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—
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this view, because in our judgment, the contention of the assessee that for setting aside an adverse order inconsistent with the provisions of the amending Act of 1956, a proceeding for review under s. 11 is the only remedy which is open to an aggrieved party, is without force. A court of appeal, in an appeal properly before it, must give effect to the law as it stands if the law has at some stage anterior to the hearing of the appeal been amended retrospectively with the object of conferring upon the authority or tribunal of first instance from the order whereof the appeal is filed jurisdiction which it originally lacked: and a provision for review like the one contained in s. 11 of the amending Act does not affect the power of the appellate court to deal with the appeal in the light of the amended law.

In the view expressed by us, this appeal must be allowed. As the appellant succeeds relying on a statute which was enacted after the date of the judgment of the High Court, we direct that there shall be no order as to costs.

Appeal allowed.

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July 28.

DALIP SINGH

v.

THE STATE OF PUNJAB.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO,
M. HIDAYATULLAH, K. C. DAS GUPTA
and J. C. SHAH, JJ.)

State Service—Officer, compulsory retirement of—If amounts to dismissal or removal from service—Test—Patiala State Regulations, 1931, Rule 278—Constitution of India, Art. 311(2).

The appellant was compulsorily retired from service by the Rajpramukh of Pepsu by an order dated August 18, 1950, which was as follows:

“ His Highness the Rajpramukh is pleased to retire from

service Sardar Dalip Singh, Inspector General of Police, Pepsu (on leave) for administrative reasons with effect from the 18th August, 1950."

No charges were framed against him and it was on his insistence that certain charges were communicated to him. Rule 278 of the Patiala State Regulations, 1931, which was then in force, provided as follows :—

" 278. For all classes of pensions of person who desires to obtain the pension is required to submit his application before any pension is granted to him.

The State reserves to itself the right to retire any of its employees on pension on political or on other reasons." The question for determination in the appeal was whether the compulsory retirement of the appellant amounted to removal or dismissal from service within the meaning of Art. 311(2) of the Constitution. The trial Court held in favour of the appellant and the High Court against him,

Held, that the two tests laid down by this Court for determining whether an order of compulsory retirement amounted to removal or dismissal from service were (1) whether it was by way of punishment, a charge or imputation against the officer, being made the basis of the exercise of the power, and (2) whether the officer was deprived of any benefit already earned as in a case of dismissal or removal.

Shyamlal v. State of U. P., [1955] 1 S.C.R. 26 and *State of Bombay v. Subhagchand Doshi*, [1958] S.C.R. 571, referred to.

So judged, the order passed against the appellant could not amount to dismissal or removal from service within the meaning of Art. 311(2) of the Constitution.

The order was not one purported to have been made on any charge of misconduct or inefficiency and the fact that any such considerations might have weighed with the Government in passing the order under Rule 278 did not amount to any imputation or charge against the officer, and there could be no question of losing any benefit earned since the Rule itself provided for retirement on pension and the officer had in fact been allowed full pension.

It would not be correct to say that since the Rule did not fix any age for compulsory retirement, an order of compulsory retirement passed under it must necessarily be regarded as dismissal or removal within the meaning of Art. 311(2) of the Constitution.

State of Bombay v. Subhagchand Doshi, [1958] S.C.R. 571, explained.

CIVIL APPELLATE JURISDICTION: Civil Appeal
No. 235 of 1958.

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Appeal from the judgment and decree dated October 18, 1956, of the former PEPSU High Court in Regular First Appeal No. 11 of 1954, arising out of the judgment and decree dated November 21, 1953, of the Additional District Judge, Patiala.

Gopal Singh and *K. R. Krishnaswamy*, for the appellant.

N. S. Bindra and *D. Gupta*, for the respondent.

1960. July 28. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—The appellant Dalip Singh entered the service of the Patiala State in 1916 and rose to the rank of Inspector General of Police of the State in June 1946. After the formation of the State of Pepsu he was absorbed in the Police Service of the newly formed State and was appointed and confirmed as Inspector General of Police thereof. While holding that post he proceeded on leave from October 18, 1949, till August 17, 1950. On August 18, 1950, an order was made by the Rajpramukh of the State in these words:—

“His Highness the Rajpramukh is pleased to retire from service Sardar Dalip Singh, Inspector General of Police, Pepsu (on leave) for administrative reasons with effect from the 18th August, 1950.”

A copy of this order was forwarded to the appellant. Thereupon on August 19, 1950, the appellant wrote to the Chief Secretary of the State stating that by his retirement he would be put to heavy loss, i.e., about Rs. 50,000 which he would have earned as his pay and allowances etc., during this period and that his pension was also being affected and that this decision of the Government tantamounts to his removal from service. He requested that the Government should let him know the grounds which had impelled the Government to take this decision about his removal. Ultimately on March 30, 1951, the Government mentioned the charges against him on the basis of which the Government had decided to retire him on administrative grounds. After service of notice under

s. 80 of the Code of Civil Procedure the appellant brought a suit in the Court of the District Judge, Patiala, against the State of Pepsu asking for a declaration that the orders of August 16, 1950, and August 18, 1950, whereby "the plaintiff has been removed from the post of Inspector-General of Police, Pepsu, are unconstitutional, illegal, void, *ultra vires* and inoperative and that the plaintiff still continues to be in the service of the defendant as Inspector General of Police and is entitled to the arrears of his pay and allowances from August 18, 1950, and is also entitled to continue to draw his pay and allowances till his retirement at the age of superannuation; and a decree for the recovery of Rs. 26,699-13-0 and full costs of this suit and future interest."

The main plea on which the suit was based was that the order of August 18, 1950, amounted to his removal from service within the meaning of Art. 311(2) of the Constitution and the provisions of that article not having been complied with the termination of his service was void and inoperative in law. The respondent State contended that the plaintiff had been retired from service and had not been removed from service and so Art. 311 of the Constitution had no application. On this question the trial Court came to the conclusion that the order compulsorily retiring the plaintiff amounted to his removal within the meaning of Art. 311 of the Constitution and as the requirement of that Article had not been complied with it held that the termination of service effected by that order was void in law. The Court accordingly decreed the suit in favour of the plaintiff declaring that the orders of the Government dated August 18, 1950, whereby the plaintiff had been removed from the post of Inspector General of Police, Pepsu, are unconstitutional, illegal, void and *ultra vires* and inoperative and that the plaintiff still continued to be in the service of the defendant as Inspector General of Police and he is entitled to the arrears of his pay and allowances from August 18, 1950 and is also entitled to continue to draw his pay and allowance

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till his retirement at the age of superannuation and a decree for the recovery of Rs. 26,699-13-0.

On appeal by the State the Pepsu High Court disagreeing with the Trial Court held that the order of compulsory retirement did not amount to removal from service within the meaning of Art. 311 of the Constitution and accordingly allowed the appeal and dismissed the plaintiff's suit.

The main contention of the plaintiff before us was that the order of retirement did amount to his removal from service within the meaning of Art. 311 of the Constitution. The learned counsel also wanted to argue that Rule 278 of the Patiala State Regulations under which the Government apparently made the order of compulsory retirement was no longer operative. It appears that the Patiala State Regulations which continued to govern the members of the services of that State after they became integrated into the Pepsu State Services were revised from time to time. It was suggested by the learned counsel that the revised rules do not contain any rules similar to Rule 278. Rule 278 of the Patiala State Regulations was in the following words:—

“ 278. For all classes of pensions the person who desires to obtain the pension is required to submit his application before any pension is granted to him.

The State reserves to itself the right to retire any of its employees on pension on political or on other reasons.”

The learned counsel though wanting to persuade us that the Rule about the State reserving to itself the right to retire any of its employees on pension on political or on other reasons was not present in the new rules was unable to show us however that before August 18, 1950, there had been any revision of Rule 278. It appears that revised rules for Travelling Allowance were published in 1946 as Vol. II of the new rules; and Rules relating to pay and allowances were published as Vol. I in 1947. Thereafter in 1952 we find that the first volume of the Pepsu Service Regulations as regards pay and leave rules was published. In the same year the third volume of the Pepsu State

Regulations containing rules relating to pensions was published. In the preface to this volume we find this statement :—

“The Revised Edition of the Patiala State Regulations relating to pay, allowances, leave, pension and travelling allowance was published in the year 1931. Subsequently the travelling allowance rules were revised and issued as Patiala Service Regulations, Vol. II, in the year 1946. Similarly the pay, allowances and leave rules were taken out from the Revised Edition (1931) and printed as Patiala Services Regulations, Volume 1, in the year 1947. The other rules relating to pensions continued to remain in the Revised Edition (1931) and kept upto date by the issue of correction slips. On the formation of the Patiala & East Punjab States Union on 20-8-48, these rules were made applicable to the entire territories of the Union by Ordinance No. 1 of 2005. The number of copies of this publication available for official use had run out of stock and great difficulty has been experienced in Government offices for want of it for reference. It was therefore found necessary to revise and reprint this publication to make it available to all offices.”

This makes it clear that upto the publication in 1952 of Volume III of the Pepsu Service Regulations the pension rules appearing in the 1931 edition of the Patiala State Regulations continued to be applicable to Pepsu. On August 18, 1950, therefore it is reasonable to hold that Rule 278 in its entirety remained in force and was applicable to Pepsu. It is interesting to mention that in this 1952 edition also this reservation by the Government of the “right to retire any of its employees on pension on political or on other reasons” has been maintained (Vide Chapter V, Rule 10). The contention of the learned counsel that Rule 278 was not applicable to the case of the appellant on August 18, 1950, is therefore totally without foundation.

This brings us to the main contention in the case, viz., that the compulsory retirement of the appellant under Rule 278 of the Patiala State Regulations was a removal from service within the meaning of Art. 311 of the Constitution. The question whether the

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termination of service by compulsory retirement in accordance with Service Rules amount to removal from service was considered by this Court in *Shyamlal v. The State of U. P. and the Union of India* (1) and again recently in *State of Bombay v. Subhagchand Doshi* (2). The Court decided in *Shyam Lal's Case* (1) that two tests had to be applied for ascertaining whether a termination of service by compulsory retirement amounted to removal or dismissal so as to attract the provisions of Art. 311 of the Constitution. The first is whether the action is by way of punishment and to find that out the Court said that it was necessary that a charge or imputation against the officer is made the condition of the exercise of the power; the second is whether by compulsory retirement the officer is losing the benefit he has already earned as he does by dismissal or removal. In that case in fact a charge-sheet was drawn up against the officer and an enquiry held but ultimately the order of compulsory retirement was not based on the result of the enquiry. The Court pointed out that the enquiry was merely to help the Government to make up its mind as to whether it was in the public interest to dispense with his services so that the imputation made in the charge-sheet was not being made the condition of the exercise of the power.

These tests were applied in *Doshi's Case* (2) and it was held that the provisions of compulsory retirement under Rule 165-A of the Saurashtra Civil Service Rules under which the order of retirement was made there was not violative of Art. 311(2). It was pointed out that "while misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy

(1) [1955] 1 S.C.R. 26.

(2) [1958] S.C.R. 571.

the rules of natural justice and the requirements of Art. 311(2) ”.

In the case before us the order of the Rajpramukh does not purport to be passed on any charge of misconduct or inefficiency. All it states is that the compulsory retirement is for “administrative reasons.” It was only after the appellant’s own insistence to be supplied with the grounds which led to the decision that certain charges were communicated to him. There is therefore no basis for saying that the order of retirement contained any imputation or charge against the officer. The fact that considerations of misconduct or inefficiency weighed with the Government in coming to its conclusion whether any action should be taken under Rule 278 does not amount to any imputation or charge against the officer.

Applying the other test, viz., whether the officer has lost the benefit he has earned, we find that the officer has been allowed full pension. There is no question of his having lost a benefit earned. It may be pointed out that Rule 278 itself provides for retirement on pension. If the provision had been for retirement without pension in accordance with the rules there might have been some reason to hold that the retirement was by way of punishment. As however the retirement can only be on pension in accordance with the rules—in the present case full pension has been granted to the officer—the order of retirement is clearly not by way of punishment.

In *Doshi’s Case* (1) there is at p. 579 an observation which might at first sight seem to suggest that in the opinion of this Court compulsory retirement not amounting to dismissal or removal could only take place under a rule fixing an age for compulsory retirement. We do not think that was what the Court intended to say in *Doshi’s Case* (1). In *Doshi’s Case* (1) there was in fact a rule fixing an age for compulsory retirement, at the age of 55, and in addition another rule for compulsory retirement after an officer had completed the age of 50 or 25 years of service. It was in that context that the Court made the above

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observation. It had not in that case to deal with a rule which did provide for compulsory retirement, at any age whatsoever irrespective of the length of service put in. It will not be proper to read the observations in *Doshi's Case* referred to above as laying down the law that retirement under the rule we are considering must necessarily be regarded as dismissal or removal within the meaning of Art. 311.

We are therefore of opinion that the High Court was right in holding that the order of compulsory retirement made against the appellant was not removal from service so as to attract the provisions of Art. 311 of the Constitution and that the suit was rightly dismissed.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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August 1.

PANDIT M. S. M. SHARMA

v.

DR. SHREE KRISHNA SINHA AND OTHERS.

(B. P. SINHA, C. J., JAFER IMAM, P. B. GAJENDRA-
GADKAR, A. K. SARKAR, K. SUBBA RAO,
K. N. WANCHOO, K. C. DAS GUPTA
and J. C. SHAH, JJ.)

State Legislature—Breach of Privilege—Decision of Court, if res-judicata between parties—Constitution of India, Arts. 194(3), 19(1)(a).

The petitioner, the Editor of the Searchlight, an English daily newspaper published from Patna, was called upon to show cause before the Committee of Privileges of the Bihar Legislative Assembly why he should not be proceeded against for the breach of privilege of the Speaker and the Assembly for publishing an inaccurate account of the proceedings of the Legislative Assembly. He moved this Court under Art. 32 of the Constitution for quashing the said proceeding and the question for decision in substance was whether the said privilege conferred by Art. 194(3) of the Constitution was subject to the fundamental