years of service as Deputy Director (Press) on June 27, 1965 having been appointed to that post on June 27, 1962. It is also true that he continued to hold the said post till June 14, 1966. The question is whether in view of these circumstances the respondent can claim the benefit of the Proviso to Rule 10(3) of the Gazetted Service Rules. It may also be mentioned at this stage that several pay slips issued by the Accountant General have described the respondent as Officiating Deputy Director (Press). Under Rule 2.42 of the Civil Services Rules we have already pointed out that a Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. Therefore, considering the appointment of the respondent

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A as Deputy Director (Press) having due regard to Rules 2.42, 3.11(c) and 3.14 *prima facie*, it is difficult to hold that the respondent was appointed against a permanent vacancy in the post of Deputy Director (Press). In the first place, he could not have been appointed substantively as Mr. Rajendra Nath had a lien on the said post. The various pay slips which are on record also lead to the conclusion that the respondent's appointment must have been on officiating basis, as defined under Rule 2.42 of the Civil Services Rules.

C It is also to be noted that the Public Service Commission raised objections to the posting of the respondent as Deputy Director (Press). Those objections are contained in the letters dated January 16, 1963, May 22, 1963 and February 10, 1965 of the Public Service Commission. It is also on record that the Public Accounts Committee also raised very serious objections to the respondent being posted as Deputy Director (Press). Notwithstanding, these objections, the Government no doubt did continue him in that post for over four years.

D All the above circumstances are against the contention of the respondent of his having been appointed against a permanent vacancy.

E Then the question is whether the Proviso to Rule 10(3) of the Gazetted Service Rules makes him a permanent Government servant, on the expiry of three years of his service as Deputy Director (Press). The essential requisite for the applicability of Rule 10 is that a person must have been appointed against a permanent vacancy. If once a person is appointed against a permanent vacancy, he has to be on probation for two years, if he has been recruited by direct appointment and for one year if he has been recruited otherwise. The very connotation of the expression "Probationer" defined in Rule 2.49 of the Civil Services Rules clearly indicates that the person is employed in or against a substantive vacancy in the cadre of a Department. Under sub-rule 2, of Rule 10 the appointing authority has got the right to dispense with the services of the officer or to revert him to his former post, as the case may be, if the officer's work, during the period of probation is not satisfactory. Under sub-Rule 3 when an officer has completed his period of probation, the appointing authority has to confirm the said officer in his appointment. But if his work and conduct are not satisfactory, his services have to be dispensed with, or he has to be reverted to his former post, if he has been recruited otherwise than by direct appointment. Under this sub-rule the appointing authority has also power to extend the period of probation. The point to be noted is that under sub-rule 1, an officer appointed against a permanent vacancy, remains on proba-

tion for a period of two years, or one year, depending upon the manner of recruitment. No special order stating that he is on probation need be passed. But when we come to the stage of sub-rule 3, the appointing authority, on completion of probation has to confirm the officer in his appointment or extend the period of probation. If the period of probation is extended, under sub-rule (3), it is needless to state that there must be an order to that effect by the appointing authority.

In the case of the respondent no order of the appointing authority, which in this case is the Government, extending his probation or confirming his appointment has been passed, though he has been allowed to continue in the said post. The Proviso to Sub-rule (3) of Rule 10 of the Gazetted Service Rules, will have to be understood in the context in which it appears in Rule 10. Sub-rule (1) refers to an appointment against a permanent vacancy; similarly, the Proviso states that the total period of probation including extension shall not exceed three years "if there is a permanent vacancy against which such member can be confirmed." In our opinion, unless under sub-rule (1), the respondent has been appointed against a permanent vacancy, as Deputy Director (Press), he is not entitled to claim the benefit of the Proviso. The effect of the Proviso is that an officer cannot indefinitely occupy a post on probation. It puts the upper limit of the period of probation as three years. It only means that the appointing authority, if it does not dispense with the services or revert him to his former post under sub-rule (3), cannot continue to keep the officer on probation beyond a period of three years. On the other hand, if the officer had been appointed in a permanent post against a substantive vacancy and if he has completed the initial period of probation or the period of probation upto the maximum of three years, the inference is that he becomes a permanent member of the Service.

In the case before us, as the respondent cannot be considered to have been appointed in 1962 against a permanent vacancy to the post of Deputy Director (Press) which was no doubt a permanent post, and as he has been working only in an officiating capacity in that post, the question of extending his probation or confirming him under Rule 10, of the Gazetted Service Rules does not arise and, if so, the question of calculating the total period of probation of three years, which is necessary for the application of the Proviso does not and cannot arise.

Mr. Ramamurthy, however, placed considerable reliance on the expression "if there is a permanent vacancy against which such member can be confirmed" occurring in the Proviso to Rule 10(3) and urged that on June 27, 1965 when he had completed three

A years of service as Deputy Director (Press), there was a third permanent post of Deputy Director (Publicity Material) in which he could have been confirmed and therefore, by virtue of the Proviso to Rule 10(3), the respondent has acquired the status of a permanent Government Servant.

B There is a fallacy underlying the contention of Mr. Ramamurthy. The Proviso speaks of the total period of probation and we have already pointed out that there is no question of the respondent being on probation, when he held the post of Deputy Director (Press) on a purely officiating basis. Before we come to the stage of the Proviso, the respondent will have to satisfy the requirement of sub-rules (1) and (3). We have already pointed out that he does not satisfy those requirements. If Mr. Ramamurthy's contention is accepted, we will presently show, that the position will become very anomalous. We will assume that there was only one post of Deputy Director (Press). In the said post to which the respondent was appointed, namely, Deputy Director (Press), the previous incumbent Mr. Rajendra Nath had admittedly a lien. The post of Joint Director, to which Mr. Rajendra Nath had been promoted was a temporary post extending from year to year and confirmed only in the year 1968. Therefore, from June 27, 1962 till 1968 Mr. Rajendra Nath had a lien on the post of Deputy Director (Press). The respondent had admittedly been in the said post from June 27, 1962 till June 14, 1966.

E On the basis of Mr. Ramamurthy's contention, on the expiry of three years from June 27, 1962, he must be considered to be a permanent Deputy Director (Press), which means Mr. Rajendra Nath will have no post to which he can come back, if the Joint Director's post is not extended. This is one anomaly. Again, if the respondent's services are considered to be satisfactory, even at the expiry of one year of probation, then under sub-rule (3), the appointing authority has no option but to confirm the respondent in the post of Deputy Director (Press). Even in such a case Mr. Rajendra Nath will have no post to which he can come back, if the post of Joint Director is abolished. We are only pointing out these anomalies to show that the construction to be placed on the Proviso must be having due regard to the object of Rule 10. That object, in our opinion, will not be served by placing the interpretation on the Proviso as contended by Mr. Ramamurthy.

G Mr. Ramamurthy, however, relied on the decision of this Court in *State of Punjab v. Dharam Singh*⁽¹⁾ in support of his contention that by virtue of the Proviso to Rule 10(3) of the Gazetted Service Rules, it should be presumed that the Government has confirmed the respondent as Deputy Director with effect from June 27, 1965.

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⁽¹⁾ [1968] 3 S.C.R. 1.

In our opinion, the said decision does not assist the respondent. In the above decision this Court had to consider Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. The rule has been quoted therein. A part from the fact that rule 6 construed therein is differently worded, the High Court in that case had found that the officers concerned were officiating in permanent posts against permanent vacancies as contemplated by sub-rules (1) and (2) of Rule 6 therein. It was further found by the High Court that the officers therein had completed their three years period of probation and therefore they must be deemed to have been confirmed in their appointment. The State contested the decision of the High Court on the ground that the officers cannot claim permanency, as no orders of confirmation had been passed by the appointing authority.

This Court after a consideration of the rules as well as the finding recorded by the High Court rejected this contention of the State and dismissed the appeal. The position of the respondent before us is entirely different. There was no substantive vacancy of Deputy Director (Press) when the respondent was appointed in 1962. We have also referred to the relevant provisions in the Civil Services Rules and the Gazetted Service Rules. In fact the Government could not have appointed the respondent against a permanent vacancy, in view of the fact that Mr. Rajendra Nath was having a lien on the post and so long as he had that lien there was no substantive vacancy in the post of Deputy Director. The circumstance that with effect from April 1, 1964 the post of Deputy Director (Publicity Material) was made permanent will not help the respondent as he has not been at all appointed in the first instance against a permanent vacancy.

In the view that we take about the Proviso to Rule 10(3) of the Gazetted Service Rules, we do not think it necessary to refer to the decisions in *The Commissioner of Income-tax, Mysore v. The Indo Mercantile Bank Limited*⁽¹⁾, *Tahsildar Singh and another v. The State of Uttar Pradesh*⁽²⁾, *State of Madhya Pradesh and another v. Lal Bhargavendra Singh*⁽³⁾, cited by Mr. Tarkunde regarding the principles to be borne in mind in construing a Proviso in a statute. Mr. Tarkunde drew our attention to a decision of the Punjab High Court in *Dr. Deep Kaur v. The State of Punjab*⁽⁴⁾. The High Court in the said decision had to consider Rule 7 of the Punjab Civil Medical Service, Class II (Recruitment and Conditions of Service) Rules, 1943. One of the contentions taken before the High Court was that the officer concerned should be considered to have been automatically confirmed after the

(1) [1959] Suppl. (2) S.C.R. 256.

(2) [1959] Suppl. (2) S.C.R. 875.

(3) [1956] 2 S.C.R. 56.

(4) [1967] (Vol. I) S.L.R. 34.

A expiry of the period of three years. On a consideration of the relevant rules, the learned Judges have held that it is only a person who is appointed against a permanent vacancy would get automatically confirmed after completion of probation of three years. It is not necessary for us to consider this decision any further as the rules construed by the learned judges were different. It is only necessary to note that the learned Judges have referred to the decision of the High Court, which is now under appeal before us as supporting the contention of the officer and the learned Judges have noted that the appeal is pending in this Court.

Mr. Ramamurthy, on the other hand, referred us to the decision of the Punjab and Haryana High Court reported in *Devi Shanker Prabhakar v. The State of Haryana and another*⁽¹⁾ and urged that the construction that he wants us to place on the Proviso to Rule 10(3) has been adopted by the High Court. We have gone through the said decision. From the facts it is seen that the officer was appointed in a substantive vacancy in a permanent post on probation for one year on October 6, 1960. The period of probation of one year ended on October 6, 1961. He was continued in the said post till he was reverted in 1969. The officer challenged the order of reversion on the ground that after he had completed the period of probation and has continued in service for more than three years in a permanent vacancy and in a permanent post, he should be considered as a permanent employee of the Government under the Proviso to Rule 10(3) of the Gazetted Service Rules. The State contended that as no order of confirmation was passed, the Government servant was not entitled to claim permanency in the post. In that connection the High Court has referred, with approval, to the decision of the High Court, under appeal before us. The facts of the decision of the High Court, referred to above, are entirely different from the facts in the appeal before us. If the respondent officer had been appointed, in a substantive vacancy in a permanent post, and if he had been continued for over three years, quite naturally, he will be entitled to claim the benefit of the Proviso to Rule 10(3).

Therefore, the view of the High Court that as there was a permanent post of Deputy Director (Publicity Material) at the material time, the respondent had become a permanent Deputy Director under the Proviso to Rule 10(3) of the Gazetted Service Rules, with effect from June 27, 1965 cannot be sustained.

The third point that arises for consideration is whether the respondent's appointment as State Press Liaison Officer, is co-terminus with the continuance of the said post. We have already referred *in extenso* to the case of the parties regarding this post. By order dated June 28, 1957 the Governor of Punjab created the

(1) [1971] (Vol. 73) Punjab Law Reporter, 644.

post of State Press Liaison Officer at Delhi with effect from June 22, 1957 till February 28, 1958 in the Public Relations Department, Punjab. The said order also appoints the respondent to the said post. On August 1, 1957 a notification was issued by the State Government regarding the appointment, posting and transfer of officers. By virtue of that order, the Governor of Punjab appointed the respondent as State Press Liaison Officer at Delhi in the Public Relations Department. The said order also states that the respondent has already assumed charge of his duties with effect from June 22, 1957. Originally, in the writ petition the respondent had claimed to his having become a permanent Government servant more or less exclusively on the basis of his having been in service for over 11 years. In connection with the post of State Press Liaison Officer, he later on, filed a copy of the gazette notification dated July 11, 1962 in and by which a new Service is said to have been created and in which the post of State Press Liaison Officer was included as a cadre post. He had also filed along with his affidavit dated February 19, 1969, a copy of the said notification. On behalf of the State, the third appellant had filed an affidavit to the effect that the post of State Press Liaison Officer was a temporary one. But it was admitted by the third appellant that the said post was held in abeyance from June 27, 1962 to June 14, 1966, during which period the respondent was functioning as Deputy Director (Press). It has also been admitted by the third appellant that the post of State Press Liaison Officer was again revived and the respondent was posted to that post with effect from June 15, 1966.

In view of the different stand taken, regarding the nature of the post of State Press Liaison Officer, the High Court passed an order on July 21, 1969 requiring the parties, including the then Chief Secretary, to file affidavits regarding the nature of the post of State Press Liaison Officer. Various affidavits were filed by the respondent. The officers of the State filed affidavits pleadings showing that the notification dated July 11, 1962 did not create any new Service, nor did the said notification make the post of State Press Liaison Officer a cadre post. We may also refer to the notification dated July 11, 1962, which is as follows :

Chandigarh, the July, 11, 1962.

No. 6244-IPP-62. The Governor of Punjab is pleased to accord sanction to the creation of the Punjab 'Public Relations Service' and to include therein the following posts after classifying them into Class I and II as mentioned below :

S.No.	Name of the Post	Class of Service
4.	State Press Liaison Officer. .	II

A On June 24, 1966 the Government transferred the respondent from the post of Deputy Director (Press) as State Press Liaison Officer with effect from June 14, 1966 "consequent upon the revival of the State Press Liaison Officer, Delhi"

B The stand taken by the Chief Secretary and the various officers, who filed affidavits in pursuance of the order dated July 21, 1969 was that the notification dated July 11, 1962 did not create a new service and did not make the post of State Press Liaison Officer a cadre post. But it is seen that during the course of arguments before the High Court the State abandoned its initial stand that the post of State Press Liaison Officer has not become a cadre post as per notification dated July 11, 1962. On the other hand it is recorded in the judgment that the State conceded that on and from July 11, 1962 the post of State Press Liaison Officer had become a cadre post. But they contested the plea of the respondent that a new Service had been created. The High Court has come to the conclusion that no new Service has been created by the said notification. On the other hand what was done by the notification was only to give a new name as Punjab Public Relations Service and the gazetted posts were classified in Classes I and II. The High Court has again remarked that the State having failed to prove that the post of State Press Liaison Officer was not a cadre post, it began to take a different stand that in any event, it was not a permanent post.

E It is on the basis of the concession made on behalf of the State that the post of State Press Liaison Officer has become a cadre post, the High Court has considered the claim regarding the nature of the right that the respondent had when he was holding that post.

F Before us Mr. Tarkunde, learned counsel for the appellants, attempted to argue that the statement in the judgment of the High Court that there has been either a concession or an abandonment of the original plea by the State, as recorded therein is erroneous, as no such concession has been made nor was the original stand taken by the State ever abandoned. We are not inclined to accept this contention of Mr. Tarkunde. If the statements in the judgment of the High Court were not correct, one would have expected the appellants when they filed their application S.C.A. No. 1 of 1970 before the High Court for grant of certificate to have challenged the statements contained in the judgment. On the other hand there is only a feeble statement in the ground No. 3 filed before the High Court that in view of the stand taken by the Government there was no question of any concession nor was any statement made that the post was in the cadre of Service. This

is not the manner in which a statement contained in the judgment is to be challenged. We have to proceed through on the basis that the appellants have accepted the position that the post of State Press Liaison Officer is a cadre post. One of the circumstances relied on by Mr. Tarkunde, that there could not have been any such concession made by the State, as stated in the judgment of the High Court, is that the post of State Press Liaison Officer is not shown in Appendix A of the Gazetted Service Rules. But it should be remembered that those rules were framed in 1958 : it is also true that the said post is not contained in Appendix A. But it will be seen that under Rule 3 of the Gazetted Service Rules, the right of the Government to make additions or reduction in the number of posts shown in Appendix A whether permanently or temporarily has been preserved. In this connection it is also to be noted that in the affidavit dated August 7, 1969, filed by Mr. E. N. Mangat Rai, the then Chief Secretary, he has clearly admitted that though no new Service was created by notification dated July 11, 1962, nevertheless, the said notification added certain additional posts to the Service. He has further admitted that one of the said additional posts was that of State Press Liaison Officer.

In view of the above facts, which are on record, it is only reasonable to infer that in exercise of the power under Rule 3, the State Government, has made an addition to the cadre of the posts in Appendix A by including therein, the post of State Press Liaison Officer. Therefore, there is nothing strange in the State having accepted the above position as correct and in the High Court holding that the respondent has succeeded in establishing that the post of State Press Liaison Officer was included in the cadre post in July 1962.

But any how it is unnecessary for us to pursue this matter further, because we have to proceed on the basis of the concession made before the High Court by the State and recorded in the judgment. From the nature of the orders passed by the State in respect of this post, it looks as if the State was specially favouring the respondent by creating a post for him and appointing him to that post. Originally the post was created on June 28, 1957 and the respondent was appointed thereto. When he was Deputy Director (Press) for all those four years, and it is admitted that the said post was kept in abeyance. This is admitted by the third appellant in his affidavit. Even otherwise, the order of the Government dated June 21, 1962 creating a post of Joint Director itself ordered that the post of State Press Liaison Officer is to be held in abeyance. It is significant to note that Mr. Rajendra Nath was appointed to this newly created post of Joint Director and the respondent was appointed as Deputy Director (Press). It was

A during this period when the respondent was Deputy Director (Press) that the post of State Press Liaison Officer was kept in abeyance. There is no indication in the order dated June 28, 1957 or in the order dated June 24, 1966 limiting the tenure of the respondent's appointment as State Press Liaison Officer.

B These are the only two orders that have been produced, so far as we could see regarding the respondent's appointment to the said post. It is claimed on behalf of the appellants that the said post was being renewed from year to year and therefore it is a purely temporary post. Though no orders have been produced before the Court, we will accept their this plea that it is a temporary post continuing from year to year.

C But the point to be noted is that no further orders appointing the respondent to the said post have been produced, though it is admitted that he was holding the said post. If such orders had been produced by the appellants, it may be possible to find out the exact nature of the tenure for which the respondent was appointed—whether his appointment is for the duration of the post or whether it has been limited only till further orders or for any particular period. But the lack of such particulars has resulted in the Court not being able to investigate the term for which the respondent was appointed to the said post.

D The High Court has proceeded on the basis that inasmuch as the post was a temporary one and was being continued from year to year, the respondent has a right to hold the post at least till February 28, 1969 till which period admittedly the post had been renewed and, therefore, the termination of his service on October 31, 1968 was illegal.

E Mr. Tarkunde has urged that the appointment of the respondent was also on a temporary basis and his appointment was not co-terminus with the continuance of the post. As we have already pointed out, no orders have been placed before the Court regarding that aspect on behalf of the State. But there is a pay slip on record dated April 22, 1968. The Assistant Accounts Officer has issued the payslip to the Treasury Officer, Delhi stating that the payslip issued in favour of the respondent, who was the State Press Liaison Officer, Haryana, New Delhi, on August 31, 1967 may be deemed as operative upto and inclusive of February 28, 1969. It was no doubt sought to be explained on behalf of the appellants that this payslip has only been issued in a routine and formal manner to enable the respondent to draw his salary. We are not inclined to accept this contention of the learned counsel. That payslip, in the absence of any other materials placed before the Court by the appellants, gives an indication that the respondent's appointment as State Press Liaison Officer is co-terminus with the

continuance of the post. It is not disputed that at the time when the said payslip was issued, the duration of the post had been extended upto February 28, 1969.

A

In view of all the above circumstances, it is reasonable to infer that the appointment of the respondent as State Press Liaison Officer is co-terminus with the continuance of the post. No doubt, we are aware of the finding recorded by the High Court that such a claim by the respondent cannot be accepted. But it was the duty of the appellants, who were urging that the respondent's appointment was a purely temporary one and that it was not for the duration of the post, to have placed all the orders relating to the appointment of the respondent to the said post. Going by the terms of the orders dated June 28, 1957 and June 24, 1966, there is no such indication. On the other hand the indications are to the contrary that his appointment was co-terminus with the continuance of the post subject of course to the rules regarding the age of retirement and superannuation and the right of the State to take disciplinary action, according to law.

B

C

D

At this stage we may mention that there is on record a notification issued by the State of Haryana dated April 11, 1969 regarding the sanction accorded to the creation of a temporary post of Liaison Officer, Haryana at Delhi from April 1, 1969 to February 28, 1970. That notification refers also to the special pay of the officer who is to be appointed to the said post as well as his grade. But that order does not relate to any appointment of any officer to the said post. Therefore, that notification by itself does not throw any light as to the duration of the office to be held by a person to be appointed to that post.

E

F

G

Mr. Tarkunde, learned counsel for the appellants, then urged that it was within the power of the State Government to terminate the services of the respondent under Rule 5.9(b) of the Civil Services Rules. The High Court has held that the said rule does not apply. But it is not necessary for us to express any opinion as to the applicability or otherwise of the said rule. As we have already held that the appointment of the respondent must be considered to be co-terminus with continuance of the post of State Press Liaison Officer, it follows that the State had no power to terminate the services of the respondent when the post itself was continuing. If any action by way of disciplinary proceedings was being taken, then the State should have complied with Art. 311(2) of the Constitution, which they have admittedly not done in this case.

H

We make it clear that by upholding the contention of the respondent that his appointment as State Press Liaison Officer was for the duration of the continuance of the said post, we do not

A intend to lay down any general proposition that whenever an officer is appointed to a post, he will be entitled to hold that post so long as the post exists. It will all depend upon particular circumstances of each case as well as the nature of the orders making the said appointment. In the case before us, we have held in favour of the respondent, in view of the various circumstances mentioned earlier.

B

To conclude, we accept the contentions of the State that the impugned order is not vitiated by *mala fides* and that the respondent did not become a permanent Government servant on his appointment as Deputy Director (Press). But we further hold that in view of the circumstances of this case, indicated earlier, the respondent's appointment as State Press Liaison Officer was co-terminus with the continuance of the post and as such the order dated October 31, 1968 terminating the services of the respondent, when the post was admittedly in continuance, the order of termination is illegal.

C

D In the result, the judgment and order of the High Court are modified to the extent indicated above and the appeal allowed in part. In other respects, the appeal is dismissed. There will be no order as to costs.

G.C.

Appeal allowed in part.