Supreme Court of India
Ajit Singh & Others Etc vs State Of Punjab & Another on 10 March, 1983
Equivalent citations: 1983 AIR 494, 1983 SCR (2) 517
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
AJIT SINGH & OTHERS ETC.

Vs.

RESPONDENT:
STATE OF PUNJAB & ANOTHER

DATE OF JUDGMENT10/03/1983

BENCH:
DESAI, D.A.
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DESAI, D.A.
ERADI, V. BALAKRISHNA (J)

CITATION:
1983 AIR 494 1983 SCR (2) 517
1983 SCC (2) 217 1983 SCALE (1)262
CITATOR INFO :
RF 1989 SC1160 (30)
D 1992 SC2093 (17)

ACT:
Civil service-Service rule prescribed probation of two years-order of appointment stated probation as one year-Government, if competent prescribe shorter period of probation.
Probation-Meaning or-object in prescribing.
Interpretation-Manadatory or directory-Tests for determining.

HEADNOTE:
The Punjab Town Improvement Act, 1922 envisages the setting up of Trusts and the Trusts so set up were to be bodies corporate with perpetual succession and a common seal. The duties and functions entrusted to the Trusts included, among others, preparation of schemes for improvement and expansion of towns in the State. For the purpose of manning the senior posts under tho Trusts, the Act conferred power on the State Government to constitute certain services. One of the services constituted by the Government was the Punjab Service of Trust Executive officers. Exercising power under the Act the State

Government framed the Punjab Trust Services (Recruitment and Conditions of Service) Rules, 1978, The Rules envisaged the setting up of a Selection Committee called the Punjab Trust Services Selection Committee for selecting officers. After following the procedure prescribed under the Rules, the Selection Committee recommended the appointment of the eleven petitioners herein to the posts of Trust Executive officers, Class 1, II and II[. The Slate Government accepted the recommendations of the Selection Committee and in May, 1979 appointed the petitioners to the respective posts. Condition (c) of the terms and conditions annexed to the order of appointment issued to each of the appointees stated: "All the appointees shall remain on probation for a period of one year under rule 10(1) of the Rules. The regular appointments shall be subject to the satisfactory completion of the period of probation by such appointee after the expiry of one year & on the date of his joining on the completion of one year of service an increment was released in favour of each of the appointees.

In August, 1980 tho State Government dissolved 21 Trusts. Purporting to act under rule 9 of the 1978 Rules, the Governor dispensed with immediate effect the services of each of the 11 petitioners after paying a month's salary in lieu of a month's notice.

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In their petitions filed under Article 32 of the Constitution impugning the order of the State Government dispensing with their services! the petitioners alleged that after they had satisfactorily completed the period of probation of one year it was not open to tho State Government to dispense with their services; the power to dissolve the Trusts was used by the Government to get rid of the petitioners; that sometime after dispensing with their services the Trusts had been reconstituted but even so they had not been recalled to their posts and that the action of the Government in the case was thoroughly arbitrary, actuated by extraneous considerations.

In reply it was stated that under rule 9 (2) the State Government had power to dispense with the services of a probationer if his work and conduct during the period of probation were not satisfactory; payment of a month's pay in lieu of notice was made by way of abundant caution and that it could not confer any right on the petitioners; the period of probation of one year, mentioned in clause (c) of the annexure to the order of appointment was a typographical-cum clerical error, which in terms of rule 9 (2) should have been two years in respect of direct recruits and lastly their services had been dispensed with because with the dissolution of the Trusts the Executive officers had become surplus and their continuance in service would be an avoidable burden on the exchequer.

It was contended on behalf of the State Government that the expression 'shall' in rule 9 (I ) on its own force would

apply so that the direct recruits would automatically be on probation for a period of two years and no power or discretion is conferred on anyone to reduce this period.

Allowing petition,

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HELD: It is not necessary to prescribe a period of probation and the State Government as the appointing authority would have discretion in the matter subject to rules by which the appointment is governed. [529 C]

Under the archaic law of hire and fire the concept of probation in service jurisprudence was practically absent; but with the advent of the concept of security in public service it came to acquire a certain connotation. In order that an incompetent or inefficient servant is not foisted upon the master the concept of probation was devised. A new recruit is put on test for a period before be is absorbed in the service or has acquired a right to the post. In so far as the master is concerned the period of probation gave a sort of locus pententaie to him to observe the work, ability, efficiency, sincerity and competence of the servant and if the servant is not found suitable for the post the master reserved the right to dispense with his service during or at the end of the period of probation. The period of probation, therefore, furnished a valuable opportunity to the master to closely observe the work of a probationer. The termination of service of a probationer during or at the and of the probation did not ordinarily and by itself constitute a punishment for, the servant had no right to continue to hold such a post. The period of probation may vary from post to post or from master to master. It is not obligatory on the part of the master to prescribe a period of probation; it is open to him to employ a person without putting him on probation. In short the power to keep a servant on probation and the period during which his performance is to be observed remained tho prerogative of the master.

[526 A-H]

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Purshottam Lal Dhingra v. Union of India [1958] SCR 828, followed.

There is no general rule which may help in determining whether a provision is mandatory or directory. It is the duty of the court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. The use of the expression 'shall' is not decisive and the question whether a provision is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. [527 G-H]

Cullimore v. Lyme Rogis Corporation, [1962] I Q.B. 718; State of U.P. & Ors. v. Babu Ram Upadhaya, [1961] 2 SCR 679 at 710; State of U.P. v. Manbodhan Lal Srivastava, [1958] 2 SCR 533 and Montreal Street Railway Company v. Normandin, L.R. [1917] A.C. 170, referred to.

Rule 9 (2) is directory and confers a discretion on the State Government to prescribe a period of probation shorter than the maximum set out in it. The period of two years prescribed in this rule is the maximum period which means that the rule placed an embargo on the appointing authority's right to prescribe a period of probation longer than two years. But the rule does not admit of a construction that a period shorter than two years could not be prescribed. The rule enables the appointing authority to determine the suitability of the person appointed and the State Government may, having regard to the biodata and other information it has about the officers, feel that a period shorter than two years would suffice to make up its mind whether to retain him in service or to dispense with his service. Power in this respect is vested in the State Government which is the highest authority and that power has to be exercised on the recommendation of a statutory body. This power is not taken away by the use of the expression 'shall' in the rule. [527 C-F]

In the instant case two of the petitioners who were appointed to class I post possessed high educational qualifications, had considerable experience in the education department of the State and left the permanent service under the State to take up the present jobs. Persons of such long experience and high qualifications would be disinclined to be put on probation again for a period of two years. It is therefore reasonable to infer that, having regard to the high attainments of tho candidates, the State Government had prescribed a period of probation of one year. A few other petitioners, who were appointed to class II and Ill posts were practising advocates. In all the cases, on the completion of the period of probation of one year they were given an increment which is released only if the work and conduct of the person are found to be satisfactory. It is implicit in this that they bad satisfactorily discharged their duties during the period of probation. In the face of this position to hold that the wording of the appointment order stating that each of the appointees would be on probation for one year was a typographical-cum-clerical error, would be doing violence to commonsense.

[525 B-E, 529 C-F]

That the dissolution of the Trusts was a device to get rid of tho petitioners is evident from later events. By the very order by which the Trusts were dissolved certain officers were appointed to carry on the functions of the Trusts. Therefore the Trusts, independent of the Board of Trustees, had a corporate personality, with a perpetual succession and their functions had to be carried out. The
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effect of the dissolution was me rely to dissolve the Board of Trustees. The corporate personality of the Trust remained inviolate. If the Trusts were functioning, if their schemes were being implemented, if all other staff was retained

there is no substance in the contention that the services of the petitioners alone were no longer required because of the dissolution of Trusts. Even if the charge of mala fide is not true there are certain aspects which unerringly point in the direction that the action was arbitrary and is violative of Articles 14 and 16 of the Constitution. [535 A-E]

There is equally no force in the contention that after the dissolution of the Trusts their continued retention in service was imposing an unnecessary burden on the State exchequer. After removing the petitioners 11 other officers were asked to take over their duties. This apart, the State exchequer was not responsible for the salary and prequisites of the Trust Executive officers; their salaries, allowances and prequisites were charged on the fund of the Trusts as envisaged by section 17 (4) of the Act. [534 A]

The argument that the performance of the petitioners was not satisfactory is equally untenable. On the expiry of the period of probation they were allowed an increment and were continued in service. It would be unjust to say that their work was unsatisfactory till they earned their increments but that their work and ) conduct were found to be unsatisfactory within less than six weeks thereafter, meriting dispensing with their services. [530 B- D]

JUDGMENT:

ORIGINAL JURISDICTION . Writ Petition (Civil) Nos. 5274-81, 5463, 5348 & 5606 of 1980.

(Under article 32 of the Constitution cf India) M.K. Ramamurthi, J. Ramamurthy, Miss R. Vaigui for the Petitioners.

Hardyal Hardy and D.D. Sharma for the Respondents The Judgment of the Court was delivered by DESAI, J. These writ petitions under Article 32 of the Constitution questioned the validity of the orders dispensing with service of each of the petitioner with immediate effect made by the Director Local Government. Punjab dated September 25, 1980 as being violative of Arts. 14 and 16 of the Constitution.

The Punjab Town Improvement Act, 1922 ('Act for short) was enacted to make provision for the improvement and expansion of towns in Punjab. The act envisages the creation and constitution of Trusts and the Trust so created will have a corporate personality with perpetual succession and a common seal. The duties and functions of the Trust inter alia include preparing of schemes under the Act for various purposes. Section 17 conferred power on the State Government to constitute certain services in the manner therein prescribed. One such service contemplated by the section was Punjab Service of Trust-Executive officers. Sub-section (2) of section 17 conferred power on the State Government to make rules for regulating the recruitment and the conditions of service of members of the Trust Services constituted by the State Government. Armed with this power, the State Government constituted Punjab Service of Trust Executive officers. In exercise of the power

conferred by sec. 73 read with sec. 17 (2) of the Act, the State Government framed rules styled as Punjab Trust Services (Recruitment and Conditions of Service) Rules, 1978 (Rules' for short). Rule 5 (2) (i) inter alia provided that fifty percent of the vacancies in the cadre of Executive officers shall be filled by direct recruitment and for this purpose rule 5(4) envisaged the setting up of a Selection Committee called Punjab Trust Services Selection Committee.

In the year 1978, Directorate of Local Government, Punjab issued advertisement No. 1078 inviting applications for the posts in Class I, II and III of Trust Executive officers Pursuant to this advertisement, large number of persons applied for various posts. The Punjab Trust Services Selection Committee interviewed various candidates and ultimately recommended eleven persons for the post of Trust Executive officers. Ajit Singh and Rajinder Singh were recommended for Class I post; S. Sarup Singh and R.L. Bhagat were recommended for Class II Post of Trust Executive officers and the remaining 7 petitioners in this group of petitions were recommended for Class III Post of Trust Executive officers. These recommendations were accepted and appointment orders were issued by Punjab Government on May 28, 1979 and it is not in dispute that all the appointees joined the respective posts. Each one of the appointees was issued an order of appointment to which terms and conditions of appointment were annexed. One such condition worth- noticing reads as under:

> "(c) All the appointees shall remain on probation for a period of one year under rule 10 (l) of the Rules. The regular appointments shall be subject to the satisfactory completion of the probation period by such appointee after the expiry of one year from the date of his joining."

After each appointee completed one year of service, an increment was released in his favour. Suddenly in exercise of the power conferred by Rule 9 of the '1978 Rules', Director of Local Government, Punjab dispensed with the service of each of the 11 Trust Executive officers, who were appointed on May 28, 1979. These orders are impugned in these petitions.

As the language of the order was the subject matter of some discussion, the one in respect of petitioner No. 3 R.L. Bhagat may be extracted. It reads as under:

> "Punjab Government Local Government Department O R D E R In exercise of the powers conferred under Rule 9 of the Punjab Trust Services Recruitment and Conditions of Service) Rules, 1978 and all other powers enabling him in this behalf the Governor of Punjab is pleased to dispense with immediate effect the services of Shri Rattan Lal Bhagat who was appointed to the Punjab Trust Service of Executive officer Class Il vide office order No. DLG (TSC)-79/126 dated 28th May, 1979. He will be paid one month's salary in lieu of the month's notice Sd/- R.D. Joshi, Director, Local Government, Punjab.
>
> Endst. No. DLG (TSC) 80/8648/51 Dated Chandigarh the 25th Sept. 1980".

Validity of this order styled as order dispensing with the service of each of the petitioner is questioned in this group of petitions on The ground that the action is thoroughly arbitrary actuated

by extraneous considerations and violative of equality of opportunity in tho matter of employment. It is also challenged on the additional ground that after the completion of the period of probation it was not open to the State Government to terminate the service of the petitioners, in the manner in which it is done. One more ground of attack was that the action was malafide in that the petitioners were appointed when a political party of other hue and colour was in power and on a change of Government, the petitioners were victimised. In support of the last contention it was urged that the power to dissolve trust conferred by section 103 was used to get rid of the petitioners which can be demonstrably established by the fact's that after dispensing with the service of petitioners, the trusts have been reconstituted without calling back petitioners to their posts.

A return was filed on behalf of the respondents-the State of Punjab and Director-cum-Joint Secretary, Local Government Department, Punjab by Prithipal Singh Sodhi. Apart from the usual preliminary objection that the petition involves disputed and tangled questions of facts which cannot be resolved under a petition under Article 32 of the Constitution, it was contended that the Government had dissolved all the 21 Improvement Trusts in the State of Punjab by its order dated August 11, 1980 and since the Trusts were dissolved, services of Executive officers were no longer required because their continuance would inflict an unnecessary burden on the State Exchequer and therefore, the State Government decided to dispense with the services of those Executive officers appointed by direct recruitment who had not completed the probationary period of 2 years under Rule 9 (1) of '1978 Rules'. It was contended that all the petitioners were appointed through direct recruitment as Executive officers in the Punjab Trust Services on May 28, 1979 and according to the respondents the period of probation was two years which would expire on May 27, 1981. It was said that the State Government in exercise of the power conferred by Rule 9 (2) could dispense with a service of a probationer, if the work and conduct of a person to a service during the period of his probation is in the opinion of the appointing authority not satisfactory. Armed with this power, it was contended that the services of the petitioners were terminated which would mean that the work and conduct of each of the petitioner who was appointed by direct recruitment was not satisfactory. Explaining why one month pay in lieu of notice was paid, it was contended that payment was ex majorie cautela and it can confer no right on the petitioners. Referring to clause (c) in the annexure to the appointment order of the petitioners which prescribed a probation period of one year, it was submitted that that was a typographical-cum-clerical error because Rule 9 (2) which prescribes period of probation in terms specifies the probation period of two years in respect of direct recruits. It was lastly contended that as the Trusts were dissolved, the services of the petitioners as Executive officers had become surplus and therefore, had to the dispensed with as a compelling necessity.

Pleadings have been set out in some detail to highlight a very narrow controversy which requires to be resolved in this case. There is no dispute that petitioners were appointed to Class I, II and III post of Trust Executive Service after they were recommended by the statutory body called Punjab Trust Service Selection Committee. That each petitioner in response to the appointment order dated May 28, 1979 joined the service is again undisputed. Terms and conditions were set out as an annexure to the appointment order of each of the petitioners and clause (c) in the annexure clearly specifies the probation period to be of one year as prescribed under Rule 10 (1) of '1978 Rules.' Now if each of the petitioners was appointed as a probationer and the period of probation which he was informed by the annexure to the appointment order was of one year, indisputably on May 27, 1980 each one

completed the period of probation. However, the contention of the respondents is that the recital in clause (c) of the annexure to the appointment order specifying the probation period of one year in respect of each petitioner is a typographical-cum- clerical error in view of the provision contained in Rule 9 (1) of '1978 Rules'. Rule 9 (1) and 9 (2) provide as under:

> "9-Probation:-(1) A person appointed to a service shall remain on probation for a period of two years, if appointed by direct recruitment, and one year, if appointed otherwise.
>
> (2) if the work or conduct of a person appointed to a service during the period of his probation is, in the opinion of the appointing authority, not satisfactory, it may;
>
> (a) if appointed by direct recruitment, dispense with his services."

It would thus appear at a glance that the real question in controversy was what was the period of probation in respect of each of the appointee. It is not in dispute nor is it controverted by the respondents that the appointment order issued by the Punjab Government did recite that the person mentioned in the order is appointed to Punjab Trust Services of Executive officers Class I or Class II or 111 as the case may be subject to the conditions annexed to the order etc. Therefore, the appointment was subject to the conditions annexed to the order and as pointed out earlier condition (c) annexed to the order prescribes a period of probation of one year. Nowhere A in the affidavit in opposition, the respondents state as to whether rule 10 (1) also confers power to prescribe a period of probation. Reference is to Rule 9 (1) which prescribed a period of probation of two years for those appointed by direct recruitment. Now examining the matter from the point of view of petitioners, all the petitioners were appointed by direct recruitment. But at this stage one may point out that petitioner No. I Ajit Singh, who was selected for Class I post of Trust Executive officer, had 26 years of service to his credit in the Education Department of Punjab Government and he had to resign that post in order to take the post of Trust Executive officer Class I. Similarly, Rajinder Singh- petitioner No. 2, who was appointed to Class I post was Class II Gazetted officer in Punjab Government service with 26 years of service to his credit till September 22, 1978. He had also worked from September 22, 1978 to the date of joining the post of Class I Trust Executive officer as Executive officer Class II in the same Local Government Department. Thus both Ajit Singh and Ravinder Singh who were appointed to Class I post had rendered service for a long time. Both were highly educated. Both had to leave permanent service to take up the post of Trust Executive officer. R.L. Bhagat, Pavittar Singh Gill, Gulam Sabir Ali Khan and Harjinder Singh, who were directly recruited to Class II and III posts of Executive officers were practising advocates. If the Service Selection Board had the bio-data of each of these persons before it, one can say with certain amount of confidence that the Service Selection Committee as well as the Punjab Government having taken into consideration such high educational attainments and past experience may prescribe a shorter period of probation. Mr. Hardy, learned counsel for the respondents, however, seriously contended that rule p 9(1) does not permit anyone to prescribe shorter period of probation than the prescribed period of two years. He relied on the use of the expression 'shall' in Rule 9 (1) as mandatory and submitted that even if the appointment order did not carry any specification about the prescribed period of probation, the rule on its own force will apply and a direct recruit appointed to Trust Executive Service and governed by

the '1978 Rules' will automatically be on probation for a period of two years. It was also pointed out that the rules do not confer any power or discretion on many authority to reduce this period. We find it difficult to subscribe to this view.

This requires examination of the genesis why period of probation is prescribed. And how the period of probation has been understood in service jurisprudence.

When the master servant relation was govern ed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of prohibition was devised. To guard against error of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus pententiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to. (See Purshotam Lal Dhingra v. Union of India.(1) The period of probation therefore furnishes a l? valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer.

Rule 9 (2) provides that a person appointed to a service shall A remain on probation for a period of two years if appointed by direct recruitment etc. Emphasis was placed on the use of the expression 'shall' and it was urged that it is mandatory. It was also urged that the rule leaves no discretion in the appointing authority to prescribe a period of probation shorter than two years. And even if someone has attempted to do the same that being clearly illegal, the person concerned having been fastened with the knowledge of the statutory rule cannot contend that his period of probation is less than two years, and the court will have to proceed on the basis that period of probation shall be two years. This submission raises a vital question whether the use of the expression 'shall' in rule 9 (2) indicates that the rule was to be mandatory in its application and no one will have a discretion to

prescribe a period shorter than two years. On a plain grammatical construction of the rule it appears clear that the prescribed period of two years was the maximum period and that placed an embargo on the appointing authority denying it a right to prescribe a period of probation longer than two years. But the rule does not admit of a construction that a period shorter than two years cannot be prescribed. The purpose underlying the rule was to give an opportunity to the appointing authority, in this case the State Government, to determine the suitability of the person appointed and the State Government having the bio-data of officers before it may feel that a period shorter than 2 years would suffice it to make up its mind whether to retain the employee concerned or to dispense with his service. Rule 9 (2) is thus an enabling provision which permits the Government to prescribe a period of probation and the period can be anywhere up to two years and not in excess of 2 years. Such enabling provision is generally held to be directory and not mandatory. The rule is cast in affirmative language and there is no prohibition placed in public interest. In order to determine whether a provision is mandatory or directory, there is no general rule which may help. It is the duty of Court to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. (See Cullimore v. Lyme Regis Corporation. (1) The use of the expression 'shall' is not considered decisive and the question whether a provision is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent it clothed. This Court in State of U.P. & Ors. v. Babu Ram Upadhaya,(l) after referring to Crawford "on the Construction of Statutes", Craies on "Statute Law", Maxwell on "The Interpretation of Statutes", State of UP. v. Manbodhan Lal Srivastava(2) and Montreal Street Railway Company v. Nirmandin,(3) briefly formulated the relevant rules for interpretation as under:

> "When a statute uses the word 'shall', prima facie, it is mandatory but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider inter alia, the nature and the design of the statute and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and, above all, whether the object of the Legislation will be defeated or furthered."

This rule of interpretation was re-affirmed recently in Municipal Corporation of Greater Bombay v. B. E. S. T. Workers Union(4). In order to ascertain whether rule 9(2) is mandatory or directory, the setting in which it is placed, the purpose under lying the provision, the object sought to be achieved would help in determining whether it is mandatory or directory. As we have pointed out above that rule 9(2) was an enabling provision conferring power on the State Government to put a person appointed by direct recruitment on a probation of maximum period of two years and no consequence or failure to comply with the same is provided in the relevant rules, the provision appears to be directory. Obviously, the appointing authority having regard to all the circumstances may not be inclined to prescribe any period of probation or may prescribe a shorter period of probation. This power is not taken away by the use of the expression 'shall' in rule 9(2). And let it be

remembered that the power of appointment A is vested in the highest executive namely the State Government and the power is to be exercised on the recommendation of a statutory body. Viewed from all these angles, it appears clear to us that rule 9(2) is directory and confers a discretion on the State Government to prescribe a period of probation shorter than the maximum set out in rule 9(2).

Having clearly ascertained the purpose and intendment underlying the concept of probationary period in service jurisprudence, one can confidently say, that it is not absolutely necessary to prescribe a period of probation in each case and the State Government as an appointing authority will have discretion in this matter subject to rules by which appointment is governed, otherwise the rule would be counter-productive. Highly qualified and experienced persons coming into service at a later stage in life like petitioners Ajit Singh and Rajinder Singh, who after rendering service for a long period of 26 years came to be appointed as direct recruits, would be disinclined to be on a probation for a period of two years. And the appointing authority, in this case the State Government, not any lower officer, noting their worth and value may either wholly dispense with the period of probation or reduce it considerably. If such be the purpose and intendment underlying the concept of probationary period, it is reasonable to infer that in respect of such experienced and highly qualified persons, the appointing authority the State Government must have prescribed the period of probation of one year. And that is why uniformly in each appointment order, the appointee concerned was told that his period of probation would be one year only. To hold with the respondents that this is a typographical-cum-clerical error is such over simplification as would be doing violence to common sense. We are therefore, of the opinion that in case of each of the appointee, the period of probation prescribed was one year only.

This conclusion is buttressed by another circumstance appearing in the record. When each of the petitioners completed his one year of service, which marked the expiration of the period of probation, an increment was released in his favour. Subject to the specific rule to the contrary, ordinarily no increment is earned during the period of probation. But at any rate, if an increment can be earned after the expiry of the period of probation, it would depend upon the satisfaction of the appointing authority that the work and conduct of the probationer was satisfactory. Further rule 4.7 of the Punjab Civil Service Rules Vol. 1 provides that an increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Government employee by a competent authority if his conduct has not been good or his work has not been satisfactory. Now almost all the petitioners completed their one year service by June, 1980. An increment was released in favour of each of them. lt is implicit in release of increment that the petitioners had satisfactorily discharged their duty during the probation period, and at any rate the work and conduct was not shown to be unsatisfactory, which permitted an increment to be earned. Assuming, as contended for on behalf of the respondents that period of probation was two years, the fact that on the expiry of one year of service an increment was released, would imply that during the period of one year the work and conduct has not been unsatisfactory. If it was otherwise the release of increment could have been interdicted on the ground that neither the work nor the conduct was satisfactory. The fact that the increment was released would atleast permit an inference that there was satisfactory completion of the probation period and that during the probationary period, the work and conduct of each of the petitioner was satisfactory.

If up to the end of June, 1980, the work and conduct of each of the petitioner was satisfactory and if the service of each of them was simultaneously on the same day September 28, 1980 dispensed with on the ground mentioned in rule 9 (2) (a) in that in the opinion of the appointing authority, the work and conduct of each of the petitioner was not satisfactory, then between June 1 980 and September 1980 something was simultaneously done by each of the petitioners to permit the appointing authority-the State to reach an affirmative conclusion that the work and conduct, became wholly unsatisfactory and the degree of dissatisfaction with the service was so high that the service of all the 11 petitioners recruited on the same day was required to be dispensed with on identical ground. This is too fortuitous to carry conviction.

Mr. M.K. Ramamurthi, in this connection, contended that there is no satisfactory explanation as to what suddenly occurred in respect of all the 11 petitioners recruited on the same day to render their otherwise satisfactory service as unsatisfactory and that too during the short period after release of increment ? Mr. Ramamurthi urged that between recruitment and termination of service, the politi-

cal hue of the party in power changed. Maybe, there may be some A substance in the contention, but for paucity of evidence we are not inclined to examine this contention. We would rather confine ourselves to the positive averment in the return filed on behalf of the respondents for dispensing with the service of all the petitioners. In Para 9 of the return, following reasons are assigned for dispensing with the services of the petitioners:

> "The services of the petitioners have been dispensed with and not terminated because :-
>
> (i) They had not completed their period of probation on the date of order;
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> (ii) Their services were no longer required as the Improvement Trusts in the State of Punjab had been dissolved;
>
> (iii) Their Continuance in service was only causing unnecessary burden to the State Exchequer;
>
> (iv) They being probationers had no right to the posts.
>
> (v) Their performance, in the opinion of the appointing authority, was not upto the mark."

We will meticulously examine the validity of each one of these reasons seriatim.

The first submission is that each of the petitioners had not completed the period of probation on the date of impugned order. This proceeds on the assumption that the period of probation was two years. For the reasons hereinabove stated, this submission is contrary to the record. If the period of probation was one year as held by us, indisputably each one of the petitioners had completed his period of probation on the date of the impugned order. Therefore this reason is untenable and will

have to be ignored.

The second reason assigned for the impugned action was that the services of the petitioners were no longer required as the Improvement Trusts in the State of Punjab had been dissolved. By an order dated August 11, 1980, Government of Punjab in exercise of the power conferred by sec. 103 (1) of the Act dissolved with immediate effect the trusts therein set out. In all 21 Trusts were dissolved.

Each Trust had an Executive officer. If 21 Trusts were dissolved, 21 Executive officers became surplus and their services would no longer be necessary as contended on behalf of the respondents. Only 11 direct recruits of 1979 recruitment were adversely affected by the dissolution of the Trusts in that their services were dispensed with. We were not informed as to how Trusts Executive officers of other 10 Trusts were dealt with, but as petitioners have not made any grievance in that behalf, we would overlook that aspect. Petitioners on the contrary contend that dissolution of the Trusts was a device to get rid of the petitioners. It would be stretching credibility too far to hold on the material placed before us that the State Government were to the extreme length of dissolving Trusts to get rid of l I petitioners, though in the circumstances of the case it is equally difficult to disabuse our mind that such may be the underlying motive. We are however determined not to be influenced by the alleged possible motivation. The question is if the Trusts were dissolved, what happened to the assets, liabilities and the ongoing and continuing functions of the Trusts. If the assets, liabilities and ongoing functions were taken over by some other bodies, but with their own staff carried on the activities, there would have been some semblance of justification in the action of the respondent in treating the petitioners as surplus and dispensing with the services on that account. On the contrary, it becomes evident from the record and it was not disputed that except the 11 Executive of Officers-petitioners herein, all other staff of all the Trusts were retained and they carried out the functions of the Trust under the supervision of an officer appointed by the Municipal Committee or in some cases by the State Government. lt thus unquestionably appears that what was dissolved was the Board of Trustees p and not the Trusts. Only the nomenclature changed. The work continued. And this is evident from the fact that as late as August 19, 1980, Batala Improvement Trust issued a notice inviting objections from the public in respect of its development scheme. Similarly on October ll, 1980 Amritsar Improvement Trust invited applications for allotment of plots to the local displaced persons available in certain schemes framed by it. We can multiply such illustration. But we consider it unnecessary to do so. And it is impossible to believe that on mere dissolution of the Board of Trustees, all its functions were wound up. As many as 1500 officers and other members of the staff continued to work for the so-called dissolved Trusts. The only persons whose services were dispensed with as no more necessary were the 11 petitioners i. e. the direct recruits of 1979. In this background, it become difficult to escape the conclusion though we are trying our level best to do so that dissolution of the Trusts was a device to get rid of the petitioners. But on that point we say no more. Mr. Hardy pointed out that by the ordinance No. 6 of 1980 styled as Punjab Town improvement (Amendment) ordinance, 1980, sub- sec. (2) was introduced to sec. 103 which took care of the situation arising out of the dissolution of the Trusts. It provided that all properties, funds and dues vested in or realisable by the Trust and Chairman respectively shall vests in and be realisable by the State Government till they stand transferred to the Municipal Committee under sub. sec.

3. Sub-clause (c) of sub-section (2) enabled the Government to appoint a Class I officer of the State Government for the purpose of completing the execution of any scheme which the Trust may be implementing. And sub-sec. (3) provided for the consequences after all the functions Of the dissolved Trusts were discharged. We fail to see how this section can throw any light on the point under discussion? on the contrary, by the very order dissolving the Trusts, certain officers were appointed in respect of each trust to carry on the functions of the Trusts. Therefore, the Trust independent of the Board of Trustees had a corporate personality. It had a perpetual succession and its functions had to be carried out. They effect of the dissolution of the Trusts was merely dissolving the Board of Trustees. The corporate personality of the Trust remained, inviolate. But the Punjab Government took advantage of the dissolution order dissolving in effect the Board of Trustees and dispensed with the services of 11 petitioners. If the Trusts are functioning, if its schemes are being implemented, if all other staff is retained, we find it difficult to accept the submission of Mr. Hardy that the services of the petitioners were no longer required because of the dissolution of the Trusts, and therefore the same have been dispensed with.

The third reason assigned is that their continuance in service was only imposing an unnecessary burden on the State Exchequer. In fact this is actually begging the issue. After removing the petitioners, 11 other officers were asked to take over the duties of the petitioners. In the order dissolving the Trusts, it is mentioned that in exercise of the power conferred by clause (2) (c) of sec. 103 of the Act. the Governor of Punjab is further pleased to direct that the officers indicated in column 2 shall perform the functions of the Trust and the Chairman under the Act. Trust Executive officer Was the highest executive officer and his function is to be discharged by the newly appointed officer. It is therefore, difficult to accept the submission that the continued retention in service of the petitioner after the dissolution of the Trusts was imposing an unnecessary burden on the State Exchequer.

This submission does not commend to us for the additional reason that the State Exchequer was not responsible for the salary and perquisites of the Trust Executive officers, in view of the provision contained in sub sec (4) of sec 17 of the Act which provides that salary, allowances, gratuity, annuity, pension and other payments required to be made to the members of the Trust Service in accordance with the conditions of their service shall be charged from the funds of the Trust in the prescribed manner.

The fourth and fifth grounds for dispensing with the services of the petitioners were that the petitioners being probationers had no right to the posts, and their performance in the opinion of the appointing authority was not satisfactory are wholly untenable because the period of probation had expired and they were continued in service after allowing each one of them to earn an increment. It is a permissible inference that till allowing each petitioner to earn his increment, his service and work were deemed to be satisfactory and nothing is pointed out to us as to what occurred in respect of 11 petitioners simultaneously within hardly a period of less than six weeks since the release of increment to stigmatise each one of them that his work and conduct was not satisfactory. Therefore, the conclusion is inescapable that none of the reasons assigned for dispensing with the services of the 11 petitioners is tenable.

Now it the reasons for dispensing with the services of petitioners are untenable, the question is whether the action of dispensing with services of the petitioners is arbitrary. Mr. Hardy, learned counsel for the respondents contended that even if the Court is satisfied that the reasons set out in the return for dispensing with the services of the petitioners are untenable and irrelevant, nonetheless the Trusts having been dissolved the conclusion cannot be escaped that services of the petitioners as Trust Executive officer were no more necessary and therefore, this Court cannot interfere with the order dispensing with the services of the petitioners. We remain until convinced. Though there was formal dissolution of Trusts, in effect and substance the Board of Trustees was dissolved. Corporate personality of Trusts remained unaffected. Staff remained. Functions were being carried out. By the time the writ petitions came up for hearing Mr. Ramamurthi pointed out that the Trusts have been re. A constituted and that was not seriously disputed by Mr. Hardy. Further, it is crystal clear that what was dissolved was the Board of Trustees and not the Trusts because functions of the Trusts were being discharged by other officers. The entire staff of the Trusts except the 11 petitioners was retained. Schemes formulated by the Trusts were being implemented. In other words, the corporate personality remained almost inviolate. Even if we decline to examine the charge of mala fides, there are certain aspects herein discussed which cannot be overlooked and which compulsively and unerringly point in the direction that the action was arbitrary. To recapitulate these circumstances, it is crystal clear that the Board of Trustees was dissolved, the Trusts without the name of Trust continued, their functions continued, the staff excluding the 11 Trust Executive officers was retained, and in place of the officers whose services were dispensed with, some other officers were asked to take over their functions and duties, and within a short time, the Trusts were formally constituted. The only effect sought to be achieved by the bizarre exercise of first acquiring power to dissolve the trusts and then ordering their dissolution was to dispense with service of only 11 Trusts Executive officers of 1979 recruitment. And having achieved the desired result the Trusts have been reconstituted albeit without showing the fairness of recalling the discharged 11 Trust Executive officers. Therefore, without imputing any motive, the conclusion is inescapable that the action was thoroughly arbitrary and violative of the guarantee of equality of opportunity enshrined in Art. 16 read with Art. 14 of the Constitution and such thoroughly arbitrary action cannot be sustained, and deserves to be quashed.

The last contention of Mr. Hardy was that in any event even if the Court comes to the conclusion that the petitioners had completed the period of probation, yet they would be temporary government servants and their services were dispensed with after giving them salary for one month in lieu of notice and as the Trusts no more exists, they at least cannot be reinstated. We find no substance in this contention. We would have beer. required to examine this contention in some depth, but we are spared the exercise in view of the decision of this Court in The Manager, Government Branch Press and Anr. v. D.B. Belliappa, wherein it was observed as under:

> "Conversely, if the services of a temporary government servant are terminated arbitrarily. and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, not withstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled

> with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action We have reached the conclusion that the action was thoroughly arbitrary and if it is arbitrary, it smacks of discrimination and a discriminatory treatment in the matter of public employment cannot be overlooked.

Accordingly, these petitions must succeed. The order dated September 25, 1980 dispensing with the service of each of the petitioner is quashed and set aside and it is declared that all the petitioners continue to be in service and they should be forthwith reinstated. By an interim order made by this Court, respondents were directed to pay half the salary to the petitioners from the date of dispensing with their services till further orders. Now that it is declared that the petitioners continue to be in service, each of the petitioners shall be paid his full salary with effect from the date of his judgment, but, for the period between the date of dispensing with the service and till today, each of the petitioners should be paid only half the salary. The respondents shall pay the costs to the petitioners and bear their own.

P.B.R. Petitions allowed