Ahmed Hussain Khan

Vs

State of Andhra Pradesh

S. Gopalan

Vs

State of Andhra Pradesh

Civil Appeals Nos. 2627 and 2628 of 1977

(CJI Y. V. Chandrachud. D. P. Madon, Ranganath Misra JJ)

28.09.1984

JUDGMENT

MADON, J. –

1. These two appeals by special leave granted by this Court raise a common question of law as regards the maximum amount of pension for Superior Service admissible under clause (b) of sub-rule (1) of Rule 299 of the Hyderabad Civil Services Rules. According to the appellant in each of these two appeals, such amount is Rs 1000 per month while according to the State of Andhra Pradesh, the respondent in both these appeals, it is Rs 857.15 per month.

2. Before considering which of these two rival contentions is correct, it would be convenient to relate first the relevant facts which have given rise to this controversy.

3. Prior to the coming into force of the Constitution of India on January 26, 1950, Hyderabad was an Indian State within the meaning of that term as defined in Section 311(1) of the Government of India Act, 1935, and its Ruler within the meaning of that term as defined in the said Section 311(1) was the Nizam. The appellant in Civil Appeal 2627 of 1977, Ahmed Hussain Khan, joined the service of the Public Works Department of the erstwhile Indian State of Hyderabad in the year 1945 and retired on April 5, 1972, as Chief Engineer, Electricity (Operation), Andhra Pradesh State Electricity Board. At the time of his retirement he was drawing a salary of Rs 1980 per month. By a Government Order, namely, G.O. MS No. 664, Public Works (E) Department, dated June 22, 1973, this appellant's pension after deducting the pension equivalent of death-cum-retirement gratuity was fixed at Rs 801.96 per month on the basis that the maximum amount of pension admissible under Rule 299(1)(b) of the Hyderabad Civil Services Rules was Rs 1000 per month. By another Government Order, namely, G.O. MS No. 769, Public Works (Pen. I) Department, dated July 2, 1973, the amount of pension payable to this appellant was fixed at Rs 683.11 per month after deducting the pension equivalent of death-cum-retirement gratuity on the basis that by a notification dated February 3, 1971, amending the said clause (b) of Rule 299(1), the amount of maximum pension admissible under the said clause was restricted to Rs 857.15. Ahmed Hussain Khan thereupon filed a writ petition under Article 226 of the Constitution of India in the High Court of Andhra Pradesh, being Writ Petition 7113 of 1973, challenging the said amendment made to clause

(b) of Rule 299(1) inter alia on the ground that under the proviso to subsection (7) of Section 115 of the States Reorganisation Act, 1956, the said amendment required the previous approval of the Central Government which had not been obtained.

4. The appellant in Civil Appeal 2628 of 1977, S. Gopalan, joined the service of the public Works Department of the erstwhile Indian State of Hyderabad in the year 1942 and retired on April 14, 1973, as Chief Engineer, Major Irrigation and General Public Works Department, Government of Andhra Pradesh. At the time of his retirement he was drawing a salary of Rs 2180 per month. By a Government Order, namely, G.O. MS No. 462, P.W., (L1) Department, dated May 8, 1973, his pension was fixed at Rs 857.15 per month pursuant to the said amended clause (b) of Rule 299(1). He thereupon filed a writ petition under Article 226 of the Constitution of India in the High Court of Andhra Pradesh, being Writ petition 7114 of 1973, on the same grounds as the appellant Ahmed Hussain Khan.

5. Both these writ petitions were heard together and disposed of by a common judgment by a learned Single Judge of the said High Court. The aforesaid contention raised in the said writ petitions found favour with the learned Single Judge and he allowed both the said writ petitions and issued a writ of mandamus in each of them directing the State of Andhra Pradesh to fix the pension payable to the appellant in each of these two appeals from the date he became eligible for pension, that is, from the date on which he retired from Government service, on the basis that the maximum pension admissible under the said Rule 299(1)(b) of the Hyderabad Civil Services Rules was Rs 1000 per month and not Rs 857.15 per month. The learned Single Judge also directed the state of Andhra Pradesh to pay the costs of both these writ petitions. The appeals filed by the State of Andhra Pradesh against the said judgment and orders of the learned Single Judge, being Writ Appeals 835 of 1974 and 920 of 1974, were allowed, with no order as to costs, by a Division Bench of the Andhra Pradesh High Court by a common judgment holding that a letter No. 5/8/73-SR(S) dated April 28, 1973, from the Joint Secretary to the Government of India, Cabinet Secretariat, Department of Personnel and A.R., to the Secretary to the Government of Andhra Pradesh, Fiance Department, was in the nature of a previous approval given by the Central Government within the meaning of the proviso to sub-section (7) of Section 115 of the State Reorganisation Act, 1956, to the impugned amendment to clause (b) of Rule 299(1) of the Hyderabad Civil Services Rules. The correctness of the judgment and orders of the Division Bench of the Andhra Pradesh High Court are assailed before us in these two appeals.

6. At the hearing of these two appeals, Mr Markandeya, learned counsel for the appellant in each of these two appeals, submitted that the said letter dated April 28, 1973, from the Joint Secretary to the Government of India, did not amount to the previous approval of the Central Government to the amendment made by the State Government to clause (b) of Rule 299(1) and the said amendment was, therefore, invalid and inoperative. He further submitted that the right to receive pension was property under sub-clause (f) of clause (1) of Article 19 and clause (1) of Article 31 of the Constitution of India and the State Government could not withhold it by a mere executive order. So far as appellant, Ahmed Hussain Khan, was concerned, Mr Markandeya further submitted that his pension having already been fixed under the said Rule 299(1)(b) at Rs 801.96 per month on the basis that he maximum pension admissible under the said Rule was Rs 1000 per month, it could not subsequently be unilaterally reduced to Rs 683.11 per month on the basis that the maximum pension admissible under the said Rule 299(1)(b) was Rs 857.15 per month as was purported to be done by the said Government Order dated July 2, 1973, without affording the said appellant an opportunity of showing cause against the same.

7. Mr Lalit, appearing on behalf of the respondent - the State of Andhra Pradesh raised the following four contentions :

> (1) Irrespective of the said amendment made in the said clause (b) of Rule 299(1) by the said notification dated February 3, 1971, the maximum pension actually admissible under the said clause (b) was only Rs 857.15 inasmuch as the sum of Rs 1000 mentioned in the said clause (b) prior to its amendment was not Rs 1000 in Government of India currency by in the former Hyderabad currency, namely, Osmania Sikka, and that the letters "O.S." which denominated Osmania Sikka in short were omitted from the said Rule 299(1)(b) by an inadvertent printing error.
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> 2. In any event, under the Hyderabad Currency Demonetization (Consequential and Miscellaneous Provisions) Act, 1953, the said sum of Rs 1000 was to be construed as its equivalent amount in the Government of India currency and, therefore, according to the standard rate of exchange the equivalent of Rs 1000 in Osmania Sikka was Rs 857.15 in Government of India currency.
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> (3) The said letter dated April 28, 1973, from the Joint Secretary to the Government of India to the Secretary to the Government of Andhra Pradesh, Finance Department, constituted the prior approval of the Central Government within the meaning of the proviso to sub-section (7) of Section 115 of the States Reorganisation Act, 1956, to the amendment made in the said clause (b) of Rule 299(1).
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> (4) The appellant in each of these two appeals had received without any protest pension on the basis that the maximum pension admissible under the said Rule 299(1)(b) was Rs 857.15 per month and had thereby waived his right to claim pension on the basis that the maximum pension admissible under the said Rule was Rs 1000 per month and he was, therefore, estopped from raising this contention.

8. In Deokinandan Prasad v. State of Bihar (1971 Supp SCR 634 : (1971) 2 SCC 330 : (1971) 1 LLJ 557 : 1971 Lab IC 881) this Court held that the payment of pension does not depend upon the discretion of the State but is governed by the rules made in that behalf and a Government servant coming within such rules is entitled to claim pension. It was further held that the grant of pension does not depend upon an order being passed by the authorities to that effect though for the purpose of quantifying the amount having regard to the period of service and other allied matter, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order by virtue of the rules. It was also held in that case that pension is not a bounty virtue of the rules. It was also held in that case that pension is not a bounty payable at the sweet will and pleasure of the Government by is a right vesting in a Government servant and was property under clause (1) of Article 31 of the Constitution of India and the State had no power to withhold the same by a mere executive order and that similarly this right was also property under sub-clause (f) of clause (1) of Article 19 of the Constitution of India and was not saved by clause (5) of that Article. It was further held that this right of the Government servant to receive pension cannot be curtailed or taken away by the State by an executive order.

9. It is, therefore, necessary for us to see the statutory provisions governing the payment of pension to Government servants who had joined the service of the erstwhile Indian State of Hyderabad and had continued in service and retired after the Constitution of India came into force. At the time when the appellate in each of these two appeals joined service the terms and conditions of the

service of Government servants in the erstwhile Indian State of Hyderabad were governed by the Hyderabad Civil Service Regulations, hereinafter for the sake of brevity referred to as "the Regulations."

10. The Regulations were promulgated in obedience to the Nizam's Firman dated 25th Ramzan, 1337 H. corresponding to 18th Amardad, 1328 F. They were amended from time to time. Regulation 1 of the Regulations stated that the Regulations were intended to define the conditions under which salaries, leave, pension and other allowances were earned by service in the Civil Departments and the manner in which they were calculated. Regulations 6 provided as follows :

> 6. An officer's claim to pay and allowances is regulated by the rules in force at the time in respect of which the pay and allowances were earned; to leave by the rules in force at the time the leave is applied for and granted and to pension by the rules in force at the time when the officer retires.

11. Civil Service in the erstwhile Indian State of Hyderabad was of two kinds, namely, Superior Service and Inferior Service. Clause (a) of Regulation 37 provided that service in all appointments the pay of which did not exceed Rs 40 per mensem was Inferior Service and that all other service was Superior Service. The appellant in each of these two appeals was, therefore, a member of the Superior Service. Regulation 313 provided for the amount of pensions and gratuities for Superior Service Clause (a) of Regulations 313 dealt with a qualifying service of less than ten years. Clause (b) of Regulation 313 dealt with a qualifying service of ten years or more. The appellate in each of these two appeals had put in a qualifying service of more than ten years and the amount of his pension, had the Regulations continued in force until he retired, would have been governed by clause (b) of Regulation 313. The relevant provision of Regulation 313 were as follows :

> The amount of pensions and gratuities for Superior Service in regulated as follows :
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> (b) After a qualifying service of 10 years or more, the amount of the pension will be calculate according the following rule; the average salary should be multiplied by the period of qualifying service and the product divided by 60; the result will be amount of pension admissible. The maximum pension ordinarily admissible will be O.S. Rs 1000 a month. In applying the above rule qualifying service of 25 years or above, whatever its length may be, will be treated as 30 years service.

It may be mentioned that the erstwhile Indian State of Hyderabad had its own currency known as the "Osmania Sikka" denominated in short as "O.S." and the phrase "O.S. Rs 1000 a month" which occurred in clause (b) of Regulation 313 meant Osmania Sikka Rs 1000 a month. The Government of India currency was known as "Indian Government currency" and denominated in short as "I.G. currency". The standard rate of exchange 7 O.S. rupees for 6 I.G. rupees.

12. Under clause (22) of Section 2 of the Hyderabad General Clauses Act (III of 1308 F.), as it then stood, "rupee" meant a rupee in the O.S. currency.

13. After India became independent, a Standstill Agreement was entered into in November 1947 by the Nizam with the Dominion of India, ensuring virtual accession of the erstwhile Indian State of Hyderabad to the Dominion of India in respect of defence, external affairs and communications. By a Firman dated November 23, 1949, the Nizam declared and directed that the Constitution of India

shortly to be adopted by the Constituent Assembly of India should be the Constitution for the erstwhile Indian State of Hyderabad as for the other parts of India, and would be enforced as such and that the provisions of the Constitution of India would, as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which were then in force in the erstwhile Indian State of Hyderabad. By the said Firman, the Nizam further declared that the said decision taken by him would be subject to ratification by the people of the State whose will as expressed through the Constituent Assembly of that State would finally determine the nature of the relationship between the erstwhile Indian State of Hyderabad and the Union of India as also the Constitution of that State itself (see White Paper on Indian States, 1950, pp. 113 and 369-70). The Constituent Assembly of Hyderabad set up shortly thereafter ractified the decision taken by the Nizam. On the coming into force of the Constitution of India on January 26, 1950, Hyderabad became a part of the territory of India a Part B State.

14. Consequently upon the above constitutional change, Hyderabad currency was demonetized with effect from April 1, 1953, and the Hyderabad Currency Demonetization (Consequential and Miscellaneous Provisions) Act, 1953 (Hyderabad Act 1 of 1953) (hereinafter referred to as "the Demonetization Act"), enacted. The Demonetization Act came into force with effect from April 1, 1953. Section 2 of the Demonetization Act provided as follows :

> 2. Provisions consequential on demonetization of Hyderabad O.S. Currency. - Subject to the provisions of the Act references express or implied in any Hyderabad law, regulation, notification, order, bye-law, contract and agreement (oral or written) bond and other instruments which immediately before the commencement of this Act were in force in the Hyderabad State shall be construed as if references therein to any amounts in O.S. currency were references to the equivalent amounts in I.G. Currency according to the standard rate of exchange and all rights and liabilities express or implied in O.S. currency in force before such commencement shall be construed accordingly :
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> Provided that nothing in this section shall preclude a person from paying his dues in equivalent O.S. currency to the extent and for the purposes for which the same continues as legal tender in the Hyderabad State after the thirty-first day of March 1953.

Illustration. - References to O.S. Rs 7 in any law or other matters mentioned in this section shall be construed as if such references to (sic) Rs 6 in I.G. currency according to the standard rate of exchange.

By the Demonetization Act, the said clause (22) of Section 2 of the Hyderabad General Clauses Act was substituted by a new clause which provide as follows :

> (22) 'rupee' means a rupee in I.G. currency and fractional denominations of a rupee shall be construed accordingly.

The definitions contained in Section 2 of the Hyderabad General Clauses Act apply for the interpretation of the terms defined thereby when occurring in any "Hyderabad law" which expression includes Regulations made by the Nizam and would thus include the Hyderabad Civil Service Regulations.

15. In view of the provisions of the Demonetization act, the maximum pension admissible under clause (b) of Regulation 313 would be Rs 857.15 being the equivalent in I.G. currency of O.S. Rs 1000. Had the matter rested there, neither of the appellants would have any case because under Regulation 6 reproduced earlier, a Government servant's claim to pension was to be regulated by the rules in force at the time the officer retired and the pension that each of them would then have got would be on the basis that the maximum pension admissible under clause (b) of Regulation 313 was O.S. Rs 1000 a month, that is, Rs 857.15 a month in I.G. currency. The Regulations, however, did not continue in existence much longer and were not in force when the appellant in each of these two appeals retired, for they were replaced in 1954 by the Hyderabad Civil Services Rules which were made by the Rajpramukh of the State of Hyderabad in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. The proviso to Article 309 confers upon the Governor of a State and, prior to its amendment by the Constitution (Seventh Amendment) Act, 1956, conferred upon the Rajpramukh of a State, or such person as he may direct in the case of services and posts in connection with the affairs of the State, the power to make rules regulation the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under the said Article 309, and any rules so made are to have effect subject to the provisions of any such Act.

16. The Hyderabad Civil Services Rules (hereinafter referred to as "the Rules") inter alia provide for general conditions of service, pay, travailing allowances, dismissal, removal, suspension and compulsory retirement of civil servants, and their pension, leave, etc. The Rules came into force on October 1, 1954. Rule 4 of the Rules is in pair material with Regulation 6 of the Regulations. Rule 4 provides as follows :

> 4. A Government servant's claim to pay and allowances is regulated by the rules in force at the time in respect of which the pay and allowances are earned; to leave by the rules in force at the time the leave is applied for and granted; and to pension by the rules in force at the time when the Government servant retires or is discharged from the service of Government.

The Rules preserved distinction between Inferior Service and Superior Service. Under clause (26) of Rule 7, "Inferior or Class IV Service" is defined as meaning "service in all appointments, the pay of which does not exceed Rs 40 per mensem". Under clause (48) of Rule 7, "Superior Service" is defined as meaning "any kind of service which is not inferior vide Rule 7(26) ". Rule 299 if the Rules provides for the pension and gratuity for Superior Service. Clause (a) of Rule 299 deals with a case where the qualifying service is less than ten years. Clause (b) deals with a case where the qualifying services is of ten years or more. The relevant provisions of Rule 299 are as follows :

> 299. The pension and gratuity for Superior Service is regulated as follows :
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> (b) After qualifying service of 10 years or more, the amount of the pension will be calculated according to the following rule; the average salary should be multiplied by the period of qualifying service, and the product divided by 60; the result will be the amount of pension admissible. The maximum pension ordinarily admissible will be Rs 1000 a month. In applying the above rule qualifying service of 25 years or above, whatever its length may be, will be treated as 30 years' service.

It will be noticed that clause (b) of Rule 299 is in pari materia with clause (b) of Regulation 313 with this difference that while under clause (b) of Regulation 313 the maximum pension ordinarily admissible was to be "O.S. Rs 1000 a month", under clause (b) or Rule 299 the maximum pension ordinarily admissible is to be "Rs 1000 a month".

17. The first question which falls for determination is whether the omission of the description "O.S." before "Rs 1000 a month" in clause (b) of Rule 299 was the result of an inadvertent printing error as contended by the respondent or was a departure deliberately made from what was provided in clause (b) of Regulations 313 in order to provide higher pension to Government servants in Superior Service. In this connection, it is pertinent to note that the Rules were made after the erstwhile Indian State of Hyderabad had become a part of the territory of India and after the Demonetization Act had been enacted and had come into force and clause (22) of Section 2 of the Hyderabad General Clauses Act (which defined the term 'rupee') substituted by a new clause by that Act. After the Demonetization Act there could be no question of any Act or Rules providing for any payment in Osmania Sikka. The word "rupees" in clause (b) of Rule 299 can, therefore, only refer to rupees in I.G. currency and not to rupees in O.S. currency. It is also pertinent to point out that the Rules were not a mere reproduction of the Regulations. The arrangement of the Rules is in several respects different from the arrangement of the Regulations. There is nowhere any amount mentioned in the Rules in O.S. currency nor are the different amounts mentioned in the Rules the exact equivalent in I.G. currency of the amounts in O.S. currency mentioned in the Regulations. For instance, the rates of mileage allowance for journeys by road mentioned in Rule 99 are not equivalent in I.G. currency of the rates mentioned in Regulation 455. It is also significant that Regulation 308 provided that a pension was ordinarily fixed in the current coin of the Hyderabad State even though it might have to be paid persons residing outside the Hyderabad State, and that in special cases it might be fixed in Government of India currency subject to the condition that the maximum of O.S. Rs 1000 per mensem fixed in clause (b) of Regulation 313 was not exceded under any circumstances. The note to Regulation 308 state that a pension transferred to India might be converted from the currency coin of the Hyderabad State to Indian Government currency under the principle laid down in the said Regulation. In the Rules, we do not find any provision corresponding to Regulation 308. If there is any doubt (assuming that there can be any), it is most easily resolved by referring to the Preface to the Eighth Edition of the Hyderabad Civil Services Rules Manual, which for the first time published the Rules in a book form. In paragraph 3 of the said Preface, the Secretary to Government, Finance Department, Hyderabad, had expressly stated : "The figures for amounts of rupees and annas mentioned in the Rules are all in India Government currency". There can thus be no scope for any argument that the sum of Rs 1000 mentioned as being admissible for maximum pension in clause (b) of Rule 299 was Rs 1000 in Indian Government currency and not in Osmania Sikka.

18. We also find that it is not open to the respondent to raise this contention. The state of Hyderabad ceased to be a separate entity from November 1, 1956, on the coming into force of the State Reorganisation Act, 1956 (Act XXXVII of 1956). Under the State Reorganisation Act, the territories of the State of Hyderabad were added partly to the State of Andhra, partly to the State of Mysore (now Karnataka) and partly to the State of Bombay (now Maharashtra) and ceased to form part of the State of Hyderabad. By Section 3(1) of the State Reorganisation Act, the name of the State of Andhra was changed the State of Andhra Pradesh. Consequent upon this reorganisation, by the Andhra Pradesh Adaptation Order, 1957, the words 'Hyderabad State' occurring in Section 2 of the Demonetization Act were substituted by the words "Hyderabad Area of the State of Andhra Pradesh" and by the Andhra Pradesh Act IX of 1961, the words "Hyderabad Area of the State of Andhra Pradesh" were substituted by the words "Telangana Area of the State of Andhra Pradesh".

Similar amendments were made in the Hyderabad General Clauses Act and the said is now called the Andhra Pradesh (Telangana Area) General Clauses Act, 1308 F. Almost fifteen years after the Rules came into force, by a memorandum, being Memorandum No. 27439/540/Pen. I/69 dated April 28, 1969, the Assistant Secretary to the Government of Andhra Pradesh, Finance Department, issued an erratum to the said clause (b) of Rule 299 purporting to correct the amount of Rs 1000 mentioned therein to O.S. Rs 1000. Three retired Government servants thereupon filed a writ petition in the Andhra Pradesh High Court being Writ Petition 3318 of 1969 - Daulat Rai v. State of A.P. A learned Single Judge of the said High Court allowed the said writ petition, holding that there was no error in mentioning Rs 1000 and that what the said erratum purported to do was to amend clause (b) of Rule 299 and the Rules promulgated by the Rajpramukh under the proviso to Article 309 of the Constitution of India cannot be amended or altered merely by issuing an erratum and that the said Assistant Secretary to the Government of Andhra Pradesh was not entitled to amend any such rule unless the sanction of the Governor of Andhra Pradesh had been obtained thereto. The said writ petition was thereupon allowed. A letters patent appeal filed against the said judgment, being Writ Appeal 568 of 1970 - State of A.P. v. Daulat Rai, was dismissed on September 24, 1970, by a Division Bench of the said High Court which also rejected an application for certificate to appeal to this Court and a petition for special leave to appeal again the said judgment was dismissed by this Court. The question whether in clause (b) of Rule 299 the sum of Rs 1000 is mentioned in Government of India currency or in O.S. currency has thus been finally decided and it is not open to the respondent to reagitate this question. This point was also not taken by the respondent in the High Court and for this reason also it is to open to the respondent to urge it before us.

19. We now address ourselves to the question of the validity of the said Government Notification dated February 3, 1971, amending clause (b) of sub-rule (1) of Rule 299. Before setting out the text of the said Notification, we may mentioned that it appears that after the judgment of the Division Bench in Daulat Rai case Rule 299 was renumbered as sub-rule (1) and a new sub-rule (2) was added. Sub-rule (2) is not relevant for our purpose. The said Notification was as follows :

> In exercise of the powers conferred by the proviso under Article 309 read with Article 313 of the Constitution of India and of all other powers hereunto enabling, the Governor of Andhra Pradesh hereby makes the following amendment to the Hyderabad Civil Service Rules :
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> The amendment hereby made shall be deemed to have come into force on October 1, 1954.
>
> AMENDMENT
>
> In clause (b) of sub-rule (1) of Rule 299 of the said Rules, for the expression "1000 a month" the expression "Rs 857.15 a month" : shall be substituted.
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> (By Order and in the name of the Governor of Andhra Pradesh)
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> # P. R. Kale, Joint Secretary to Government##

In order to appreciate the challenge to the said Notification, it is necessary to reproduce the relevant provision of Section 115 of the States Reorganisation Act, 1956, namely, sub-section (2), (3), (4) and (7) thereof. These sub-sections are as follows :

> (2) Every person who immediately before the appointed day is serving in connection

with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall as from that day, provisionally confine to serve in connection with the affairs of the principal successor State to that existing State, unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other : successor State.

(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of sub-section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon the Governments concerned, and in default of such agreement, as may be determined by the Central Government.

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(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of the Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

Under clause (m) of Section 2 of the States Reorganisation Act, 1956, "principal successor State" in relation to the State of Hyderabad means the State of Andhra Pradesh. Chapter I of Part XIV of the Constitution of India deals with services under the Union and the States and consists of Article 308 to 313.

20. What is pertinent for our purpose is that under the proviso to sub-section (7) of Section 115 of the States Reorganization Act, the conditions of service applicable immediately before the appointed day, namely, November 1, 1956, in the case of any person referred to inter alia in sub-section (2) of Section 115 cannot be varied to his disadvantage except with the previous approval of the Central Government. Pension is a condition of service as held by this Court in State of M.P. v. Shardul Singh ((1970) 3 SCR 302, 306 : (1970) 1 SCC 108, 111) and, therefore, if any rules are to be made by the Governor of a State varying the amount of pension to the disadvantage of those who were in service on the appointed day, such rules would not be valid without the previous approval of the Central Government. The amendment made by the said Notification reduced the amount of pension payable to Government servants who were in the service of the erstwhile State of Hyderabad and whose services continued under the principal successor State to the State of Hyderabad, namely, the State of Andhra Pradesh. The contention of the respondent, however, is that such approval has, in fact, been given by the Central Government by the said letter dated April 28, 1973. This contention found favour with the Division Bench of the Andhra Pradesh High Court. The said letter dated April 28, 1973, was in reply to a letter dated March 13, 1973, written by the Joint Secretary to the

Government of Andhra Pradesh Finance Department. In the said letter dated March 13, 1973, after referring to the Demonetization Act and the Rules it was stated that there was an omission to convert the maximum limit of pension of O.S. Rs 1000 into I.G. currency but in practice, however, the figure was treated as O.S. Rs 1000 and all pensions sanctioned before November, 1, 1956, were restricted to Rs 857.15 being the equivalent in I.G. currency of O.S. Rs 1000. Incidentally, there is nothing on the record to bear out this statement. The issue of the said erratum, and the judgment of the Andhra Pradesh High Court striking it down were then recited in the said letter. It was then stated that the Government held the view that as on one was paid more than Rs 857.15 in I.G. currency prior to November 1, 1956, the condition of service that the maximum pension admissible should be Rs 1000 in I.G. currency did not exist and that it came into being only by virtue of the judgment delivered by the Andhra Pradesh High Court in 1970, that is, in the said writ petition filed by Daulat Rai and two others, and that it was, therefore, felt by the State Government that what it had done was not a variation in the conditions of service of any employee to this disadvantage but an action taken to give effect to an actual situation that existed prior to November 1, 1956. The said letter then went on to state :

> It, therefore, does not appear necessary to obtain previous approval of Government of India for this amendment under the proviso to Section 115 of the S.R. Act, 1956. Should however Government of India consider it otherwise they may kindly accord approval for the amendment as explained earlier.

Along with the papers forwarded with the said letter was a copy of the said Notification dated February 3, 1971. By his reply dated April 28, 1973, to the said letter, the Joint Secretary to the Government of India, Cabinet Secretariat, Department of Personnel and A.R., stated as follows :

> I am directed to refer to the correspondence resting with Shri P. R. Kale's letter No. 14154-A/462/Pen. I/72, dated March 13, 1973 on the above subject and to say that the Government of India agrees with the view of the State Government that since no retired employee was paid a pension of more than Rs 857.15 in Indian currency before November 1, 1956, the proposed amendment in the Hyderabad Civil Service Rules is not a variation in the conditions of service of any employee to his disadvantage after November 1, 1956 and does not require prior approval of the Government of India under Section 115 of the State Reorganisation Act, 1956.

21. The Division Bench of the Andhra Pradesh High Court took the view that "when all the facts relating to the pension admissible to an employee governed by the Hyderabad Civil Services Rules were placed before the Government of India and when it gave a considered opinion, that opinion is a prior approval satisfying the requirement of Section 115(7)". We are unable to follow this line of reasoning. By the said letter dated March 13, 1973, the Government of India was requested to occur approval to the said amendment if it considered it necessary so to do. By its said reply dated April 28, 1973, the Government of India categorically stated that the said amendment did not require its prior approval under the said Section 115 and, therefore, did not give any approval to the said amendment., To equate the not giving of approval with a prior approval satisfying the requirements of the proviso to sub-section (7) of Section 115 appears to us to be a contradiction in terms as also to say that a letter written on April 28, 1973, was a prior approval given to an amendment which was made more than two years earlier on February 3, 1971. The statement made in the said letter dated March 13, 1973, that by the said amendment the conditions of service were not being varied was incorrect because by the said amendment the maximum pension of Rs 1000 per month in I.G. currency was being reduced to the equivalent in that currency of O.S. Rs 1000 per month, namely,

to Rs 857.15 per month, and that too with retrospective effect from the date of the coming into force of the Rules, namely, October 1, 1954. For such an amendment the previous approval of the Central Government was required by the proviso to sub-section (7) of Section 115. Such approval was not given and the amendment made by the said Notification was, therefore, invalid and inoperative so far as it concerned persons referred to in sub-section (1) and (2) of Section 115 of the State Reorganisation Act. The question whether even with respect to persons other than those referred to in the said sub-sections, the said Notification insofar as it is retrospective is valid does not arise in these appeals and does not fall to be decided.

22. In this view of the matter it is unnecessary to consider the other points arising in these appeals except the respondent's contention that the appellant in each of these two appeals had waived his right to receive pension on the basis that the maximum pension admissible under clause (b) of Rule 299(1) is Rs 1000 and was, therefore estopped from claiming pension on that basis. There is no substance in this contention. This point was never taken in the High Court. Further, apart from the fact that there cannot be any wavier of the right to receive pension payable under the rules made in that behalf, there is no factual basis whatever for this contention. The appellant Ahmed Hussain Khan retired on April 5, 1972. By the said Government Order dated June 22, 1973, his pension was in fact fixed on the basis that the maximum pension admissible under Rule 299(1)(b) was Rs 1000 per month in I.G. currency. This order was revised by the order dated July 2, 1973, by which his pension was fixed on the basis that the maximum pension admissible was Rs 857.15 per month. Within a short time thereafter in the course of that year he filed his writ petition in the High Court and the said writ petition was heard and disposed of by the learned Single Judge by his judgment delivered on July 16, 1974. So far as the appellate S. Gopalan is concerned, he retired on April 14, 1973, and his pension was fixed by the Government Order dated May 8, 1973, on the basis that the maximum pension admissible under the Rules was Rs 857.15 per month. He also filed his writ petition in the same year and it was decided along with the writ petition filed by Ahmed Hussain Khan by the said Judgment delivered on July 16, 1974.

23. For the reasons set out above, we hold that the appellant in each of these two appeals is entitled to receive pension on the basis that the maximum pension admissible under clause (b) of sub-rule (1) of Rule 299 of the Hyderabad Civil Services Rules is Rs 1000 per month in Government of India currency and not Rs 857.15 per month in that currency.

24. In the result, we allow both these appeals, reverse the judgment of the Division Bench of the Andhra Pradesh High Court and set aside the orders appealed against. We direct the State of Andhra Pradesh to fix within one month from today the pension payable to the appellant in each of these two appeals from the date on which he became eligible for payment of pension, that is, from the date on which he retired from Government service, on the basis that the maximum pension admissible under clause (b) of sub-rule (1) of Rule 299 of the Hyderabad Civil Services Rules is Rs 1000 per month in the Government of India currency. We further direct the State of Andhra Pradesh to pay to the appellant in each of these two appeals the balance of the amount of pension payable to him for the past period according to such refixation within one month from the date of refixation of his pension.

25. The respondent will pay to the appellant in each of these two appeals the costs of the appeal in this Court and of the writ petition and the writ appeal in the Andhra Pradesh High Court.

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