and 24, 18 and 17, 13 and 14, 8 and 7 of rectangle No. 95. If the Superintending Engineer had passed an order under section 30-E and given effect to what had been approved by him, no objection could have been taken to that order. But what the Superintending Engineer did was that instead of giving effect to what he had approved under the old Act, he provided a new water channel from B to C, from C to D, and from D to F. This course could only be adopted by recourse to the provisions of Section 30-A and not otherwise. This is abundantly clear from the combined reading of the old provisions as well as the new ones. No power of review has been conferred on the Superintending Engineer and he cannot review his own order. The power of revision is only against an order of a subordinate authority. Therefore the impugned order, by which he has altered his own previous final order, is certainly without jurisdiction.

Mr. Kwatra finally urged that no injustice had been caused to the petitioners. This contention has no meaning when an order wholly without jurisdiction is passed.

Mr. J. S. Wasu, who appears for Jang Singh, has raised the contention that the point which has now been made by the petitioners' learned counsel was not raised in the writ petition. This contention loses sight of the fact that a supplementary petition was filed by the learned counsel with the leave of this court, and in it the contention has been raised. The State has put in a reply to the supplementary petition and the position remains where it was. The stand taken up by the Canal authorities in their reply is not justified.

For the reasons recorded above, I allow this writ petition, quash the order (Annexure 'B'), passed by the Superintending Engineer and direct that he should give effect to his final order passed under the old Act, and in case he wants to shift the watercourse, he should take proceedings in accordance with section 30-A of the Act. In the circumstances of the case, there will be no order as to costs.

R. N. M.

APPELLATE CIVIL

Before A. N. Grover and Prem Chand Pandit, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

BHAGWAN SINGH GREWAL,—*Respondent.*

Regular First Appeal No. 137 of 1963.

March 16, 1967.

Limitation Act (IX of 1908)—Art. 102—Time-scale of pay charged and the Government employee's pay fixed at lesser amount than due under revised

scale—Representation against the fixation of pay decided by Government on 13th February, 1961—Terminus a quo for suit for arrears of salary—Whether the date of decision of his representation.

Held, that article 102 of the Indian Limitation Act, 1908 will apply to a suit by a government servant for the recovery of arrears of his pay and such a suit has to be brought within three years from the date when the wages accrued due. In a case where the pay of an employee is fixed at a lesser figure than due under the revised scale of pay and the employee makes a representation against the fixation of his pay in the new scale, it will be the date of decision of his representation on which the wages will be deemed to have accrued due and if the suit for the recovery of arrears of pay is filed within three years of that date, it will be within time. Until the proper authority decides the matter and the decision is against him, the employee cannot file a suit in a civil Court and if the decision is in his favour but the Government does not carry out that decision and make payment in accordance therewith, the terminus a quo for the suit for recovery of arrears of pay will be the date of the decision by the appropriate authority.

First Appeal from the decree of the Court of Shri O. P. Aggarwal, Sub-Judge 1st Class, Patiala (C), dated the 24th December, 1962, granting the plaintiff a decree for declaration to the effect that the plaintiff was entitled to pension at the rate of Rs. 90.30 Paise per month from 24th January, 1959 onwards and further granting him a decree for the recovery of Rs. 4,109.90 paisa consisting of Rs. 3801.42 Paisa as arrears of salary Rs. 151.90 paisa as the difference in the gratuity and Rs. 155.80 paisa on account of the arrears of pension for the period 24th January, 1959 to 24th March, 1962 and also awarding the plaintiff proportionate costs of the suit and fixing Rs. 30 only as pleader's fee so far as relief of declaration was concerned and dismissing the rest of the plaintiff's claim as made in the plaint.

J. N. KAUSHAL, ADVOCATE-GENERAL, PUNJAB WITH B. S. CHAWLA, ADVOCATE, for the Appellant.

P. C. JAIN, AND, A. S. ANAND, ADVOCATES, for the Respondents.

ORDER

PANDIT, J.—This is a defendant's appeal against the decree of the learned Subordinate Judge, 1st Class, Patiala, decreeing the plaintiff's suit.

Bhagwan Singh Grewal, plaintiff was at the time of the formation of PEPSU, the employee of the Patiala State and he continued to serve there till 7th of September, 1954. He was integrated as Head Assistant in the Health Department of PEPSU State, with effect from 1st September, 1948,—*vide* their order, dated 29th of October, 1956.

He retired on superannuation pension, with effect from 24th January, 1959. On 13th of March, 1948, he was drawing Rs. 74 per mensem in the grade of Rs. 70—4—90. The PEPSU Government revised the pay of its employees in 1948. Consequently, the Accountant-General, Punjab, Simla, fixed the plaintiff's pay at Rs. 88 per month in the grade of Rs. 80—8—220, with effect from 1st September, 1948. According to the plaintiff, his next annual increment raising his pay from Rs. 88 to Rs. 96 per mensem fell due on 13th of March, 1949, under the PEPSU Revision of Pay Rules. Thus, he earned his next increment raising his pay to Rs. 104 per month, with effect from 13th of March, 1950 in the aforesaid scale. However, the Accountant-General, Punjab, erroneously decided that he was only entitled to Rs. 100 per mensem in the revised scale of Rs. 100—10—250, with effect from 1st March, 1950. Under the PEPSU Home Department order, dated 21st March, 1952, according to the plaintiff, he was entitled to a pay of Rs. 110 per month in the revised scale of Rs. 100—10—250, with effect from 13th March, 1950, as he was already entitled to Rs. 104 per mensem from 13th March, 1950, in his previous grade of Rs. 80—8—220. The decision of the Accountant-General, Punjab, therefore, caused a great loss to the plaintiff in his pay, pension and gratuity. On the plaintiff's representations, the Punjab Government, with which in the meantime PEPSU State had been integrated, fixed his pay at Rs. 110 per mensem, with effect from 13th March, 1950; the next increment falling due on 13th March, 1951, and necessary sanction in that behalf was conveyed by the Secretary to Government, Punjab, Medical and Public Health Department, to the Director of Health Services, Punjab, on 13th February, 1961. The plaintiff was informed about this order of the Government by the Malaria Officer, Patiala, to whom the sanction was conveyed by the Director of Health Services, Punjab. But, in spite of this, according to the plaintiff, he had neither been paid his arrears of pay, gratuity and pension in accordance with this order, nor had his pension been fixed at Rs. 90/32 per mensem from the date of his retirement, viz., 24th January, 1959. That necessitated the filing of a suit in April, 1962; out of which the present appeal has arisen. The relief claimed by him against the State of Punjab was that he should be given a decree for the recovery of Rs. 4,109.88 nP., with interest at the rate of 6 per cent per annum on the decretal amount from the date of the institution of the suit till the realisation of the amount, as follows :—

(a) Rs. 3,801.42 nP. being arrears of pay, as sanctioned by the Punjab Government by their order, dated 13th February,

1961, with effect from 13th March 1950, up to the date of retirement, i.e., 24th January, 1959;

(b) Rs. 148.32 as arrears of pension from 24th January, 1959 to 23rd January, 1962;

(c) Rs. 51.90 on account of the difference in gratuity;

(d) Rs. 8.24 on account of difference in pension for the notice period, i.e., from 23rd January, 1962 to 24th March, 1962.

A declaration was also claimed by him to the effect that he was entitled to a pension of Rs. 90.32 nP., per mensem from the date of his retirement.

The suit was resisted by the State of Punjab, on a number of pleas which gave rise to the following issues :—

"(1) Whether this court has jurisdiction to entertain the present suit ?

(2) Whether the suit is not properly valued for purposes of court-fees and jurisdiction ?

(3) Whether the suit is within limitation ?

(4) Whether the present suit is barred by Pensions Act as alleged in para 2 of the preliminary objections of the written statement ?

(5) Whether the matters involved in the present suit are not justiciable as alleged in para 3 of the preliminary objections of the written statement ?

(6) Whether the notice under section 80 C.P.C. is an invalid one ?

(7) Whether the plaintiff is entitled to recover a sum of Rs. 3,801.42 nP., as arrears of pay for the period, 13th March, 1950 to 24th January, 1959 ?

(8) Whether the plaintiff is entitled to a Pension at the rate of Rs. 90.32 nP. per month as alleged in the plaint ?

(9) Whether the plaintiff is entitled to difference of pension amounting to Rs. 148.32 nP. as claimed in the plaint ?

(10) Whether the plaintiff is entitled to difference of gratuity amounting to Rs. 151.90 nP. as claimed in the plaint ?

(11) Relief.

The trial Judge came to the conclusion that the civil courts had jurisdiction to entertain the suit; that the suit was properly valued for purposes of court-fee and jurisdiction; that the suit was within limitation; that the suit was not barred by the Pensions Act; that the matters involved in the present suit were justiciable; that the notice under section 80 of the Code of Civil Procedure was valid; that the plaintiff was entitled to Rs. 3,801.42 nP. as arrears of pay, for the period, 13th March, 1950 to 24th January, 1959; that he was also entitled to get a pension at the rate of Rs. 90.30 nP. and not at the rate of Rs. 90.32 nP. as alleged in the plaint; that the plaintiff was entitled to Rs. 147.60 nP. and not Rs. 148:32 nP: on account of the difference in pension; and that he was entitled to Rs 151.90 nP., on account of the difference in gratuity. It was also held that the plaintiff was entitled to Rs. 8.20 nP for the difference in pension for the notice period, i.e., from 23rd January, 1962 to 24th March, 1962. As a result of these findings, the plaintiff was given a decree for the recovery of Rs. 4,109.12 nP., and he was also granted a declaration that he was entitled to a monthly pension of Rs. 90.30 nP. from the date of his retirement, i.e., 24th January, 1959. The claim regarding interest on the decreetal amount was, however, negatived. Against this decision, the present appeal has been filed by the State of Punjab.

The only contention raised by the learned counsel for the appellant was that the trial Judge was in error in holding that the plaintiff's claim regarding the arrears of his salary was within limitation. According to him, Article 102, of the Indian Limitation Act, 1908, applied to the recovery of these arrears and the limitation prescribed was three years from the date when the salary accrued due. He submitted that the suit was filed in April, 1962 and the claim with regard to the arrears of salary related to the period 13th March, 1950 to 24th January, 1959, when he retired. The said arrears accrued due to him more than three years before the institution of the suit. Under Article 102, a plaintiff can recover only the wages which had accrued due to him within three years of the filing

of the suit. With regard to the order of the Governor, dated 13th February, 1961, Exhibit P./1, by which he accorded sanction to the fixation of the plaintiff's pay at Rs. 110 per mensem with effect from 13th March, 1950 in the grade of Rs. 100—10—200/10—250, his submission was, that it did not give him any fresh period of limitation, because the wages had accrued due to him right from 13th March, 1950, when, according to the plaintiff, he became entitled to the rate of pay claimed by him. If the Government was not making the payment according to that rate, he could have filed a suit for their recovery within three years of the date they became due. Learned counsel argued that if an employee who was not being given proper salary by the Government brought a suit for a declaration that his salary be correctly fixed and for recovery of the arrears of pay on that basis and if that suit was ultimately decreed, he could not be given a decree for arrears of salary for more than three years. The order of the Governor, so argued the learned counsel, could not be placed on a higher footing than the decree of a civil court. Reliance in this connection was placed on a Bench decision of this court in *Union of India* v. *Ram Nath Chitory* (1), where it was observed that by granting a declaration about the legality or illegality of dismissal the court did not create any right in the plaintiff. It merely removed an illegal order from the way of the plaintiff. That would not affect the accrual of cause of action in any manner, and the cause of action would still arise on the day the salary for a particular period became due under the terms and conditions of employment.

It is common ground that Article 102 will apply, if the Government servant had to file a suit for the recovery of arrears of his pay. Such a suit has to be brought within three years from the date when the wages accrued due. When did the wages accrue due in the instant case ? Admittedly, the plaintiff was working in the pay scale of Rs. 80—8—220 and the next annual increment raising his pay from Rs. 88 to Rs. 96 per mensem fell due on 13th March, 1949. He was to get his next increment on 13th March, 1950, when he would have drawn Rs. 104 per mensem. In the meantime, on 1st March, 1950, his pay grade was revised to that of Rs. 100—10—200/10—250. In spite of this, the Accountant-General, Punjab, decided that he was only entitled to get Rs. 100 in the revised scale with effect from 1st March, 1950 and that he would get an increment of Rs. 10 per mensem every year from 1st March, 1951. According to the plaintiff, however, he was to get Rs. 110 per mensem, with effect from 13th March,

(1) I.L.R. (1966) 2 Punj. 907=A.I.R. 1966 Punj. 500.

1950 with an increase of Rs. 10 every year from 13th March, 1951. It is undisputed that the Government and not the Accountant-General, Punjab, was the proper authority for fixing the plaintiff's pay in the new time-scale. The Government decided this matter on 13th February, 1961,—*vide* Exhibit P/1, by which the claim of the plaintiff was admitted. If the decision of the Government had been against the plaintiff, it is only then that he could file a suit in a civil court. He could not go to the civil court earlier than that date, because in that case, the same would have been dismissed as premature, because the proper authority, which had to fix his pay in the new time-scale, had not given any decision against him. It is only to challenge an adverse decision that one goes to a civil court to get it rectified. In the instant case, the appropriate authority had not given any decision against the plaintiff. The plaintiff's pay was rightly fixed on 13th February, 1961 and consequently, it would be on this date that the wages at the enhanced rate fell due to him. Admittedly, the suit was brought within three years from this date. The decision relied on by the learned counsel is of no assistance to the appellant. It is clearly distinguishable on facts. There the employee was dismissed from service with effect from 19th of January, 1952 and he brought a suit on 5th of March, 1957, challenging that dismisssal and for recovery of arrears of pay. The trial court decreed the suit, but on appeal by the Union of India, this Court partly accepted the appeal, in as much as it confirmed the finding of the trial court that the order of dismissal was illegal, but reduced the period for which he was entitled to get the arrears of salary to only three years and two months (for the notice period), before the institution of the suit. No such thing has happened in the instant case. As already mentioned above, it was for the first time on 13th February, 1961, that the appropriate authority had fixed the salary of the plaintiff in the new time scale and fortunately for him, the decision had been in his favour.

It may be mentioned that the learned counsel also wanted to argue that under the Pensions Act, the plaintiff could not file a suit for a declaration that he was entitled to get a particular pension every month. But, since in the instant case, it was agreed that if the plaintiff was entitled to the pay of Rs. 110 per mensem wih effect from 13th March, 1950 in the time-scale of Rs. 100—10—200/10—250, his pension would come to Rs. 90.30 per mensem with effect from 24th January, 1959, learned counsel did not press this argument any further.

No other point was urged before us.

The result is that this appeal fails and is dismissed with costs.

A. N. GROVER, J.—I agree.

B. R. T.

REVISIONAL CIVIL

Before Mehar Singh, C. J.

SARLA DEVI,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Revision No. 302 of 1965.

March 21, 1967.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(d) and 13(2)(ii)—Building let out to Income-Tax Department—Main building occupied by offices and out-houses occupied by employees of the Department—Building—Whether a residential building—Activity of Income-Tax Department—Whether a business activity—Employees permitted to reside in out-houses even on payment of rent—Whether amounts to sub-letting.

Held, that the building in which the Income-Tax Department maintains its offices is a non-residential building and merely because some of its employees are permitted to reside in the out-houses, even on payment of rent, will not create a sub-lease in favour of those employees nor will it convert the building into a residential building. No interest is created in the out-houses in so far as the employees are concerned.

Held that the activity for which the demised premises are used by the Income-Tax Department is a business activity within the meaning and scope of that word in section 2(d) of the East Punjab Urban Rent Restriction Act, 1949 and the building is, therefore, a non-residential building.

Petition under Section 15(4) of the East Punjab Urban Rent Restriction Act, for revision of the order of Shri Manmohan Singh Gujral, District and Sessions Judge, Appellate Authority under the Act, Ambala, dated 30th November, 1964, affirming that of Shri H. S. Ahluwalia, Rent Controller, Ambala City, dated 4th April, 1963, and dismissing the appeal of the petitioner and leaving the parties to bear their own costs.

J. K. SHARMA, ADVOCATE, for the Petitioner.

D. N. AWASTHY, ADVOCATE, for the Respondents.