executing Court and it is a mixed question of fact and law, I would remand the case to the executing Court for deciding as to whether the execution application was filed within limitation or not. If the Court finds that the execution application is within limitation, he should dispose it of according to law. Parties have been directed to appear before the Court below on 9th January, 1961. In the peculiar circumstances of the case, I will make no order as to costs in this Court.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

GURDIP SINGH,—*Appellant.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Regular First Appeal No. 243 of 1957

1960

Dec., 13th.

Pension—Claim to—Whether a legal right and enforceable in a Court of law—Pension—Meaning and nature of.

Held, that the right to pension is justiciable and can be enforced through Civil Courts. The word pension, in relation to government servants, must be given a meaning of periodical payment by a Government to a person in consideration of past services. This periodical payment must be construed so as to stimulate efforts in the performance of duty by Government servant and, therefore, in order to achieve this object this right must not be made to depend on the arbitrary and uncontrolled whim of the authorities. The law of pensions is basically statutory and so long as the provision under which the pensions are sanctioned remains in force, the person in whose favour they are sanctioned is entitled to claim them. The fact that they are

liable to be changed unilaterally would not affect the question of their enforceability so long as they remain in force.

Note.—The learned Judge held that Pensions Act (XXIII of 1871) was not applicable to this case.

First Appeal from the decree of the Court of Shri Udham Singh, Sub-Judge, 1st Class, Patiala, dated the 31st day of May, 1957, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

J. N. KAUSHAL AND BEHARI LAL, ADVOCATES, for the Appellant.

S. M. SIKRI, ADVOCATE-GENERAL AND C. D. DEWAN, ASSISTANT ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Dua, J.

DUA, J.—The short though by no means easy question, which calls for determination in this case, is whether claim to a pension is a legal right and is enforceable in a Court of Law.

The facts and circumstances giving rise to this appeal may briefly be stated. The plaintiff-appellant S. Gurdip Singh joined the erstwhile Patiala State Army some time in February, 1924, and by honest and hard work, he in due course became a subedar in that Army. In 1942, he was given commission and as a result of his services in the Second World War, he was later given a regular commission. In October, 1947, he was placed in the reserve list by the Army authorities and on 1st April, 1950, he was retired from service. The plaintiff thus served the Army for a little more than 26 years; for two years, he was a regular officer and for about three years, he served as an Emergency Commissioned Officer and for 2½ years as a Reserve Officer. For the remaining period he

served as V.C.O. or N.C.O. He was granted pension of Rs. 75 per mensem which was later on raised to Rs. 101 per mensem. In the present suit, he has alleged after narrating the above history that his pension according to the rules should have been fixed at the rate of Rs. 228 per mensem and has, therefore, claimed a declaration that he is so entitled. He has further claimed that he is entitled to Rs. 8,516-4-3, as arrears due with effect from 1st of April, 1950 to 16th of October, 1955.

The defendants-respondents resisted the suit *inter alia* on the ground that the suit relating to pensions could not be proceeded with in a Civil Court. In the written statement, the amount of pension actually fixed was also sought to be justified on the merits.

On the pleadings of the parties, the following issues were settled by the Court below :—

(1) Whether claim to pension is a legal right and is enforceable in a Court of law ?

(2) Whether this suit for declaration simpliciter is competent ?

(3) Whether the plaintiff issued a legally sufficient notice to the defendant as contemplated by section 80 of the Code of Civil Procedure ? and

(4) Whether the plaintiff is entitled to pension at the rate of Rs. 228 per mensem ?

The trial Court decided issue No. 1 against the plaintiff and came to the conclusion that pension right of the plaintiff could not be enforced through Civil Court and it is principally on this finding that

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the plaintiff's suit has been dismissed. Under issue No. 2 the suit in the present form was held competent and decision on issue No. 3 also was given in favour of the plaintiff. Under issue No. 4, the plaintiff was held entitled to a pension at the rate of Rs. 240 per mensem from the date of his release, i.e., from the 1st of April, 1950, but as he had claimed pension only at the rate of Rs. 228 per mensem and the arrears amounting to Rs. 8,516-4-3, he was held disentitled to claim more than what he had asked for in his plaint, with the result that the Court below held him entitled to pension at the rate of Rs. 228 per mensem and arrears amounting to Rs. 8,516-4-3. But, as already observed, decision on issue No. 1 had gone against the plaintiff and his suit was dismissed, but the parties were left to bear their own costs.

On appeal referred by the plaintiff to this Court, the only question canvassed at the Bar, as already indicated, is the one covered by the first issue, namely, whether the right to pension is justiciable and can be enforced through Civil Court. The decision of the lower Court on the merit was not challenged on behalf of the respondents. The main contention raised on behalf of the respondents in support of the decision of the Court below and against the competency of the present suit is principally based on two decisions of the privy Council reported as *R. T. Rangachari* v. *Secretary of State* (1), and *R. Venkata Rao* v. *Secretary of State* (2). In *Rangachari's* case, the facts as discernible from the report were as follows :—

Some time before July, 1927, Rangachari was Sub-Inspector of Police in the Presidency of

(1) A.I.R. 1937 P.C. 27.
(2) A.I.R. 1937 P.C. 31.

Madras and certain charges of irregular and improper conduct in the execution of his duties as a Police Officer were made against him and formed the subject of an official inquiry conducted by one Mr. Charsley, Assistant Superintendent of Police. The inquiry was held in the manner required by the Statutory Rules, 1924, made under section 96-B(2), Government of India Act, 1919, Mr. Charsley concluded his inquiry on 7th September. On that date, Mr. Kalimullah was the Acting District Superintendent of Police having taken charge of the district in question in the month of August and he continued in charge till the latter part of October, when he was succeeded by one Mr. Loveluck. Rangachari had for some time before 7th September been in bad health and when on 7th September, Mr. Charsley finished the inquiry, Rangachari had applied to him for being examined by the District Medical Officer for being invalided because he had been growing worse with hernia and was, therefore, unfit for further service. This request was forwarded by Mr. Charsley to Mr. Kalimullah with a statement that it appeared to be true that Rangachari had a bad rupture. On 9th September, there was some conference between Mr. Charsley and Mr. Kalimullah as to the course to be adopted with regard to Rangachari. It appears that two courses were under consideration at that stage : (1) disciplinary action such as dismissal and (2) retirement for health reasons on pension. Mr. Charsley's view was adverse to Rangachari, but he recognised, as was the fact, that the final decision rested with Mr. Kalimullah who, after giving the matter careful consideration and after full discussion with Mr. Charsley came to the conclusion that the evidence was doubtful and inconclusive and the charges against Rangachari should be dropped, and that

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Rangachari should, subject to a medical certificate, be allowed to retire on grounds of health and that an invalid pension should be awarded to him. Mr. Charsley submitted to this decision though he safeguarded himself by making a note of his adverse view. Appropriate authorization for payment of pension was then issued from the office of the Accountant-General. Rangachari was accordingly in fact retired from service and his pension was paid to him for the months of September, October and November. It appears that Mr. Charsley's report had been put aside in the office and was not brought before Mr. Kalimullah by his subordinates. When he went out of office, Mr. Loveluck succeeded him and saw the report, and he chose to give more weight to the adverse view of Mr. Charsley than to the unrecorded reasons of Mr. Kalimullah, who had formed a more lenient view as to the proof of the charges against Rangachari. It was considered that the report should have been placed before the pensions Authorities or before the Deputy Inspector-General, who had been asked to authorize the pension. As a result, it seems that Rangachari's pension was first suspended for further consideration on 28th February, 1928, orders were issued purporting to remove him from service from the date upon which he was invalided. The grant of pension was also allowed to be put an end to. Rangachari memorialized the Government of Madras against this decision basing his prayer for relief from the cancellation of the order stopping his pension upon the simple ground that the matter had been decided by a competent authority and could not be re-opened. The relief having been refused by the Government, Rangachari instituted a suit for enforcing his right. The Judicial Committee held that the appellant Ranga-

chari had suffered a wrong and that his complaint was well-founded in fact, but on the question whether the wrong was actionable and whether Rangachari could succeed in the suit, which point had been decided against the plaintiff by the Courts in India on the basis of section 4, Pensions Act (23 of 1871), the Privy Council observed that this position had not been disputed before their Lordships except for the enactment of the Government of India Act, 1919. It was contended before the Privy Council that by the terms of section 96-B of the Act of 1919, the pension rules had been made statutory and of the same force as if they had been set out in the statute itself; by virtue of the same section it was further contended that the persons in the Civil Service of the Crown in India held office not simply at pleasure, but on the terms set out both in the section and in all the rules made, thereunder including the pension rules; since the statutory right was thus created between the Crown and the servant it was argued that it necessarily implied that any provisions in any antecedent statute repugnant to the terms of the statute creating such right were repealed or rendered inapplicable to such a case. The Privy Council, however, disagreed with this contention and considered it very difficult to hold that the provisions of the Pensions Act had been impliedly repealed by reason of any repugnancy or had been rendered inapplicable to the action brought by Rangachari. With respect to the argument that the pension rules had by the terms of section 96-B of the Government of India Act acquired statutory force was also negatived, but for the reasons for this conclusion on this point reference was made to the decision in *Venkata Rao's* case.

It is thus desirable at this stage to refer to the decision in *Venkata Rao's* case. The plaintiff

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Venkata Rao had brought a suit for damages for wrongful dismissal from Government service and the question involved in the controversy was whether the dismissal was in fact wrongful and in breach of the material rules of service and if so, whether the suit for damages was maintainable. The plaintiff was in May, 1924, a reader in the Government Press, Madras, and as such reader held office in the Civil Service of the British Crown in India. In May, 1924, he fell under suspicion of being concerned in some leakage of information in respect of Pleadership Examination papers. The appellant, however, strongly and consistently denied the charge. Investigation was held and at first the appellant was directed to vindicate his character in a Court of law, which he proceeded to do by means of a suit for libel against a candidate for examination, who was said to have given information against him. In this litigation he secured judgment by default for nominal damages, but before the determination of the case the plaintiff was on 23rd August, 1924, suspended, and on 22nd September, dismissed from service. His appeal to the Madras Government by memorial was also unsuccessful. It was thereupon that the suit claiming damages for wrongful dismissal was instituted on 17th December, 1927. In his plaint, in addition to the contention that he was innocent of the charge, he also complained that the dismissal was contrary to the Government of India Act, 1919, inasmuch as it was not preceded by enquiry prescribed by Rule 14, Civil Service Classification Rules, made thereunder. It was on these facts and circumstances that the Privy Council discussed the argument based on the complaint of non-compliance with Rule 14 mentioned above. It will be better at this stage to reproduce

the observations of the Privy Council in their own words :—

"Their Lordships now pass to consider the questions of law raised in the appeal. The contention for the appellant was and is that the statute gives him a right enforceable by action to hold his office in accordance with the rules and that he could only be dismissed as provided by the rules and in accordance with the procedure prescribed thereby. The respondent's contention and the decision of the Courts below, is that there is no such actionable right conferred by the statute. There are two decisions of this Board much discussed in the Courts below which state the principles to be applied to cases such as this. The first is *Shenton* v. *Smith* (1), relied upon by the respondent and the other is *Gould* v. *Stuart* (2), relied upon for the appellant. In the first case Dr. Smith held office in the Government Medical Service in Western Australia and relied upon certain rules and regulations of the service as an essential part of his contract of service. He was dimissed and brought an action for damages which failed. Upon appeal to Her Majesty in Council, Lord Hobhouse, in giving their Lordships' judgment, said:

It appears to their Lordships that the proper grounds of decision in this case have been expressed by Stone J. in the Full Court. They consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public

(1) (1895) A.C. 229.
(2) (1896) A.C. 575.

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service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law suit, but by an appeal of an official or political kind. As for the regulations, their Lordships again agree with Stone J. that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants.

A special case such as was contemplated in the above-cited passage occurred in *Gould's* case where the Board, consisting of three members two of whom had sat in *Shenton's case*, held that the respondent Stuart held office in New South Wales under certain conditions expressly enacted in the body of the New South Wales Civil Service Act, 1884, and that these express provisions of the statute were inconsistent with importing into the contract of service, the term that the Crown may put an end to it at its pleasure."

The question is: Does the present case fall into the general category defined and illustrated by *Shenton's* case or the more exceptional category defined and illustrated by *Gould's* case ? On the facts it stands somewhere between the two cases inasmuch as here the rules are expressly and closely related to the employment by the statute itself. In these circumstances difference of Judicial view in India has manifested itself. There are decisions favourable to the present appellant in *Satish Chandra Das* v. *Secretary of State* (1), in *Baroni* v. *Secretary of State* (2), and to some extent also in *Bimlacharan* v. *Trustee for the Indian Museum* (3). On the other hand both Courts in the present case have adopted the contrary view.

(1) I.L.R. 54 Cal. 44.
(2) I.L.R. 8 Rang. 215.
(3) I.L.R. 57 Cal. 231.

In their Lordships' opinion the judgments in the Courts below express the correct view. The reasons which have led their Lordships to this conclusion may be shortly stated. Section 96-B, in express terms, states that office is held during pleasure. There is, therefore, no need for the implication of this term and no room for its exclusion. The argument for a limited and special kind of employment during pleasure, but with an added contractual term that the rules are to be observed is at once too artificial and too far-reaching to commend itself for acceptance. The rules are manifold in number and most minute in particularity and are all capable of change.

Counsel for the appellant nevertheless contended with most logical consistency that on the appellant's contention an action would lie for any breach of any of these rules, as for example, of the rules as to leave and pensions and very many other matters. Inconvenience is not a final consideration in a matter of construction, but it is at least worthy of consideration and it can hardly be doubted that the suggested procedure of control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience, but confusion. There is another consideration which seems to their Lordships to be of the utmost weight. Section 96-B and the rules make careful provision for redress of grievances by administrative process and it is to be observed that sub-section 5 in conclusion reaffirms the supreme authority of the Secretary of State in Council over the Civil Service. These considerations have irresistibly led their Lordships to the conclusion that no such right of action as is contended for by the appellant exists. It is said that this is to treat the words "subject to the

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rules" appearing in the section as superfluous and ineffective. Their Lordships cannot accept this view and have already referred to this matter in their judgment in *Rangachari's* case."

A little lower down, their Lordships of the Privy Council took into account mistakes of a serious kind having been made and wrongs done in the two cases mentioned above, but they found themselves unable, as a matter of law, to hold that redress was obtainable from the Courts by action. To give redress, according to the Privy Council, was a responsibility as also the pleasure of the Executive Government.

Mr. Sikri has, while relying on the ratio of these two decisions, specially emphasized the reference, by way of illustration, made by Lord Roche in *Venkata Rao's* case, at page 34 of the report, to the 'rules as to leave and pensions' while observing that the suggested procedure of control by the Courts over Government in the detailed work of managing its services would cause not merely inconvenience, but also confusion. It was argued by the learned Advocate-General that these observations unequivocally suggest that no suit can lie for any breach of the rules relating to pensions. Stress was laid in this connection by the counsel that the above observations of the Privy Council are even today binding on this Court unless they are shown to come into conflict with the law as laid down by the Supreme Court or with some other statutory provision.

On behalf of the appellant, reliance was placed on a decision of the Supreme Court in the *State of Bihar* v. *Abdul Majid* (1), where the rule of English Law that a civil servant cannot maintain a suit against the State or against the Crown

(1) A.I.R. 1954 S.C. 245.

for the recovery of arrears of salary was held not to prevail in India because it was considered to have been negatived by the provisions of the Statute Law. The expression 'Holds office during His Majesty's pleasure' occurring in section 240 of the Government of India Act, 1935, was also commented upon and it was observed that this expression concerns itself with the tenure of office of the civil servant and it was not implicit in it that a civil servant served the Crown '*ex gratia*' or that his salary was in the nature of a bounty. This expression was also stated to have no relation or connection with the question whether an action could be filed to recover arrears of salary against the Crown. The origin of the two rules being different and their operation being also on two different fields, the true scope and effect of the expression was further explained to be that even if a special contract had been made with the civil servant the Crown was not bound thereby. In other words, civil servants were liable to dismissal without notice and there was no right of action for wrongful dismissal, that is, that they could not claim damages for premature termination of their services. This rule of English law, according to the Supreme Court decision, had not been fully adopted in section 240 of the Government of India Act, 1935, because the section itself placed restrictions and limitations on the exercise of that pleasure and those restrictions must, in the view of the Supreme Court, being imperative and mandatory, be given effect to. In case of a breach by the Government or the Crown of the restrictions imposed by the statute, the matter was held to be justiciable and the party aggrieved entitled to suitable relief in the Municipal Courts. On this reasoning it was expressly held that to the extent that the rule that Government servants hold office during pleasure had

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been departed from by the statute, the Government servants were entitled to relief like any other person under the ordinary law, and that relief was held to be regulated by the Code of Civil Procedure. Relying on the ratio of this decision, it was asserted on behalf of the appellant that the observations of the Privy Council in the cases of *Rangachari* and *Venkata Rao* must be deemed to have lost their binding effect on the Courts in this country. It may at this stage be mentioned that section 4 of the Indian Pensions Act is admittedly not applicable to the case in hand, and for the purpose of determining the jurisdiction of the Civil Courts, we have merely to see as to how far the observations in the decisions of the Privy Council mentioned above are still binding on the Courts in the Indian Republic. On behalf of the appellant, reference was also made to some decisions of other High Courts, but it is not possible to get much assistance from them. In *M.A. Waheed* v. *State of Madhya Pradesh* (1), a Division Bench of the Nagpur High Court, held that the pleasure of the Governor contemplated by Article 310(1) of the Constitution was held to be restricted to the holding of a post by the civil servant and the action with respect to the dismissal, discharge or reduction in rank of such civil servant was held to be subject to the civil Courts provided under Article 311(1). In other respects, the conditions of service referable to Article 309 read with Article 372(1) of the Constitution were held to be guaranteed to him. In *Jogesh Chandra Dutta Gupta* v. *Union of India* (2), a Division Bench of the Assam High Court following the Supreme Court decision in *Abdul Majid's* case held a suit for recovery of arrears of salary by a civil servant to be maintainable in a civil Court. Similarly, in

(1) A.I.R. 1954 Nag. 229.
(2) A.I.R. 1955 Assam 17.

Lachhman Prasad Ram Prasad and others v. *Superintendent, Government Harness and Saddlery Factory* (1), Mehrotra, J., observed that all that Article 310 deals with is that every civil servant holds his post during the pleasure of the President, and that in the exercise of that pleasure it may be open to the President to terminate the service of all the employees, but the fixation of scales could not be considered as exercise of the pleasure under Article 310. The appellant also relied on a decision of the Calcutta High Court by Sinha, *J.*, in *N. C. Chatterjee* v. *K. B. Mathur and others* (2), in which it was held that the High Court was competent to investigate whether the law had been observed and that, therefore, it could also see that the rules promulgated under section 241(2) of the Government of India Act had not been violated. It was further observed that this did not permit the High Court to remedy if an 'administrative error' had been committed. These observations must, in my opinion, be construed in their own context and in the light of the question which the Court was called upon to decide. The grievance of the petitioner there was against the order withholding increment which on the facts was held to amount to a penalty and the Court issued a writ of *mandamus*. The question which arises in the case in hand did not strictly speaking concern the Court in the reported case and indeed no reference seems to have been made to the rule enunciated by the Privy Council and no occasion arose there to consider its applicability and scope. *Ranjit Kumar Chakravarty* v. *State of West Bengal* (3), is also of no particular help. The observations in para 11 at page 553 that "once a Government servant is appointed, he acquires a status and his rights and obligations are

(1) A.I.R. 1958 All. 345.
(2) A.I.R. 1954 Cal. 187.
(3) A.I.R. 1958 Cal. 551.

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no longer determined by consent of both parties, but by statutory Rules framed and altered unilaterally by the Government" must also be read and construed in the background of the question which arose there for consideration. Those observations occurred in the course of discussion of the question whether the existence of a formal contract of employment in strict compliance with Article 299 of the Constitution is necessary so as to entitle a Government servant to the protection of the guarantee contained in Article 311(2) or to enforce his right in a Court of law. It is obvious that this decision is of no real assistance in the present case.

For the appellant it was then contended that the pension in the present case had been earned on account of service having been rendered to the State. In support of this contention, reliance was placed on Exhibits P. 3, P. 11 and Pepsu Service Regulations, Volume 111. It was asserted that pension earned after serving the State could neither be considered to be gratuitous nor could it be described to be mere bounty of the State; it is not a mere reward, but what is due as of right to the retired Government servant. The counsel also cited *Maya Dutta and others* v. *State of Orissa* (1), where claim to extraordinary pension by the widow and children of the deceased Government servant, who had died of accident brought about by the risk of service, was held to be as of right.

Mr. Sikri has, however, submitted that exhibit P. 3 alone is applicable to emergency commissioned officers and not Exhibit P. 11. It is further argued that Exhibit P. 11 is merely an executive order having no statutory force; according to him

(1) A.I.R. 1960 Orissa 7.

they are merely Army instructions neither constituting an ordinance nor a law and thus unenforceable in the Municipal Courts. This contention has, however, been sought to be met by Mr. Kaushal on the ground that this precise point was never raised by the respondent in the pleadings, otherwise he could have adduced evidence to show the source of Exhibit P. 11 and to establish that it had the statutory force in the erstwhile Patiala State. The Rajpramukh, according to him, was the Head of the Army under the covenant between the East Punjab States to form Patiala Union and was thus fully competent to determine and settle terms of service of the Army personnel. Salary and pension were both paid to the Army personnel under these rules and it is contended that it is no longer permissible for the Advocate-General to assail their binding effect. *Messrs Dalmia Dadri Cement Co. Ltd.* v. *Commissioner of Income-tax* (1), was also referred to for the purpose of showing the scope and effect of the above covenant.

Mr. Sikri has also relied on *K. P. Shankerlingam* v. *Union of India and another* (2), where Desai, J., held that tenure of office of Government servant, depending as it does on the pleasure of the President, dismissal under rules would not furnish a justiciable cause with the result that no suit for declaration would lie and on *P. N. Sarkar* v. *State of Bihar and others* (3), for the proposition that the legal position of a Government servant is more one of status than of contract, and that once appointed, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be

(1) A.I.R. 1958 S.C. 816.
(2) A.I.R. 1960 Bom. 431.
(3) A.I.R. 1960 Pat. 366.

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framed and altered unilaterally by the Government. The counsel deduced from these observations that since rules can be altered unilaterally by the Government, their violation cannot, from their very nature, confer any right which can be enforced in the Municipal Courts. Reference was also made to *Shaukat Hussain Beg Mirza* v. *State of Uttar Pradesh and another* (1), where Jagdish Sahai, J., after making a reference to the provisions of the Pensions Act, observed that those provisions clearly reveal that a claim to pension cannot be enforced in a Court of law and the proper remedy is to make departmental representations. The provisions of the Civil Service Regulations were also construed to point in the same direction. Finally, our attention was invited to an unreported judgment of this Court in *Didar Singh Chima* v. *The State of Punjab*, Civil Writ No. 349 of 1959, where while considering the claim of a stenographer in the office of the Financial Commissioner, who had challenged by means of writ petition, the validity of an order of the Punjab Government, adversely affecting the petitioner's seniority, a Division Bench of this Court following the decision in *Venkata Roa's* case held that a breach of statutory rules governing the conditions of service was not justiciable unless there is in addition contravention of a fundamental right. Most of the cases cited before us were also cited before the Division Bench and on a consideration of the various decided cases brought to their notice the preliminary objection of the breach of rules governing conditions of service not being justiciable was upheld. Mr. Sikri contends that this Division Bench decision is binding on us and, therefore, this appeal must be dismissed. Attention of the learned Judges deciding *Didar Singh Chima's* case was drawn to a decision of

(1) A.I.R. 1959 All. 769.

the Supreme Court in *Nohiria Ram* v. *Union of India* (1), in support of the contention that the violation of the rules gave rise to a justiciable issue and that the Supreme Court in that case actually went into the merits of the petition and considered the scope and effect of the various rules on which reliance was placed on behalf of Nohiria Ram in support of his right. The contention was disposed of by the Bench in the following words :—

> "No doubt, the various service rules were taken into consideration by their Lordships of the Supreme Court but it seems that the case of the State being strong on merits, the preliminary objection as to the non-maintainability of the suit was not taken."

I have sent for the record in that case in order to see as to what pleas were taken. In the additional pleas in the written statement I do find the following defence :—

> "The suit is not maintainable in the present form. Suit for declaration does not lie."

but apparently this plea only assails the form of the suit. It thus appears that in the trial Court no precise plea based on the ratio of the Privy Council decision was taken; but when an appeal was filed against the judgment and decree of the Court of first instance granting the declaration claimed by Nohiria Ram, in the Memorandum of Appeal, this objection was clearly kept in the forefront and it was urged in the Memorandum of Appeal that the only remedy in favour of the plaintiff-respondent was by way of departmental

(1) A.I.R. 1958 S.C. 113.

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representation and not by means of an action in a civil Court. The Division Bench hearing the case, however, went into the merits and allowing the appeal dismissed the plaintiff's suit. The objection based on the incompetency of the suit thus does not appear to have been pursued even at the hearing of the appeal because no discussion on this point appears in the judgment. In the Supreme Court also, this point does not seem to have been canvassed. It is, however, permissible to the appellant before us to contend that if the point is so clear and well settled as is claimed on behalf of the respondent, then it would in all probability have been raised in the Supreme Court on behalf of the Union of India, it being a pure question of law going to the root of the jurisdiction of the Civil Court to entertain and adjudicate upon the suit. But be that as it may, the decision in *Didar Singh's* case must, in my opinion, be confined to the precise point which called for determination there, namely, competency of a suit challenging an order affecting the seniority of the plaintiff and it cannot serve as a binding authority for the proposition that a suit with respect to pension in cases not covered by the Pensions Act is incompetent. Section 96-B of the Government of India Act, 1919, the scope and effect of which was the subject-matter of discussion in *Venkata Rao's* case has been quoted *in extenso* in that judgment. Sub-section (2) of that section deals with the subject of the classification of the civil services in India, the method of their recruitment, their conditions of service, pay and allowances and discipline and conduct, whereas the right to, and the scale and conditions of, pensions are separately dealt with in sub-section (3). In sub-section (4) for the removal of doubts it is expressly declared after confirming all the rules, etc., in operation at the time of the passing of

the Government of India Act 1919 that all such rules, etc., are liable to be revoked, varied or added to by rules made under section 96-B. Finally in sub-section (5), supreme authority is unequivocally vested in the Secretary of State in Council to deal with case of any person in the civil service of the Crown (meaning the British Crown) in India, in such manner as may appear to him to be just and equitable. In *Venkata Rao's* case, the question which directly arose related to the alleged violation of classification rule XIV (prescribing a mode of enquiry in cases of dismissal, removal or reduction of officers) apparently framed under sub-section (2) of section 96-B and the Courts in India as well as the Privy Council came to the conclusion that a most definite and salutary rule had been disregarded in most essential respects and the contention on behalf of the Government that what had been done was "well enough" was described, in the words of Lord Roche, to be "mischievous in tendency and ill-founded in fact" After coming to this conclusion, the Judicial Committee considered the two cases of *Shenton* v. *Smith* (1), and *Gould* v. *Stuart* (2), and observed that the facts of the cases before them stood somewhere between those two cases, they being neither covered by the general category of *Shenton's* case nor by the special category of *Gould's* case. After making these observations, the Privy Council agreed with the view of the High Court that there was no right of action in the appellant. Their Lordships were not impressed by the argument of a limited and special kind of employment during pleasure with an added contractual term that the rules had to be observed, and indeed they described the argument to be too artificial and to be too far reaching to commend itself for acceptance.

(1) 1895 A.C. 229.
(2) 1896 A.C. 575.

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They apparently took this view because "the rules were manifold in number and most minute in particularity and were all capable of change" and also because control by the Courts over Government in the detailed work of managing its services would result in inconvenience and confusion, but utmost weight was attached to the existence of careful provisions for redress of grievances by administrative process and the vesting of supreme authority over the civil services in the Secretary of State in Council by section 96-B (5). To quote the exact words of Lord Roche : "these considerations irresistibly led their Lordships to the conclusion that no such right of action as was contended for by the appellant" existed. To give redress against violation or breach of the statutory rules was considered to be the responsibility and the pleasure of the Executive Government. That in taking this view their Lordships of the Privy Council were basically influenced by the language of section 96-B, is also clear from the following observations :—

> "Their Lordships in these circumstances and taking this view of the effect of section 96-B of the statute do not deem it necessary to discuss at length certain other grounds assigned for their conclusions by the Judges in the Courts below."

It is thus as a result of the provisions of section 96-B of the Constitution Act that in *Venkata Rao's* case, the Privy Council felt irresistibly inclined to negative the right of action for obtaining redress even against the disregard in most essential respects of the most definite and salutary rule.

In *Rangachari's* case, the ratio of *Venkata Rao's* decision was adopted and the contention that the provisions of Pensions Act being repugnant to the provisions of section 96-B of the

Constitution Act, 1919, should be deemed to have been impliedly repealed was also repelled. In this case too the appellant was held entitled to complain of the stoppage of his pension as being in breach of the rules relating to pensions, but sections 4 and 6 of the Indian Pensions Act were construed to deprive him of the right of action. It was unsuccessfully contended on his behalf before the Judicial Committee, as stated above, that the provisions of the Pensions Act were impliedly repealed by section 96-B which conferred on him a right of action.

In the Republican Constitution which the People of India have given to themselves on attaining freedom from the British yoke, Part XIV Chapter 1 consisting of Articles 308 to 314 deals with the subject of services, but we do not find any provisions analogous or closely similar to sub-section (5) of section 96-B of the Act of 1919. Indeed it was perhaps for this very reason that the learned Advocate-General did not invite our attention to any provisions of the Constitution, but merely concentrated on the decision of the Privy Council under the Constitution Act of 1919 in support of his contention. In my view, the ratio of the Privy Council decision which was given in the background of the Government of India Act, 1919, can by no means serve as a binding precedent or even as a sound and safe guide for coming to a correct decision with the present constitutional set-up when we are called upon to interpret laws and determine citizens' rights in the light of our present democratic Constitution.

It would not be out of place here to notice that even in the Government of India Act, 1935, section 240 is in marked contrast with section 96-B of 1919. Sub-section (1) of this section undoubtedly retains the English constitutional

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theory that all public offices are held during the pleasure of the Crown of England—a theory which curiously enough was perhaps also applied to the servants of the East India Company, but which was certainly made applicable to the civil servants when the British Crown assumed the governance of the Indian territories from the East India Company—incorporated in section 96—B of 1919. But sub-sections 2 and 3 of section 240 contain some mandatory safeguards which impose positive limitations on the right of the Crown to dismiss or reduce in rank persons holding civil posts under it. As a matter of fact, we find that in *High Commissioner for India* v. *I. M. Lall* (1), Lord Thankerton, who prepared the judgment of the Board, noticed the contrast between section 96-B of 1919 and section 240 of 1935 and declared as inoperative and void the removal of I.M. Lall from service because of violation of the mandatory provisions of section 240(3) of the Constitution Act of 1935. It is manifest from the judgment that the ratio of the earlier Privy Council decisions was not applied to cases governed by the 1935 Act. However, the rule of English Common Law that a public servant cannot enforce his right to remuneration in a Court of Justice was still applicable to India and I.M. Lall's right to claim his salary through action was negatived. Their Lordships also noticed that even against the East India Company such an action was incompetent. The law laid down in *I. M. Lall's* case, in so far as the question of recovery of salary through action is concerned, has since been dissented from by the Supreme Court in *Abdul Majid's* case. In view of the foregoing discussion, in my humble opinion, the strength of the ratio contained in the decisions in *Rangachari's* and *Venakta Rao's* cases is completely shaken and they can hardly now command any binding force.

(1) A.I.R. 1948 P.C. 121.

Coming now to the nature of the claim to pension, the word 'pension' has been defined in the Oxford English Dictionary to mean *inter alia* : "(a) any regular payment to a person for present services; stipend, salary, wages; (b) such a payment made to one who is not a professed servant or employee, to retain his allowance, good will, secret service, assistance when needed, etc., a subvention, a subsidy, a fixed allowance; (c) a regular payment to persons of rank, royal favourites, etc., to enable them to maintain their state; also to men of learning or science, artists, etc., to enable them to carry on work of public interest or value; (d) an annuity or other periodical payment made by a person or body of persons, especially by a Government, a company, or an employer of labour in consideration of past services or of the relinquishment of rights, claims, or emoluments." These various meanings show that the word 'pension' is used in somewhat varying senses. In the present case, however, it appears that the word 'pension' must be given a meaning of periodical payment by a Government to a person in consideration of past services. This periodical payment in my view must be construed so as to stimulate efforts in the performance of duty by Government servant and therefore, in order to achieve this object it may well be suggested that this right must not be made to depend on the arbitrary and uncontrolled whim of the authorities. The law of pensions is, however, basically statutory, but language of the provision in the instant case creating the right to pension does not state that it is a bounty depending on the mere sweet will of the authorities; nor can I spell out any such necessary intendment from its language. Exhibit P. 11 which lays down the revised pension rates, also suggests that the pensions are not gratuitous but the person in whose favour they are sanctioned is entitled to claim them so long as the provision under which

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they are sanctioned remains enforceable. The fact that they are liable to be changed unilaterally would not, in my opinion, affect the question of their enforceability so long as they remain in force. In the 1935 Act in section 247, remunerations and pensions of persons recruited by the Secretary of State were specifically protected in the proviso to sub-section (1). This also seems to suggest that salaries and pensions were treated in the 1935 Act in the same manner and that if salary has been held not to be a mere bounty so must also be the case in the matter of pensions.

There is also another aspect of the matter. Dismissal or removal from service has been held to amount to a penalty as it involves loss of benefit already earned in that an officer dismissed or removed does not get pension which he has earned. This line of reasoning has been adopted by the Supreme Court in more cases than one. See for instance, *Shyamlal* v. *State of Uttar Pradesh* (1) and *State of Bombay* v. *Saubhag Chand M. Doshi* (2). If, therefore, in accordance with the law as laid down in *Abdul Majid's* case an action for salary is competent in civil Courts, I find it somewhat difficult to see why a suit for pensions should on the mere analogy of some rule of English Common Law be held to be incompetent. It is a different matter if on the merits the court holds that pension in a given case is not claimable or claimable on a lower rate, but it is not understood how the jurisdiction of the civil Courts to entertain and try the suit can in the absence of any clear provision of law to the contrary be held to be ousted according to our jurisprudence. I am willing to grant that the core of our laws has, broadly speaking, been largely derived from Englisn law, but it must constantly be kept in

(1) A.I.R. 1954 S.C. 369.
(2) A.I.R. 1957 S.C. 892.

view that we have our own governmental institutions, our own written constitution which is supreme in this Republic, our economic, political and social life, and our own peculiar problems which we have to solve. We must therefore, be careful not to depend for guidance too heavily and uncritically on English insight and experience of the working of their governmental institution and of the solution of their problems.

Going back for a moment to the argument that an action to claim redress against breach of statutory rules does not lie as laid down by the Privy Council in *Rangachari's and Venkata Rao's cases*, I find that in addition to *Nohiria Ram's case*, the Supreme Court in *M. Narasimhachar* v. *The State of Mysore* (1), also went into merits of the allegation of breach of rules and regulations, in retiring the appellant there and came to the conclusion that the order retiring him was in no way against the rules. According to the rules applicable, reduction of pension was also considered by the Courts to be discretionary with the Government and, therefore, no breach of regulations was held to have been established in that case. If the controversy as to the amount of pension payable was not justiciable, the Supreme Court would, in my opinion, have rejected the appellant's claim on the short ground of the controversy not being justiciable instead of going through the merits in a fairly detailed and exhaustive judgment after granting special leave. It is not easily conceivable that such an obvious point, if possessing merit, would have been missed by the counsel and ignored by the Court. I would on the other hand feel inclined to take the view that on account of the obvious difference in essential particulars in the language between section 96(B) of 1919 Act

(1) A.I.R. 1960 S.C. 247.

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and the corresponding provisions in our constitution, the rule enunciated by the Privy Council in the aforesaid decisions of 1937 can no longer serve as binding or even helpful precedents for arriving at a just and fair decision in the instant case.

The other ground which weighed with the Privy Council was the bar contained in sections 4 and 6, Pensions Act (23 of 1871), which, as is agreed at the Bar, does not apply to the case in hand. The fact that it was considered necessary to enact these two sections also tends to suggest that, but for these provisions the right to pension would have been enforceable in the municipal Courts. I am not unmindful of the possible contention that these provisions might have been enacted by way of abundant caution, but as this aspect was not debated at the Bar and no point was sought to be made on this basis, I need not pursue this matter any further.

In so far as the question of Exhibit P. 11 is concerned, I agree with the appellant that the respondent had never taken the plea that the special Patiala Army order had not been issued under the authority of the *Ijlas-i-khas* as it *prima facie* purports to be. Had the requisite plea been taken, the appellant would perhaps have placed material on the record to show that in Pepsu this order had been issued in accordance with the prescribed procedure. But this apart, the decision of the Courts below on the merits was not sought to be challenged on behalf of the respondents who confined their contention only to issue No. 1, with the result that in so far as the question of the rate of pension is concerned, it is unnecessary to say anything more at this stage.

For the reasons given above, this appeal must, in my opinion, succeed and setting aside the judgment and decree of the Court below, I would

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pass a decree in favour of the plaintiff at the rate of Rs. 228 per mensem as claimed by him according to which the arrears come to Rs. 8,516-4-3. In the peculiar circumstances of the case, however, the parties are left to bear their own costs in this Court.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

SANTA SINGH AND ANOTHER,—*Appellants*

versus

JAWAHAR SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 264 of 1958

1960

Dec., 21st

Punjab Pre-emption (Amendment) Act (X of 1960)—Sections 15 and 31—Pre-emptor succeeding in his suit—Vendee filing appeal from that decree—During pendency of appeal the right of pre-emption of the pre-emptor taken away by the Amending Act—Amending Act conferring right of pre-emption in another capacity held by the pre-emptor—Whether pre-emptor can plead such new right to sustain his decree—Pre-emptor—Whether can improve his position after the sale—Right of pre-emption—Nature of—Whether vested right.

Held, that the scope and effect of section 31 added to the Punjab Pre-emption Act by the Amendment Act, X of 1960, is that no decree in a suit for pre-emption, after the enforcement of the amending statute, can be passed which is inconsistent with its provisions. An appeal is a continuation of the suit and a re-hearing of the matter. Affirmance of a decree by the appellate Court amounts to "passing a decree" within the meaning of section 31 of the Act. It is, therefore, not correct to say that if the trial Court has passed a decree for pre-emption and the vendee has come up in appeal, the appellate Court cannot reverse the decree