

SAROJ RANI AND ANR. ETC. ETC.

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v.

STATE OF PUNJAB AND ORS.

AUGUST 24, 1999

[SUJATA V. MANOHAR AND A.P. MISRA, JJ.]

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Service law—Promotion—Examination for—Clerks promoted to the post of Assistant on passing an examination—Clerks having put in 18 years of service exempted from taking examination— Exemptees filling almost all vacancies of Assistant—Dispute between exemptees and qualifiers of examination—Held, exemption to a rule cannot efface the Rule itself—Vacancies decided to be filled in the ratio of 70 : 30 between the exemptees and the qualifiers—Punjab State Assistant Grade Examination Rules, 1984—Rule 12.

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Service Law—Promotions—Examination for—Rule providing for exemption of any class or category from examination for reasons to be recorded in writing—Held, does not confer unbridled power—Punjab State Assistant Grade Examination Rules, 1984—Rule 12.

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Service law—Promotions—Examination for—Rule Providing for exemption of any class or category from examination for reasons to be recorded in writing—Notification exempting a certain class did not contain reasons for such exemption—However Record of events and correspondence which led to such exemption showing reasons therefor—Held, notification is not invalid—Punjab State Assistant Grade Examination Rules, 1964—Rule 12.

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Service Law—Seniority—Inter se seniority between promotees—Promotees having cleared Departmental Examination for promotion—Rule protecting seniority of those who cleared the examination in five chances—Promotion to be made on the basis of seniority cum merit—Held, those who passed examination in five chances could not be given any preference over those passing it in more than five chances—Punjab State Assistant Grade Examination Rules, 1984—Rule 10.

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The dispute in this appeal relates to the rival claims of clerks in various departments of the State of Punjab to promotion to the post of Assistant. Initially promotion to the post of Assistant (later on re-designated as Senior

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A Assistant) from the post of clerk was made purely on the basis of seniority-cum-merit. In 1984, Punjab State Assistant Grade Examination Rules, 1984 were framed and under the said Rules, only those clerks who passed the examination prescribed under the Rules could be promoted to the post of Assistant. The promotions were to be made from amongst the qualifiers on the basis of seniority-cum-merit.

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The Punjab State Assistant Grade Examination Rules, 1984 was amended on 5.12.1984 and seniority of even those clerks who cleared the Assistant Grade Examination in two chances was protected. On 16.9.1985, the Rules were again amended and seniority of those who passed the Assistant Grade Examination in four chances was protected. On 18.10.1986, number of chances were further enhanced to five.

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D On the repeated representations of those who could not qualify the Assistant Grade Examination in spite of their long services, by a notification dated 21.1.1991, the Government exempted all clerks who completed 18 years of service as a clerk from taking the Assistant Grade Examination for promotion to the post of Assistant. The notification was issued under Rule 12 of the Punjab State Assistant Grade Examination Rules, 1984 which provided that if the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, exempt any class or category of persons from the operation of the Rules of 1984. The exemption was to operate prospectively.

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F There arose a dispute between (a) those who had qualified for promotion after taking the Assistant Grade Examination (the qualifiers) and those who had been exempted from the examination under the notification dated 21.1.1991 (the exemptees); and (b) those who had cleared the examination within five attempts and those who had cleared the examination in more than five attempts. Several Writ Petitions were filed by the aggrieved parties.

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On there being a conflict between two judgments of the High Court in respect of validity of the notification dated 21.1.1991, the matter was referred to a Full Bench of the Court. The Full Bench in *Surinder Jit Singh and Others v. State of Punjab and Ors.*, (1994) 4 Vol. 98 SLR 702 upheld the validity of the notification dated 21.1.1991. It further held that the notification was to be prospective in operation and the exemptees under it were to be treated at par with the qualifiers and promotion to the post of Assistant was

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to be made on the basis of seniority-cum-merit.

After the pronouncement of the Judgment by the Full Bench, several employees who had been promoted to the higher post of Assistant after 21.1.1991 on the basis of their having qualified in the examination were reverted and the exemptees who were senior to them were promoted. Again, several Writ Petitions were filed challenging both the validity of the notification dated 21.1.1991 and the consequential reversions. High Court again upheld the validity of the notification dated 21.1.1991.

The aggrieved parties filed appeals before this Court contending, *inter alia*, that—

1. Grant of exemption to clerks who have completed 18 years of service as clerks from the Assistant Grade Examination results into nearly all the vacancies of Assistant being filled up by the exemptees as they are more in number than the vacancies accruing and also as they are senior to the qualifiers and thus notification dated 21.1.1991 completely abrogates the very purpose and basis of the Punjab State Assistant Grade Examination Rules, 1984;

2. No reasons were recorded in the notification dated 21.1.1991 while granting exemption to certain candidates from passing the examination and therefore, the exemption granted was not in accordance with Rule 12 of the Punjab State Assistant Grade Examination Rules, 1984;

3. Rule 12 of the Punjab State Assistant Grade Examination Rules, 1984 is invalid as the power granted under it is without any guidelines and is unbridled; and

4. Preference ought to be given to those clerks who have cleared the examination in first five chances over those who qualified in more than five chances.

Before this Court, the counsel appearing for the parties suggested that to bring peace and amity between the litigating employees and to save the validity of the notification dated 21.1.1991, a quota should be fixed for promotion to the post of Assistant between the exemptees and the qualifiers in the ratio of 70% and 30%. The counsel for the State also made a statement that the State would not come in way of the agreement between the exemptees and the qualifiers.

Disposing of the Appeals, the Court

A HELD: 1.1. An exception to the rule cannot efface the rule itself, similarly exemption clause in a rule cannot obliterate the very rule itself. When a clause exempts a class or category of person from application of any rule, the exemption itself denotes it to be of persons in a small circle out of the bigger circle. But it cannot be said that exemption can destroy the bigger circle from which it owes its own existence. [711-A-B]

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1.2. It is within the legitimate jurisdiction of the State to decide as policy on any situation emerging from time to time. But it is always better for the State to consider all the pros and cons affecting the interest of all before laying down any policy. A short sighted policy or a policy without proper application of mind, brings parties in the litigating fray. However, the understanding reached between all interested contesting parties brings the curtain down of long two rounds of litigation. [712-H; 713-A]

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1.3. The qualifiers at the examination and exemtees would form one coherent class as eligible for promotion to be considered when any vacancy arises, on the basis of the principal of seniority-cum-merit. In other words, there would be no preference to those who have qualified or become eligible earlier. All would be at par. Thus there cannot be any distinction or preference *inter se* between them. [710-F]

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2. Granting an exemption to those who completed 18 years of regular service as clerk itself reveals the reason, viz. their experience for working this long period. This apart, records placed before the High Court reveals that there was protracted meetings, communications between the employees union, demanding the abolition of the Assistant Grade Examination with the Finance Secretary and the Government after due consideration issued the notification dated 21.1.1991. In other words, reasons were there on record.

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[706-H; 707-A, B]

3. Rule 12 of the Punjab State Assistant Grade Examination Rules, 1984 cannot be held to be without any guidelines or unbridled. There is in built check in the rule itself, as before exercising the power, certain conditions have to be fulfilled, viz., (a) State must form its opinion; (b) it pass an order in writing; and (c) it must record its reasons in writing. [706-E-F]

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4. It is not in dispute that the basis for promotion to the post of Assistant from amongst the eligible candidate is seniority-cum-merit. Eligible candidate in this context means all those who passed the examination in less than or more than five chances. They constitute as one group. There is no

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division among the qualifiers either under the rules or any order. This one cohesive group has to wait for promotion till vacancy arises. The promotion from among these eligible candidates, when principle of seniority-cum-merit is to be applied, there cannot be any preference *inter se* among the said two groups. Thus, no preference can be given to those who has qualified in first five chances over those who qualified in more than five chances. [708-E-F]

5. For the aforesaid reasons, the following directions are issued:

(1) All vacancies on the post of Assistant/Senior Assistants prior to 21st January, 1991 are to be filled up by those who qualified by passing the examination and exemptees would have no claim on such vacancies.

(2) All vacancies after 21st January, 1991 shall be filled in the ratio of 70 per cent and 30 per cent between exemptees and qualifiers in the examination, respectively, for each year in question till all the existing qualifiers are absorbed.

(3) All promotions or reversions made has to be readjusted within the aforesaid frame work, irrespective of any interim orders then in force.

(4) Any incumbent who worked on the post of Assistant/Senior Assistant on account of promotion orders and in case they have to be reverted or have been reverted, any salary or consequential amount paid to such employees for working on the post of Assistant/Senior Assistant shall not be taken back from them. Similarly, if any employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she will not be entitled to any arrears of salary. [713-C, D, E, F]

Surender Jit Singh and Ors. v. State of Punjab and Ors., (1994) 4 Vol. 98 SLR 702 and *State of Orissa and Ors. etc. etc. v. R.C. Raut and Ors., etc. etc.*, [1993] 2 SCC 486, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 11660-61 of 1995 Etc. Etc.

From the Judgment and Order dated 21.11.1994 of the Punjab and Haryana High Court in C.W.P.No.13810 and 9809 of 1994.

P.N. Misra, (Sanjay Sarin) for Ashok Mathur, Ms. Manjula Gupta, P.K. Goplaney, Dr. Meera Aggarwal, R.C. Mishra, Rajiv Talwar, Rajiv Dutta, S.P. Singh, K.K. Jagia, Jasbir Malik, Uma Dutta, N. Ganpathy, (Pradeep Gupta) for

A K.K. Gupta and Manoj Swarup for the appearing parties

The Judgment of the Court was delivered by

MISRA, J. Leave granted in the Special Leave Petition Nos. 376-379 of 1999.

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It is very common scenario in a service to see litigation spurting whenever more than one avenue is opened in any recruitment or promotion. It may be between direct recruits or promotees or inter se within a class creating two or more groups for promotion to a next higher grade. Sometime it is more out exuberance of one or the other group to have greater lion share in a higher grade or may be on account of some ambiguous instruction or an order without proper application of mind or any rule shrinking, extinguishing or effecting ones right, inevitably the litigation opens up. It further multiplies on account of amendments, orders etc. during pendency of litigations may be on account of interim orders passed by courts, bringing in new persons, class or groups into this fray. It is this which destandarises the efficiency of service class as not only lot of energy adrift in pursuing this but it fans poison within the two contesting such classes. The present group of cases is also one of such case, details of which we are referring hereunder.

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The aforesaid appeals arise after the conclusion of spate of litigations in its first leg, when their grouse not being satisfied they rolled into second round. The present second leg of dispute is raised by group of clerks working in the various departments of the Government of Punjab. There are two sets of contest, the one is inter se between the group which had passed the examination under the Punjab State Assistant Grade Examination Rules, 1984 (hereinafter referred to as the '1984 Rules'), viz., the one who has passed within five chances and the others who passed in more than five chances.

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The other set is between the group who passed the examination irrespective of number of chances and the group who were granted exemption from appearing in the examination under Rule 12. The exemptees under it are those who completed 18 years of their regular service. The claim for promotion of all these groups are for the posts of Assistant (redesignated as Senior Assistant). Before reverting to the facts of each of the aforesaid appeals, it is necessary to give short summary of the aforesaid rules and conditions of service preceding these rules. Prior to the aforesaid Rule of 1984 promotion from the post of clerk to the post of Assistant were made purely on the basis

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of seniority-cum-merit having requisite period of experience and qualification.

Thus came change in policy of the government. In order to bring up meritorious and efficient employees, promotion were decided to be only to those who pass an examination under Rule 4 of the aforesaid 1984 Rule, Rule 4 made it obligatory for the first time on all the holders of substantive post of clerks to be considered for next higher post of Assistant if they qualify the Assistant Grade Examination to be conducted in accordance with Rules 5, 6 and 7. Rule 4 is quoted hereunder :

“Eligibility for promotion to the post of Assistant

(1) No person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualifications and experience prescribed for appointment by promotion to the post of Assistant, he qualifies the test:

Provided that a person who has already qualified the Assistant Grade Examination inter-alia in terms of Punjab Government Circular No. 4809-G II-57/21176, dated the 23rd October, 1957, or who was holding on regular basis the post of Assistant on the 23rd October, 1957, shall not be required to qualify the test;

Provided further that if a person holding the post of Assistant or a high post, on provisional basis, on the commencement of these rules is of the age of fifty years or more; he shall also not be required to qualify the test;

Provided further that a person who has been appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of these rules, shall be required to qualify the test within a period of three years from such commencement and failure to qualify the test within the specified period shall result in reversion of such person to the post of clerk or to the post by whatever designation called from which he was appointed by promotion to the post of Assistant on provisional basis.

(2) Notwithstanding anything contained in sub-rule (1) where no person, who has qualified the test, is available for promotion to the post of Assistant in a service, the appointing authority may appoint a person by promotion to the post of Assistant on provisional basis till a person who has so qualified the test becomes available in that service.

Then came the first amendment in the said Rule by amending Rule 10(1)

- A on 5th December 1984, which protected the seniority of those who could not clear the Assistant Grade Examination in the first chance. So even if one qualifies the test within first two chances, he is assigned the seniority in the cadre of Assistant in accordance with their seniority in their substantive post. Next amendment was on 16th September, 1985 in Rule 10(2) under which
- B instead of two chances four chances were substituted. The third amendment was on 18th October, 1986 under which instead of four chances it was substituted by five chances. Thereafter, number of instructions were issued by the respondent one of such was on 4th January, 1988 by which it was clarified that persons who have cleared the Assistant Grade Examination within 5 chances will be given the seniority in order of seniority of substantive
- C rank. Thereafter, under the instructions dated 30th August 1989, it was further clarified that persons who passed the Assistant Grade Examination within 5, 6, and 7 chances should not be given the seniority till the decision of Civil Writ Petition No. 392 of 1989 on account of interim order dated 16th March, 1989 passed in that case. Both the appellants in Saroj Rani case are those who have passed their examination on November 1990 but were promoted on
- D 30.12.1992.

This policy of promotion only to those who pass the examination under the aforesaid Rule continued for some time. It seems the other clerks, senior clerks etc. who could not qualify in the examination in spite of their long services felt heart burn and started representing the government for their promotion without taking recourse to the examination based on their experience, service record. This pressure brought in another change in the government policy, which led to the issuance of the impugned Notification dated 21st January, 1991 exempting all such employees who completed 18 years of service as clerk from taking recourse through examination for promotion. This notification was issued under Rules 12 of the aforesaid Rule. Rule 12 is quoted hereunder:

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"12. Power to Grant Exemption:

G Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded, in writing exempted any class or category of persons from the operation of these rules and such exemption shall operate prospectively."

H This gave birth to a distinct class to lay their claim for promotion which inevitably, effected the other class of clerks who became eligible by passing the examination under the aforesaid Rule.

Thus on the issuance of this notification all those who completed 18 year of regular service became eligible for being considered for promotion to the post of Assistant/Senior Assistant. This class admittedly is ever increasing as all those who in turn completes 18 years of regular service would qualify to this group and be also eligible for promotion. This led into two clear sources of promotion one who became eligible after passing the examination. under Rule 4 and the other, the exemptees under the said Notification dated 21st January, 1991. issued under Rule 12. This led to filing of number of writ petitions challenging the aforesaid Notification dated 21st January, 1991. In Civil Writ Petition No. 13310 of 1991, *Ravi Shankar v. State*, the High Court quashed this notification holding it to be invalid, while in another civil Writ Petition No. 9828 of 1991, the same Court upheld the said notification. In the same first round of litigation in another civil Writ Petition No. 11023 of 1991, *Surinderjit Singh and other v. State of Panjab*, same question was raised, whether persons who passed the examination prior to 21st January, 1991 could be treated senior to the exemptees on 21st January, 1991. including validity of Notification dated 21.1.1991. In this though specifically the virus of this Notification dated 21.1. 1991 was not challenged but only order dated 28.6.1991 under it, but the Bench in view of the two conflicting decisions of the same Court, one holding the Notification dated 21st January, 1991 valid and the other invalid and also as this issue went to the very root felt to resolve this which was effecting large number of State employees, hence referred it to the Full Bench. The Full Banch in *Surinder Jit Singh and Ors. v. State of Panjab and Ors.*, (1994) 4 vol. 98 Service Law Reporter Page 702 upheld the validity of the said Notification dated 21st January, 1991. It further held that the notification to be prospective in operation and exemptees under it to be treated at par with those who qualified in the examination and promotion to the post of Assistant/Senior Assistant to be made on the principle of seniority-cum-merit As a consequence, the respondent issued letter dated 18th May 1994, issued to the various head of the departments to take necessary steps to implement the judgment of this Full Bench, *viz.*, *Surinder Jit Singh* (supra).

In spite of this, doubt arose as to whether the vacancies which occurred after 21st January, 1991 are to be filled only by the exemptees namely, those who have completed 18 years of regular service or it should also go to those who passed the examination on or before the said date. In the absence of any instruction either way some of the heads of the departments took steps and demoted the senior Assistant who were promoted after 21st January, 1991 on account of their eligibility of having passed the examination. Some of them stayed their hands with hope that some policy and guideline may be issued

A to implement the said judgment. However, reversion started of the qualifiers in the examination by the respondent in view of this Full Bench. This is because these two classes constituted as one group for promotion and on the principle of seniority-cum-merit, those who were seniors unless found unfit were to be promoted first. It is not disputed, exemptees number being large and they invariably being senior, chances of promotion of examination
B qualifier become very remote on existing vacancies as their turn could only be after such seniors exemptees were promoted. It is at this point of time a serious issue was raised inter se between the exemptees and those having passed the examination which led to the second round of litigation. Number of writ petition were filed in the High Court challenging the impugned
C notification and consequential orders including reversions on number of grounds including that they have already cleared their probation on the post of Senior Assistant on promotion and were fully eligible and qualified hence cannot be reverted. Since the aforesaid appeals raise similar issues within the aforesaid periphery, we are disposing them off compositely by means of this common order.

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Now we proceed to refer to the facts and submissions made by various learned counsels for the parties in each of the aforesaid appeals.

E The aforesaid appeal of *Saroj Rani and Another* (C. A. No. 11660 of 1995) also arises out of such petitions which in addition to the challenge of Notification dated 21.1.1991 also challenges the validity of Rule 12 being unbridled and unguided. Submission of learned senior counsel Mr. P. P. Rao is that conferment of such unbridled power on the State demonstrates how, its exercise, through Notification dated 21.1.1991 has rendered the aforesaid Rule 1984 redundant. He submits the grant of exemption under it results into
F filling up of cent percent vacancies going to exemptees excluding completely the other group of eligible candidates. This erodes the very purpose for which the aforesaid Rule was framed. The submission is Rule 12 is inconsistent with Rules 4, 6, 9, and 11. Further the Full Bench in *Surenderjit Singh* (supra) never directed to revert any person who is qualified and promoted. It only declared that the exemptees should be treated at par with persons who have qualified
G through examination. Putting at par means both should be treated alike and not to defeat and totally surrender the right of one group to the other. In case they are reverted they will never get a chance for promotion in rest of their service career. As a small example it was submitted, the appellant belongs to the Irrigation Department of the Government and according to the averment,
H under the Notification dated 21 January, 1991, 925 candidates have been

exempted and on the then vacancies existing, 250 qualified persons were promoted who qualified in the examination, out of which 187 were promoted after 21st January, 1991. Now they have to give way to exemptees who are large in number. It was submitted, the number of exemptees qualifying will be an on going process and qualifiers of examination, who had to undertake extra effort to qualify, their number being small, in contrast to the largeness of exemptees, they will never get a chance to be promoted. This in turn will not only disheartened the meritorious employee but will knock their incentive down. This obliterates the very objective of 1984 Rules and it brings to stand still its various provision under it. Hence submitted, the Notification dated 21st January, 1991 and the said instruction dated 18th May, 1994 must go. In this appeal learned senior counsel Mr. P. P. Rao, while repelling the challenge that the aforesaid Full Bench forecloses this submission as it upheld the validity of Notification dated 21.1.1991, the submission is that exemption notification was challenged on a limited ground that no reasons were recorded in it while granting exemption which is an essential ingredients under Rule 12. However, no challenge was made nor any consideration is given that the impugned notification completely abrogates the very purpose and base of 1984 Rules and nullifies Rule 4. This annihilates both the foundation of the said Rule and the qualifiers under it, all over the State of Punjab hence this requires due consideration by this Court in the larger interest of the dimension and disgruntlement of the employees all over the State. He submits even dismissal of the special leave petition on 8th April, 1994 filed against the judgment of Full Banch decision of *Surenderjit Singh* (supra) does not conclude the matter because the area in which the appellants have pressed their grievance in this writ petition is not covered by the said Full Bench decision. This apart, in addition since the dismissal of the special leave petition was *in limine* without adjudicating the issues on merit would not foreclose this issue, as this Court has yet not considered or decided the matter. Further the Court has only put the exemptees at par with qualifiers but what would be at par has not been considered by the State neither any policy nor any guideline has been laid down. State should not make qualifiers promotion as an illusion. By the impugned order the High Court dismissed the writ petition and upheld the validity of Rule 12 and the said Notification dated 21st January, 1991 and the instruction dated 18th May, 1994. It held that promotion to the post of Assistant (Designated as Senior Assistant) in view of admitted position that promotion to be on the basis of seniority-cum-merit, a senior person would be entitled to be promoted first unless his record reveals him to be unfit Both the appellants in this appeal were promoted after 21st January, 1991.

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A So far in the appeal of *Dhanna Singh and Other*, (C. A. No.11661 of 1995) same question is raised with almost similar facts as in the case of *Saroj Rani and Another*, and learned counsel for the appellant Shri P. N. Puri adopts the same.

B Learned counsel Shri Ashok Mathur for the appellants in *Ravi Lamba and Other*, (C.A. No. 3315 of 1997) has challenged another Full Bench decision of Panjab and Haryana High Court decided on 17th September, 1996 in civil Writ Petition No. 16959 of 1994. *Baldev Raj and Others, v. The State of Panjab and Other*. The question raised in this appeal is;

C Whether the persons who have passed the examination within five chances shall have preference for promotion over the persons who passed the test in more than five chances on the date of vacancy and also whether the exemptees could be put at par with the candidates having passed the test in first five chances and the other who have passed in more than five chances?

D The appellants really have challenged the Government order dated 17th November, 1994 which is an office order passed. The direction issued under it is quoted hereunder :

E “(1) The officials mentioned in Annexures who were promoted as Assistants on the basis of the number of chances of passing the Assistant Grade Examination, vide orders dated 20.8.1990 issued vide Endst. No. 1017/90 Estt. 1 (3)/11586 dated 21.8.1990 and orders dated 7.9.1990 issued vide Endst. No.1/17/90-Estt-1 (3) 12995 dated 10.9.1990, subject to the result of various writ petitions pending in the Hon’ble High Court of Panjab and Haryana but their turn for promotion to the post of Senior Assistant does not come on the basis of seniority - cum-merit, are hereby reverted from the post of Senior Assistant.

F (ii) the dates of promotion of remaining Senior Assistants from amongst the officials promoted vide orders dated 20.8.1990 and 7.9.1990 are readjusted in accordance with their seniority-cum-merit as per Annexure-II.

G (iii) 8 Clerks named in Annexure-III who had completed 18 years of regular Service as Clerks/Senior Clerks/junior Assistants upto 23-10-1992 (i.e. the last date upto which promotions have been made) are exempted from passing Assistant Grade Examination with effect from the dates mentioned against their names and the

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persons at S. N. 2 to 8 namely Sarvshri Jaswant Singh , Tarilochan Singh, Bishan Dutt, Sadipt Kumar, Ashok Kumar S/o Shri Kulwant Rai, Ashok Kumar S/o Shri Narinder Nath and Varinder Nayar are promoted as Senior Assistants in the pay scale of Rs.1800-40-2000-50-2400-60-60-2700-75-3000-100-3200 with effect from the due dates as mentioned against the names, Shri Pawan Kumar figuring at Sr. No. 1 has been considered for promotion but found unfit for promotion on the basis of his service record. A

(iv) Consequently, against the two posts of Sr. Assistants, which become available from 27.5.1992, Smt. Sudesh Sharma D/o Sh. Mohinder Singh Dhillon, have been found fit for promotion against the said vacant post w.e.f 27.5.1992 on the basis of seniority-cum-merit and eligibility and, are accordingly promoted to the post of Senior Assistants in the pay Scale of Rs. 1800-3200 w.e.f. 27.5.1992. B C

(v) The dates of promotions as Sr. Assist of officials promoted after the order mentioned in (I) above and upto 23.10.92. and those mentioned in (ii). (iii) and (iv) above are adjusted/re-adjusted as per Annexure-IV." D

But to put the matter straight the said order also records the following:-

"The above promotions/reversions and changes in the dates of promotions are further subject any subsequent orders of the Hon'ble Court. E

Dated the 17.11.1994

P.S. Ahuja

Chandigarh

Joint Secretary, Secretariat
Administration." F

Thus the said directions were specifically made subject to any orders of a Court. The appellants further seek direction through their writ petition that they be permitted to continue working as senior Assistants in pursuance to their promotion order which were admittedly prior to 21st January, 1991. The impugned Full Bench finally held; G

"Persons who passed the test within first five chances shall not have preference over the ones who passed the test in more than five chances in case the latter are available or all are available on the dates the vacancy arises. The exemptees from passing eligibility test having rendered 18 years of service would be at par with the candidates who H

- A passed the test in less than or more than five chances on the dates of vacancy arises and as a necessary corollary promotions would be effected on the basis of seniority-cum-merit. The vacancies shall be filled in accordance with the date on which these became available from amongst the persons eligible on that date on the principle of seniority-cum-merit irrespective of the fact that they have passed within five on more than five chances. Rule 10(2) is rule regarding fixation of seniority by protecting the same and a rule providing for eligibility or qualification for promotion.”
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- C The appellant in this case has also challenged the decision of the High Court so far it holds, in case of one vacancy and employees who have passed the said examination in the first five chances would not get priority over the employees who have passed in more than five chances and vacancy is to be filled on the basis of seniority-cum-merit. The challenge is if that be so the very purpose to bring in more meritorious employees would be defeated. The contention is, the High Court was in error in putting two groups of those who have passed test within five chances and another in more than five chances at par at the time of filling the vacancy. This appeal also challenges the putting of exemptees at par with other eligible persons who have passed the examination. For this similar submission is made as in the case of Saroj Rani and Another.
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- E The appellants of *Punjab Ministerial Qualified Assistant Association* (C.A. No. 3316 of 1997) raises the similar question as in the case of the aforesaid appeal of Ravi Lamba and other. Learned counsel Shri P.N. Mishra in addition emphasised that the order dated 21st January, 1991, does not record the reasons. Hence violative of Rule 12 thus liable to be struck down.
- F He submits where the rule obliges reasons to be recorded, it must be recorded. He relied on [1993] 2 SCC 486 *State of Orissa and Other etc. etc. v. R. C. Rout and Other etc. etc.*

- G In *Tarlok Singh and Other* (C.A. No. 1329 of 1999) all the appellants though passed the examination under the aforesaid Rules prior to 21st January, 1991 within five chances but were promoted after 21st January, 1991 in view of the interim order dated 30th April, 1997 passed by this Court in special leave petition filed against the order of Full Bench dated 17th September, 1996 *Beldev Raj* (supra). The appellants were ordered to be reverted to give way to the eligible exemptees. The submission in this case was the same as in the case of *Punjab Ministerial Qualified Assistant Association* appellants. The
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interim order dated 30th April, 1997 is quoted hereunder:

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“Special Leave granted.

Printing dispensed with. Issue notice in the stay application. In the meanwhile, there shall be interim stay of the operation of the impugned order. It is, However, clarified that neither the tendency of the appeal nor the interim stay granted by us today, come in the way of those who have qualified by passing a required test to be promoted when due.”

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In *Sukhdev Singh Sarpal etc.* (CA No. of 1999 @ SLP (C) Nos. 376-379 of 1999) appellants are exemptees who claim in view of the Full Bench Decision in *Surenderjit Singh* (supra) to be promoted first on the existing vacancy after 21st January, 1991 though were promoted after 21st January, 1995 but were reverted in view of the interim order dated 4th December, 1995 passed by this Court which is quoted hereunder :

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“Special leave granted.

Printing dispensed with. Pending appeal there will be stay of the operation of the impugned order. This will not preclude promotion to those who have qualified by passing the required test.”

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The grievance is that they should not have been reverted on account of the interim order as there was no such direction. According to the appellants on 5th January, 1996, the Government issued a letter for implementation of the interim order dated 4th December, 1995 passed by this Court but by this it never ordered any reversion of all those employees who have already been promoted as senior Assistant. It is significant that finally State took decision vide Notification dated 3rd March, 1998 to abolish Assistant Grade Examination, thus consequently issued a letter dated 9th March, 1998. On doubt being expressed the Government also issued a clarificatory letter dated 17th August, 1998. The case of the appellant is, that respondent itself misinterpreted the said clarificatory letter dated 17th August, 1998, and passed reversion order of the appellant on 26th November, 1998. It is this reversion order which is under challenge in the writ petition of the appellants, However, the High Court dismissed the writ petition against which this appeal is preferred.

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In the aforesaid appeals the questions raised are;

(a) Whether Rule 12 of the 1984 Rule invalid?

(b) Whether the notification/order dated 21st January, 1991 is valid?

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- A (c) Whether in terms of Full Bench decision in *Surenderjit Singh* (supra) on the facts and circumstances of this case, are the exemptees going to fill up to cent percent vacancies of Assistant in case yes, is it not necessary for the State Government to come out with some policy or guideline to redress the grievance of those who passed the examination prior to 21st January, 1991?
- B (d) What meaning is to be given to the Full Bench decision in *Surenderjit Singh* (supra) according to which the exemptees have been placed at par with those who qualified in the examination?
- C (e) Whether a person who has passed the test in first five chances has preference over the persons passing the test in more than five chances?
- (f) Whether exemptees who were promoted in view of Full Bench decision in *Surenderjit Singh* (supra) their reversion in terms of the interim order passed by this Court could be held to be valid?
- D (g) Whether, the reversion of qualifiers in the examination in view of interim order of this Court, who were promoted to the post of Assistants prior to 21st January, 1991 could be held to be valid?

E Having given our consideration to the various arguments raised by learned counsel for the parties so far the question of validity of Rule 12, viz. Question number (a), we have perused the impugned judgment which considered this question in depth and concluded after due consideration by upholding its validity. It holds rightly, Rule 12 cannot be held to be without

F any guidelines or is unbridled. It hold, in effect there is in built check in the rule itself, as before exercising the power, certain conditions have to be fulfilled, viz. (a) State must form its opinion, (b) it pass an order in writing; and (c) it must record its reasons in writing. We have also examined similar submissions before us, to which we do not find any merit, and hold impugned order was justified in upholding the validity of Rule 12 which does not require

G any interference. So far the validity of notification/order dated 21st January, 1991 the question numbers (b), (c) and (d) could be disposed of under one head. Countering the submissions for the respondents learned counsel for the appellants submits that test of validity; of this notification in the earlier Full Bench decision was confined to the question, whether reasons were recorded

H in this order or not in terms of Rule 12. The Full Bench held that granting an

exemption to those who completed 18 years of regular service as clerk itself reveals the reason, viz, their experience for working this long period. The apart, records were placed before the Full Bench and it recorded that the relevant record reveals, there was protracted meeting, communications between the employees union demanding the abolition of the Assistant Grade Examination, with the Finance Secretary and the Government after due consideration issued the impugned Notification dated 21st January, 1991. In other words reasons were there on record. Thus, the court while upholding the order, rejected the contention that there were no reasons recorded. In this second leg of litigation an attempt is made by various learned counsel to challenge this order even on this ground but we feel the matter stands concluded by the decision of Full Bench in *Surenderjit Singh* (supra). Hence for this reason and also for the reason recorded in the impugned orders we do not feel it to be fit case to interfere on this ground. However, learned senior counsel Mr. P.P. Rao submits with vehemence, in the present series of appeals the invalidity of the impugned order dated 21.1.1991 is raised on the ground which was neither raised nor was an issue earlier. Submission is, this order is passed even if reasons recorded, without application of mind, as its consequential effect on the other group of qualifier in the examination or on 1984 Rules were never considered. Submission is in granting exemption to those who completed 18 or more years in the regular service, whose number being very large and promotion being on seniority-cum-merit, the exemptees inevitably being senior, chances of promotion to this other group is completely eliminated. Promotion to this group can only be when eligible candidates in the exemption group is exhausted. Thus, practically in spite of qualifying and being eligible they will never be promoted hence the very base of 1984 Rules to give incentive to the qualifiers is eroded. Such exercise of power of granting exemption cannot be exercised to eliminate the other group or to invalidate any rule. In any case at least there should have been some guideline or such policy to project the interest of this other group. This order dated 21.1.1991 makes Rule 4 and the policy behind 1984 Rule redundant.

This submission which goes to the root and effect clerks of the State employees all over the State and were not raised in the first leg of litigation and on the facts and circumstances of this case, we proceed to consider this to bring to an end, as far as possible this long drawn litigation.

However, unfortunately we find in the present case the appellants have not given any details except the figures which we have recorded above with

- A** respect to the Irrigation Department and there are some figures given by the interveners in their application. The contention for the appellants is, since the State has not chosen either to give any figures or even to file counter affidavit before the High Court in the appellants' writ petition, out of which arises the aforesaid appeal of *Saroj Rani and others*, hence the averments and ground raised in the writ petitions should be accepted. Contention is, there is specific plea and ground that the resultant effect of the impugned Notification dated 21st January, 1991 makes 1984 Rules redundant. Since this issue touches the very foundation effecting large number of employees, we thought it proper in the larger public interest, to grant opportunity to the State to bring correct facts and figures on record and also to place State stand in this regard.
- B**
- C** Accordingly, learned counsel appearing for the State of Panjab took time to place on affidavit the relevant facts and figures and the stand of the State. One affidavit dated 3rd August, 1999 has been filed before us by the State, sworn by Shri Megh Raj, joint Secretary to the Government Department of Personnel. About this and question Nos. (b), (c) and (d), we shall be dealing in the later part of our judgment.
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- So far the question No. (e) regarding the preference inter se between the candidates who passed the test within first five chances and the other who passed in more than five chances. We find the reasons given by the High Court in the impugned judgements including the Full Bench, *Baldev Raj* (supra) to be well considered, which does not call for any interference. It is not in dispute, the promotion to the post of Assistant from amongst the eligible candidate is seniority-cum-merit. Eligible candidate in this context means all those who passed the examination in less than or more than five chances. They constitute as one group. There is no division among the qualifiers either under the rules or any order. This one cohesive group has to wait for promotion till vacancy arises. The promotion from among these eligible candidates, when principle of seniority, cum-merit is to be applied, there cannot be any preference inter se among the said two groups. Thus impugned order has rightly concluded, no preference can be given to those who has qualified in first five chances over those who qualified in more than five chances.
- E**
- F**
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- In the appeal of Punjab Ministerial Qualified Assistant (C.A. No. 3316/97) the question raised is regarding inter se seniority for promotion between those who passed examination in five chances and another in more than five chances. In view of our finding recorded above we conclude, the decision of
- H**

the High Court holding both the said class at par, is just and proper, which does not call for any interference. The appellants in these appeals are all those who qualified and became eligible for promotion prior to 21st January, 1991 but in the absence of vacancies existing they were only promoted after this date. However, their right as against the exemptees would depend on our decision of questions No. (b) to (d) which we would be dealing later as aforesaid.

It is also relevant to refer that the aforesaid Full Bench, though upheld the validity of the notification/order dated 21st January 1991, but held it to be not retrospective in operation. This part of the order is not under challenge. The result is, it comes into operation only from 21.1.1991. Thus to any vacancy filled up prior to the said date, there could possibly be no dispute even as against the exemptees, as their right could only be on the vacancies occurring on or after 21.1.1991. Hence so far the appellants, viz., the qualifiers in the examination in Ravi Lamba and others (C.A. No. 3315/97) who were admittedly promoted prior to this date, their promotion would not be affected and so cannot be held to be illegal. So we hold these promotions to be valid. Thus the cancellation of their promotion and reversion by the respondent cannot be upheld. The stand that they were reverted because of the said interim order passed by this Court cannot be accepted. Firstly, there was no such direction by this Court to revert them, secondly, when the said Full Bench held the order dated 21.1.1991 not to be retrospective these appellants whose promotions were earlier to this date are placed outside the disputed area.

So far *question number (f)* which is in issue in the appeal of *Sukhdev Singh Sarpal* (CA No. of 1999) @ SLP (C) Nos. 376-379 which relates to exemptees, who were promoted after the Full Bench decision of *Surenderjit Singh* (supra) on or after 21st January, 1995 but were reverted in view of the interim order passed by this Court. They challenged the reversion order. The High Court neither scrutinise nor adjudicate this question raised, which it should have. It only observed that the appellant may seek their remedy from this Court as reversion was based on the interim order passed by this Court. We do not find anything in the interim order of this Court which directed their reversion. This Court merely stayed the impugned order pending appeal. However, since the matter is before us, so far the claims of exemptees, we have no hesitation to hold, if exemptees are grouped with other group of qualifiers, the promotion of the exemptees invariably has to be first because

A of their seniority on the principle of seniority-cum-merit, for a vacancy occurring on or after 21.1.1991. Thus their reversion prima facie cannot be upheld. This of course is also subject to our decision on questions (b), (c) and (d). Similarly in the appeal of *Dhanna Singh* (C.A. No. 11661/95) the question raised is the same as in the case of *Saroj Rani and others*.

B This takes us to the remaining questions, viz. (b), (c) and (d). This is the main thrust of submission which has been strenuously contended before us by the various learned counsel for the appellants. It is for this, we directed the State Government to file an affidavit. The questions (b), (c) and (d) are inter linked, hence we are considering and adjudicating them under one head.

C The question raised under this head is truly the validity of Notification dated 21.1.1991, specially on account of the resultant aftermath of the decision in the Full Bench in *Surenderjit Singh* (supra). One of the question raised is, if on account of this exemption notification, all vacancies after 21.1.1991 are going to be filled only by the exemptees, does it not make Rule 8 redundant and if so then whether this notification is liable to be struck down, specially

D in the absence of any guideline or policy of the State to salvage this situation. The submission is that this notification could only be saved if State either has provided or is ready to provide respite to the qualifiers in the examination, by reopening the door of their promotion by dividing the quota inter se between the exemptees and qualifiers in some reasonable ratio. Further they

E submit, what meaning is to be given to the finding of the Full Bench that both exemptees and the qualifiers in the examination will be at par. Does at par mean exclude the qualifiers to give way only to the exemptees?

F So far this last point which is under head (d) i.e., what meaning to be given when court said, place exemptees and qualifiers in the examination at par. In our considered opinion, it only means, the qualifiers at the examination and exemptees would form one coherent class as eligible for promotion to be considered when any vacancy arises, on the basis of the principle of seniority-cum-merit. In other words there would be no preference to those who have qualified or become eligible earlier. All would be at par. Thus there cannot be

G any distinction or preference inter se between them. Next to test the validity of this impugned notification, its consequential effect is to be examined on the facts of this case, for which we gave opportunity to the State to place them on record. So, answer to question Nos. (b) and (c) would depend on the analysis of facts placed by the State. The case for the appellants is, by the grant of exemption, all vacancies occurring from 21.1.1991. until March

H 1998, when this aforesaid rule was withdrawn, would go to the exemptees

alone, filtering out the qualifiers in the examination for all times. It is on this premise it is submitted that it makes Rule 4 redundant.

Prima facie after hearing learned counsels for the parties, we felt impressed by this submission. It is also settled, an exception to the rule cannot efface the rule itself, similarly exemption clause in a rule cannot obliterate the very rule itself. When a clause exempts a class or category of person from application of any rule, the exemption itself denotes it to be of persons in a small circle out of the bigger circle. But can it be said that exemption can destroy the bigger circle from which it owes his own existence. Now we proceed to test this submission, whether it is true or not that the exemptees will occupy almost cent per cent vacancies and in case yes, whether there is any Government guideline or if not whether State feels to consider to lay down some principle or guideline to save from this attack of the validity of the said notification.

The State has filed its affidavit dated 3rd August, 1999 as aforesaid, We have gone through the same and also its annexure. Its annexure gives clear picture of the number of employees who have completed 18 years of service, number of employees who have qualified in the examination the total number of vacancies to be filled from 21.1.1991 to 3.3.1998 in the various departments of the State Government. The States affidavit also gives its own conclusion in this regard. Relevant portion of the affidavit is quoted hereunder:

“From the information received from various Heads of Departments in the State of Panjab transpires that in most of the cases, the number of exemptees were in excess as compared to the number of qualified persons/vacancies available.....had the promotions of exemptees not been stayed, the net effect of the exemptions order on promotions.... between 21.1.1991 and 3.3.1998 would have been that the maximum number of vacancies (except in a few Departments) which became available during the aforesaid period, would have gone to the exemptees.”

We ourselves scrutinised the details given in the annexure, we find barring very few departments, almost in every department, the exemptees number is far more than the vacancies during the said period. The annexure also reveals during 21.1.1991 to 3.3.1998 total number of exemptees are 7609 (Seven thousand six hundred and nine) and total number of vacancies available for promotion is only 3328 (Three thousand three hundred and twenty eight).

A In this figure, the affidavit almost admits that qualifiers in the examination would have no chance or very remote chance in only few departments for promotion. In other words, the sphere of exemption destroys the qualifiers of any chance to be promoted.

B When this situation emerged, we asked learned counsel for the State as to what would be the State stand which has not been stated in this affidavit. For this, he sought further time to seek instructions from the State. On the other hand both learned counsels for exemptees and qualifiers fairly proposed and were agreeable for fixing the quota between exemptees and qualifiers in the ratio of 70% and 30% based on the approximate number of exemptees who were eligible for promotion and the approximate number of qualified persons who were eligible for promotion during the period 21.1.1991 to 3.3.1998. This would not only save the impugned Notification dated 21.1.1991 but will bring peace and amity to the concerned employees of the State. So we, without expressing any final opinion on the point in issue, adjourned this case for the State counsel to obtain the instruction. Subsequently, learned State counsel made the following statement based on the instruction.

E “If the exemptees and those who have passed the qualifying examination come to an agreement for a proportionate sharing of vacancies for promotion to the post of Senior Assistant in the ratio of 70 per cent for the exemptees and 30 per cent for the qualifying candidate for every year with effect from 21st January 1991, the State will not come in the way of such Settlement, if it receives the approval of the Court.”

F As recorded earlier, which is reiterated again by the learned counsels appearing for all the parties, viz., exemptees and qualifiers that they are agreeable of this ratio of 70 per cent and 30 per cent for their promotion. It was expected from the State to have come out with its own clear policy decision as the present piquant situation is its own creation. First it decided to promote the incumbents only on the principle of seniority cum merit, then brought in 1984 Rules to promote only through examination who passes it and next by granting exemption to a class of employees, creating two channels for promotion which is subject matter of consideration and finally even dissolving this by withdrawing the Rule of promotion through examination. Of course, it is within the legitimate jurisdiction of the State to decide as

H policy on any situation emerging from time to time. But it is always better for

the State to consider all pros and cons affecting the interest of all before laying down any policy. A short sighted policy or a policy without proper application of mind, brings parties in the litigating fray. However fortunately, in view of understanding reached between all interested contesting parties, the State has also agreed in this situation to accept and honour this consensus, which brings the curtain down of long two rounds of litigation. We commend the spirit shown by all the concerned employees. It is this spirit of give and take which not only creates good congenial atmosphere in the working field but also curtails long unfortunate innings in the courts of law.

For the aforesaid reasons emerging from the facts and circumstances of this case we issue the following directions :

- (1) All vacancies on the post of Assistants/Senior Assistants prior to 21st January, 1991 are to be filled up by those who qualified by passing the examination and exemptees would have no claim on such vacancies.
- (2) All vacancies after 21st January, 1991 shall be filled in the ratio of 70 per cent and 30 per cent between exemptees and qualifiers in the examination, respectively, for each year in question till all the existing qualifiers are absorbed.
- (3) All promotions or reversions made has to be readjusted within the aforesaid frame work, irrespective of any interim orders then in force.
- (4) Any incumbent who worked on the post of Assistant/Senior Assistant on account of promotion orders and in case they have to be reverted or have been reverted, any salary or consequential amount paid to such employees for working on the post of Assistant/Senior Assistant shall not be taken back from them. Similarly, if any employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she will not be entitled to any arrears of salary.
- (5) State shall complete this exercise of promotion on the above said formula on or before the 31 December, 1999; till then the existing arrangement shall continue.
- (6) So far two appellants in the appeal of Ravi Lamba, since they were promoted prior to 21st January 1991, for which there is no

