

(1976) 03 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 662 of 1973

Dr. (Smt.) F. Chaudhury

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-03-1976

Acts Referred:

Constitution of India, 1950 — Article 254, 309
Government of India Act, 1935 — Section 241(2)(a)
Penal Code, 1860 (IPC) — Section 409

Citation : (1977) ILR (MP) 372

Hon'ble Judges : R.J. Bhawe, J;N.M. Golwalker, J;G.P. Singh, J

Bench : Full Bench

Advocate : R.S. Dabir with Rajendra Singh, Anoop Chaudhari and O.P. Namdeo, for the Appellant; Y.S. Dharmadhikari, Advocate General and A.P. Tare, Govt. Advocate for State, for the Respondent

Judgement

G.P. Singh, J.—This petition u/s 561-A of the Code of Criminal Procedure, 1898, raises a question of construction of Article 351-A of the Civil Service Regulations as applicable to the petitioner, Dr. (Smt.) F. Choudhary, who was retired from the State Education Service (Class I) on 31st August 1970. The petition was first heard by one of us (Golwalker J.) who having regard to the importance of the question referred it for hearing to a Division Bench.

2. The petitioner started her career as a civil servant in the Central Provinces. She continued in service of the erstwhile State of Madhya Pradesh till reorganisation of States in 1956 and thereafter of the present State of Madhya Pradesh till 31st August 1970 when as already stated, she was retired. On 12th December 1973, the Special Police Establishment, Bhopal, presented a challan in the Court of Special Judge, Bhopal, for prosecution of the petitioner u/s 409 of the Penal Code and sections 5 (1) (d) and 5 (1) (c) read with section 5 (2) of the Prevention of Corruption Act, 1947. It is alleged in the challan that the petitioner while acting as Director of Public Instructions embezzled four items, viz. (i) Rs. 80,919.30, (ii) Rs. 9,917 21, (iii) Rs. 2,489.20 and (iv) Rs. 6,566.30, and

thereby committed offences u/s 409 of the Penal Code and section 5 (1) (c) read with section 5 (2) of the Prevention of Corruption Act. It is further alleged that the petitioner and one B.L. Goyal, another officer, by misusing their offices caused wrongful gain to one Maheshprasad Agarwal to the tune of Rs. 70,776 89 and thereby committed an offence u/s 5 (1) (d) read with section 5 (2) of the Prevention of Corruption Act. These offences essentially relate to the fees that were collected for holding middle school examinations of 1968. The petitioner was then Director of Public Instructions. A current account was opened by the petitioner as Director in the Central Co-operative Bank, Bhopal and a sum of Rs. 4,06,099.12 received on account of fees was deposited in this account. The account was operated by the petitioner. The petitioner withdrew Rs. 2,25,263 by cheques drawn in favour of self. The last of these cheques is dated 9th July 1968. Maheshprasad Agarwal was also paid from this account by cheques drawn by the petitioner in his favour. The last of these cheques is dated 4th September 1968. The offences alleged against the petitioner were thus complete by 4th September 1968.

3. The petitioner on 17th December 1973 filed the present petition in the High Court u/s 561-A of the Code of Criminal Procedure contending that her prosecution is barred by lapse of time under Article 351-A of the Civil Service Regulations, and praying that the proceedings before the Special Judge be quashed. On 18th December 1973 this petition was admitted for hearing and the proceedings in the trial Court were stayed.

4. The Civil Service Regulations were initially made sometime prior to 1914. They do not appear to have been then made in the exercise of any statutory power; (See Basu, Constitution of India, Vol. 5 (5th edition) p. 142). They gained statutory authority by section 96 B (4) inserted by the Government of India Act, 1919.

5. The general scope of the Regulations is expressed in Chapter I. Article 1 (a) in this chapter provides that "these Regulations are intended to define the conditions under which salaries and leave and pension and other allowances are earned by service in the Civil Department". It also provides that the Regulations do "not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, discipline or the like". The right of changing the Regulations or of interpreting them in case of dispute is reserved by the Government by Article 4 (first part). The power of changing the Regulations was also specifically conferred by section 96-B (4) of the Government of India Act, 1919. As regards the power of interpreting the Regulations in case of dispute, now the Government's interpretation will not be final and it would be for the Courts to decide finally any dispute touching the interpretation of the Regulations. What is material is, however, the second part of Article 4. It gives the clue as to which rule, in case of change of rules, will govern an officer's claim to pay and allowances, leave and pension. It reads as follows:

Art. 4 (Second part)--An officers claim to pay and allowance 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 officer resigns or is discharged from the service of the Government.

6. Part II of the Regulations deals with "ordinary Pensions". Chapter XV in this Part contains "General Rules". Section 1 in this Part bears the title "Extent of application". Originally Article 351 was the last Article in section 1. It reads as follows:

Art. 351.--Future good conduct is an implied condition of every grant of a pension. The Local Government, the Government of India, and the Secretary of State in Council reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

7. By a notification dated 23rd February 1939, Article 351-A was inserted in section 1 of Chapter XV (Part IV) by the Governor General in Council in exercise of his rule making power u/s 241(2)(a) of the Government of India Act, 1935. This Article did not automatically extend to persons serving in connection with the affairs of a Province as the rule making power in respect of such persons was vested in the Governor of the Province. In Central Provinces and Berar, Article 351-A was adopted by a notification dated 18th April 1939 issued in the exercise of the powers of the Governor u/s 214(2)(b) of the Government of India Act, 1935. The Article so adopted reads as follows:

351-A. The Provincial Government reserves to itself the right to order the recovery from the pension of an officer who entered service on or after the 18th April 1939 of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his services:--

Provided that--

(1) Such departmental proceedings, if not instituted while the officer was on duty,--

(i) shall not be instituted save with sanction of the Provincial Government;

(ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later;

(iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and

(iv) shall be conducted by such authority and in such place whether in India or elsewhere, as the Provincial Government may direct;

(2) All such departmental proceedings shall be conducted, if the officer concerned so requests, in accordance with the procedure applicable to

departmental proceedings on which an order of dismissal from service may be made; and

(3) Such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

8. After coming into force of the Constitution, the Governor of the erstwhile State of Madhya Pradesh in 1951 framed the New Pension Rules under Article 309. These Rules modified the pension Provisions contained in the Civil Service Regulations in their application to civil servants of the State. Rule 9 of section VII of these Rules provides that the "Government will have the right to effect recoveries from a gratuity or pension sanctioned under sections II and III in the same circumstances as recoveries can be effected from an ordinary pension under Article 351-A of the Civil Service Regulations".

9. The President in exercise of his rule making power under Article 309 by notification dated 21st August 1958 substituted a new Article 351-A in place of the then existing Article 351-A. This new Article 351-A was again substituted by another new Article 351-A by a notification dated 22nd August 1962. By this notification a new Article 351-B was also added. These notifications substituting new Article 351-A and inserting Article 351-B did not apply to persons appointed to public services and posts in connection with the affairs of a State as authority to make rules under Article 309 of the Constitution in respect of such persons vests in the Governor of the State. The Governor of Madhya Pradesh for the first time adopted these new Articles by notification dated 8th September 1972. Article 351-A so adopted reads as follows:

Civil Service Regulations as applicable to Government Servants of Madhya Pradesh.

1. For Article 351-A of the said Regulations, the following article shall be substituted, namely :--

351-A. The Governor further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:--

Provided that--

(a) Such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the officer, be deemed to be a proceeding under this Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(b) such departmental proceeding if not instituted while the officer was in service, whether before his retirement or during his re-employment:--

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) No such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) the State Public Service Commission shall be consulted before final orders are passed.

Explanation.--For the purpose of this article--

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted--

(i) in the case of a criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

10. A comparison of the old Article 351 A with the new Article 351A goes to show that the new Article besides conferring the power of ordering recovery from a pension of the amount of any pecuniary loss caused to the Government, also enables the Governor to withhold or withdraw a pension or any part of it, a power which was not present under the old Article. Both these Articles contemplate that action under them can only be taken if the pensioner is found guilty of misconduct or negligence during the period of his service which has caused loss to the Government in a departmental or judicial proceeding which is pending at the time of the officer's retirement or is instituted thereafter. Under the old Article such departmental or judicial proceeding, if not already instituted while the officer was on duty, should be instituted before the officer's retirement or within a year from the date when the officer was last on duty and should be in respect of an event which took place not more than one year before the date on which the officer was last on duty to enable the Governor to order recovery of the loss from the pension. Under the new Article action affecting the pension can

be taken only when the departmental or judicial proceeding, if not pending at the time of retirement, is subsequently instituted in respect of an event which took place within four years from the date of its institution. So far there is no difficulty or dispute. The learned counsel for the petitioner further contends that both old and new Articles 351A contain a rule of limitation in respect of institution of judicial proceedings concerning misconduct or negligence of the officer during his service and no judicial proceeding can at all be instituted after expiry of period provided in these Articles. The learned counsel submits that this rule of limitation is contained in proviso (3) of the old Article and in proviso (c) of the new Article. The learned counsel's argument is that if a judicial proceeding is not instituted before retirement or within one year from the date on which the officer was last on duty and is not in respect of an event which took place within one year of the date when the officer was last on duty, the judicial proceeding will be barred by limitation under proviso (3) of the old Article. His further argument is that under proviso (c) of the new Article the period of limitation is four years from the date of the event. Although, according to the argument of the learned counsel, criminal proceedings instituted against the petitioner are barred, whether the old or the new Article be applied, he submitted that it is the new Article that will apply to this case. The learned Advocate-General, who appeared for the State, contended that neither the old nor the new Article 351A provides any period of limitation for institution of Judicial proceedings. His argument is that proviso (3) of the old Article and proviso (c) of the new Article only contain the conditions which must be fulfilled if the Government wants to use the power under these Articles of recovering loss from the pension or to withhold or withdraw it, and that these provisions do not otherwise affect the normal period of limitation applicable for institution of judicial proceedings. It was further submitted that it is the old Article which will apply to the petitioner's case as it was that Article which was in force when the petitioner retired, and the new Article which was substituted long after the petitioner retired cannot apply to her. It is not disputed before us that the expression "judicial proceedings" as used in both old and new Articles will include a criminal prosecution.

11. The first question that arises for consideration is whether the old or the new Article 351A applies to the instant case. I have already stated that Article 351A was first adopted and applied to the civil servants of the Central Provinces by the notification dated 18th April 1939. This is the Article referred to as the old Article. This Article was substituted by a new Article 351A in the State of Madhya Pradesh by notification dated 8th September 1972. It has already been stated that the petitioner started her career in the Central Provinces and she was retired from service from 31st August 1970, before the new Article was substituted. The petitioner, therefore, at the time of her retirement was governed by the old Article. Article 351A, both old and new, find place in Chapter XV of Part IV of the Regulations which deals with General Rules relating to ordinary Pensions as indicated by the titles of the chapter and part IV. The Article, whether old or new, primarily concerns with the right of the Government to withhold or withdraw

pension or to recover by deductions from it loss caused to the Government by the misconduct or negligence of the pensioner while in service. It affects the right of the pensioner to continue to claim his pension earned by him at the time of retirement. Regulation 4 (second part) which we have earlier quoted says that an officer's pension is governed by "the rules in force at the time when the officer resigns or is discharged from the service of the Government". This regulation makes it clear that the new Article 351A cannot apply to the petitioner and she would be governed by the old Article. After expiry of one year from the date of retirement, the petitioner in 1971 got a vested right that her pension was not liable to be affected under Article 351A and the introduction of the new Article in 1972 could not give any right to the Government to affect the pension by starting departmental or judicial proceedings in respect of events happening within four years. Just as the Government cannot use the new Article against the petitioner, the petitioner also cannot use the same against the Government. Even assuming that proviso (c) of the new Article 351A enacts purely a rule of limitation and bears the construction which the petitioner wants us to accept, it cannot obviously apply to those events or causes of action, proceedings in respect of which would be barred under it on the very first date of its enforcement, for such an intention to extinguish subsisting causes of action by enforcement of a new law of limitation is not inferred unless there is a clear indication to the contrary which is generally shown by postponing the coming into force of the new law for a reasonable time after its enactment. I have already said that the offences for which the petitioner is sought to be prosecuted were complete on 4th September 1968. The new Article 351A was made and enforced on 8th September 1972. Four years had then already expired from the commission of the offences. So if new Article 351A is applied, its effect will be to extinguish a subsisting right to prosecute the petitioner for these offences, a result which could not have been intended. For these reasons, I am of opinion that the new Article 351A is not applicable to the petitioner. Of course it would be a different matter if the proceedings are barred under the old Article 351A itself, a question which I shall examine hereinafter.

12. The main enacting part of the old Article 351A reserves to the Government the right to order recovery from the pension of an officer of any amount "on account of losses found in judicial or departmental proceedings to have been caused to the Government by the negligence or fraud of such officer during his service". So to enable the Government to order recovery from pension, the main provision makes it obligatory that the fact thru loss was caused to the Government by the negligence or fraud of the officer must be established in a departmental or judicial proceeding. Provisos (1) and (2) lay down the conditions which a departmental proceeding has to fulfil so that a finding reached in it may enable the Government to exercise the right of making recovery from pension. Proviso (1) requires that if the departmental proceeding was not instituted while the officer was on duty, (i) it shall not be instituted except with the sanction of the Government; (ii) it shall be instituted before the officer's retirement from

service or within a year from the date on which he was last on duty whichever is later; (iii) it shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and (iv) it shall be conducted by such authority and in such place whether in India and elsewhere, as the Government may direct. Proviso (2) lays down a further condition for the departmental proceeding which is not relevant here. Proviso (3) deals with a judicial proceeding, a finding reached in which may enable the Government to exercise the right of recovery. It says "such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1)." Expanded, the proviso will read as follows:

Such judicial proceedings, if not instituted while the officer was on duty:

(i) Shall have been instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later; and

(ii) shall have been instituted in respect of an event which took place not more than one year before the date on which he was last on duty.

13. Proviso (3) to Article 351A (old) only means that if a judicial proceeding does not fulfil the conditions laid down in the proviso a finding reached in it will not enable the Government to make recovery from the pension. The proviso cannot be construed to mean that no judicial proceeding against an officer who has retired can at all be instituted in respect of fraud or negligence committed by him during his service except within the period indicated in clauses (ii) and (iii) of proviso (1). There are various reasons for reaching this conclusion. The first and the foremost reason is that the proviso does not say so. If the intention of the Governor was to frame a rule prescribing a rule of limitation for institution of judicial proceedings (civil and criminal), the rule would have clearly said that in spite of anything contained in the law relating to limitation a judicial proceeding against a retired officer shall not be instituted in respect of causes of action or events that arose or took place a year before the date on which he was last on duty. The words "shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1)" cannot be read as "shall not be instituted except in accordance with sub-clauses (ii) and (iii) of clause (1)". Secondly if we read the proviso in the manner desired by the learned counsel for the petitioner, it would go beyond the scope of the substantive provision and will itself assume the role of a substantive enactment. The normal presumption in case of a proviso is that it is limited to the subject-matter covered by the substantive enactment and is intended to carve out some exceptions to it or to lay down conditions for its operation. The subject-matter of the substantive part of Article 351A is the right of the Government to make recoveries from pension. The proviso appended to the Article has prima facie to be construed as laying down conditions restricting the right dealt with by the substantive part of the Article and not as a substantive enactment prescribing periods of limitation for institution of civil and criminal proceedings contrary to the general law of limitation. It is true that sometimes a substantive enactment occurs in the garb of a proviso; but such

cases form exception to the general rule. It is only when the language employed in a proviso clearly shows that it goes beyond the subject-matter covered by the main part of the section, the Court will construe it as a substantive enactment. That is not the position in the instant case. Thirdly, the object of the Civil Service Regulations, as declared by Article 1 (a), is to provide conditions relating to salaries, leave and pension and other allowances. The construction advanced by the learned counsel for the petitioner does violence to the general scope of the Regulations. Fourthly, Rule 9 of section VII of the new Pension Rules, 1951, which we have noticed earlier and which makes reference to Article 351-A also shows that the object of the Article is to provide the circumstances under which loss can be recovered from pension, and the object is not to provide rules of limitation for institution of civil and criminal proceedings. For all these reasons, I am of opinion that the true meaning of proviso (3) to Article 351A (old) is that if a judicial proceeding relating to fraud or negligence of an officer committed by him during service is not instituted within the period mentioned in clauses (ii) and (iii) of proviso (1), a finding reached in the proceeding will not enable the Government to exercise the right of making recovery of loss caused to it by making deductions from pension. Non-fulfilment of the conditions mentioned in clauses (ii) and (iii) does not bar the institution of judicial proceeding according to the normal law of limitation ; it only debars the Government to make recoveries from pension and thereby secures to a pensioner stability of pension that he had earned.

14. The learned counsel for the petitioner submitted that the construction adopted by me will create a conflict between Article 351 and Article 351 A. The argument is that if a civil or criminal proceeding is allowed to be instituted beyond the period mentioned in clauses (ii) and (iii) of proviso (1) to Article 351A, a finding of misconduct, although not available to the Government under that Article for making recoveries from pension, will be available under Article 351 for withholding and withdrawing pension and thereby the object of restriction imposed by the proviso (3) to Article 351A will be defeated and a conflict will arise between these two Articles. In my opinion, there is no merit in this contention. Articles 351 and 351A must be construed to cover different situations for affecting the pension of an officer, for there is normally no sense in making overlapping provisions. As a matter of construction the application of the general provisions of Article 351 must be understood as not embracing cases of fraud or negligence committed by an officer in relation to his employment during the period of his service and cases of this type must be taken to be exclusively covered by the special provision made for them in Article 351A. If a judicial proceeding in respect of such fraud or negligence is not filed in accordance with the conditions laid down in Article 351A, neither Article 351A nor Article 351 will enable the Government to affect the pension. Article 351A will not apply for want of fulfilment of necessary conditions and Article 351 will not apply as the subject-matter will be beyond its scope. So no question of conflict between the two Articles can really arise. This construction finds support from the language used

in the first part of Article 351 which refers to "future good conduct." The expressions "serious crime" and "grave misconduct" occurring in the second part of Article 351 appear also to be limited to future conduct of the pensioner. At any rate, they do not, as already indicated, include cases of fraud and negligence committed by an officer during the period of his service which are covered by Article 351 A.

15. The learned Advocate General argued that Article 309 of the Constitution does not enable the Governor to make a rule prescribing periods of limitation for institution of judicial proceedings against officers, for such a rule will not be covered by the power "to make rules regulating the recruitment and the conditions of service". It was further argued that such a rule, if made, will also be inconsistent with the Indian Limitation Act and will be void under Article 254 of the Constitution. The learned Advocate General contended that on these grounds also Article 351A of the Regulations should not be construed as a provision prescribing periods of limitation for institution of judicial proceedings. It is not necessary to consider this contention of the learned Advocate General, because for the reasons already stated by me I find that Article 351A does not lay down a rule of limitation for institution of judicial proceedings.

16. Before concluding I want to make it clear that I have construed only the old Article 351A which is applicable to the petitioner and not the new Article 351 which is not applicable to her.

17. For these reasons, the petition fails and is dismissed.

OPINION

N.M. Golvalker J.

1. I have had the privilege to study the views expressed by my colleague on the Bench and to give my anxious considerations to all the reasons which weighed with him to hold that the petition is liable to be dismissed. However, I regret my inability to persuade myself to fall in line with his views except with respect to the application of Regulation 351-A of the Civil Service Regulations as was in force when the petitioner retired and not the one adopted by this State in 1972. Accordingly I express my views separately on the question that has fallen for decision by this Bench.

2. Since the question which falls for determination in the instant petition depends upon the construction of old Regulation 351-A of the Civil Service Regulations, which in my opinion also is applicable to her, it will be proper to reproduce hereunder the same :

351-A. The Provincial Government reserves to itself the right to order the recovery from the pension of an officer who entered service on or after the 18th April 1939 of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service:

Provided that--

- (1) such departmental proceedings, if not instituted while the officer was on duty-- (i) shall not be instituted save with sanction of the Provincial Government;
 - (ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later;
 - (iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and
 - (iv) shall be conducted by such authority and in such place whether in India or elsewhere, as the Provincial Government may direct;
- (2) All such departmental proceedings shall be conducted, if the officer concerned so requests, in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and
- (3) such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

(F.I.F.D. Notification No. F6 (8)-R-II-39, dated 23-2-1939).

(C.P. and Berar Government, Finance Department Endt. No. 825-342-R.VI, dated 13-4-1939 and also Finance Dept. Notification No. 859-336-R-VI, dated 18-4-1939, File No. P-50-3 of 1933-39).

3. According to the petitioner, under sub-clause (iii) of clause (1) of the proviso to the said Regulation, read with clause (3) thereof, her prosecution, with respect to the events in question, meaning her negligence and fraud having occurred more than one year before she was last on duty, is barred.

4. It was urged on behalf of the State that the sole object under the aforesaid Regulation is only to secure reimbursement from the pension payable to the pensioner, for all the losses caused to the State by the said pensioner as a result of her negligence and fraud committed by her while in service, and to enable it to do so, that finding about her negligence and fraud as a fact, has first to be obtained either in a departmental enquiry or judicial proceedings to be held against such pensioner. The limitation of one year prescribed for holding such enquiry or proceedings, it was urged, would come into play only to defeat this right of reimbursement and for no other purpose. The common law right to prosecute the petitioner otherwise for her negligence or fraud is not affected at all, and she can be prosecuted at any time. It was submitted that the petitioner, even if she is convicted, would continue to draw her full pension.

5. I am unable to accept the aforesaid submissions. I don't think such an odd situation where the pensioner gets full pension notwithstanding his conviction in a criminal Court, was ever contemplated or had ever intended to ensue by the framers of the said Regulation. It is not disputed that the expression "judicial

proceedings" referred to in the Regulation includes both civil as also criminal proceedings. If that is so, I am unable to understand where was the necessity to hold criminal proceedings against the pensioner if the only purpose was to secure a finding about pensioner's negligence and fraud. Such a finding can be easily obtained either in a departmental enquiry held or in a civil suit filed against the pensioner. In fact, it is easier to obtain such a finding both in a departmental enquiry as also in civil proceedings rather than in criminal proceedings where burden to establish negligence or fraud lies very heavily on the prosecution. It cannot be disputed that the prosecution has to establish such negligence or fraud to such an extent that it excludes to a moral certainty the innocence of the accused. The very fact that criminal proceedings are included in the expression "judicial proceedings", it means that those proceedings have also to be held or commenced within one year of the event of negligence or fraud on the part of the pensioner. In my opinion, the negative form now given to sub-clause (ii) to clause (i) of Regulation 351-A in 1972 makes no difference. To construe that negative form in the manner urged on behalf of the State would amount merely a play on words. If the framers of the Regulation had intended that judicial proceedings should mean only civil proceedings, nothing prevented them from framing the Regulation accordingly. In fact, to leave no scope for such approach that the amended Regulation was worded in the negative form indicating expressly the bar against the judicial proceedings already implicit. The proviso governs the procedure for obtaining the finding about pensioner's negligence and fraud, furnishing thereby the condition precedent to recover losses from the pensioner.

6. Prescribing period of limitation for taken penal action within certain period against offenders, it may be noted, is not uncommon or unusual. There are various legislations in which contravention of any of its provisions renders persons contravening the same penalty liable, provided he is prosecuted within certain period after the date of contravention. Not only that, but persons acting or purporting to act under the said legislations cannot also be prosecuted for any offence under any other law committed while so acting, after a lapse of certain period. This is the view taken by the Supreme Court in case of *Virupaxappa Veerappa Kadampur Vs. The State of Mysore*, . If the provisions of the Bombay Police Act prescribing period of limitation, within which prosecution of the police official has to be launched, cover not only offences under the Police Act, but also those under other penal laws, I am unable to see how the limitation for starting criminal proceedings against a pensioner would not also bar the trial of the petitioner.

7. While I am dealing with the provisions about limitation for prosecution under other laws, I may as well, in fairness to the State, point out the views expressed by the Supreme Court in the case of *Khandu Sonu Dhobi and Another Vs. State of Maharashtra*, , though not cited at the Bar by the State. The views at the first impression would appear to go counter to the views of the Supreme Court taken earlier as aforesaid in *Virupaxappa Veerappa Kadampur v. State of Mysore*. But a

close examination of the provisions of law prescribing limitation for prosecution would make it clear that the limitation provided therein was expressly with respect to offences arising out of that law only and not any other law and hence their Lordships of the Supreme Court repelled the objection that the prosecution was barred by limitation

8. Therefore, in the view I take, I hold that the instant petition has to be accepted quashing the prosecution of the petitioner as barred.

ORDER OF REFERENCE

As indicated in the opinions recorded by us separately, we differ on the question whether the prosecution of the petitioner is barred under old Article 351-A of the Civil Service Regulations. The case shall now be laid before Hon"ble the Chief Justice under clause 26 of the Letters Patent for nominating a Judge to resolve the difference.

OPINION

Bhave J.

1. The petitioner, before she proceeded on leave on 10-9-1968, was holding the office of the Director of Public Instructions. On 31-8-1970 she retired from Government service. The State of Madhya Pradesh, through Special Police Establishment, Bhopal has started proceedings against the petitioner in the Court of Sessions Judge, Bhopal, u/s 409 of the Indian Penal Code and sections 5 (1) (d) and 5 (1) (c) read with section 5 (2) of the Prevention of Corruption Act. This challan was filed on 12-12-1973 for the alleged embezzlement said to have been committed by her while she was acting as the Director of Public Instructions. An objection was raised that under Article 351A of the Civil Service Regulations no judicial proceeding including a criminal prosecution could be initiated against the petitioner for an offence committed more than a year before the initiation of the prosecution. This objection was raised before this Court u/s 561A of the Code of Criminal Procedure with a prayer that the proceedings before the Special Judge be quashed. As the question involved was of some importance, the learned Single Judge directed that the matter be heard by a larger Bench. Accordingly, a Division Bench of Justice Singh and Justice Golvalkar was constituted to decide the matter. There was difference of opinion between the two Judges. Hence, the matter has been referred to me. The order of reference is to the following effect:--

As indicated in the opinions recorded by us separately, we differ on the question whether the prosecution of the petitioner is barred under Old Article 351-A of the Civil Service Regulations. The case shall now be laid before Hon"ble the Chief Justice under clause 26 of the Letters Patent for nominating a Judge to resolve the difference.

From the order it is clear that both the Judges have agreed that Article 351-A, before its amendment in 1972, is attracted in this case, and, as such, I am called

upon to deal with that Article only. Article 351-A reads as under :--

351-A. The Provincial Government reserves to itself the right to order the recovery from the pension of an officer who entered service on or after the 18th April 1939 of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his services:--

Provided that--

(1) such departmental proceedings, if not instituted while the officer was on duty,--

(i) shall not be instituted save with sanction of the Provincial Government;

(ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later;

(iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and

(iv) shall be conducted by such authority and in such place whether in India or elsewhere, as the Provincial Government may direct;

(2) All such departmental proceedings shall be conducted, if the officer concerned so requests, in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and

(3) Such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

10. On behalf of the petitioner, reliance is placed on the third proviso which says that such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clause (ii) of clause (1), that is to say, within a year from the date on which the officer was last on duty and that the event took place not more than one year before the date on which the officer was last on that duty. Justice Singh while interpreting this proviso, observed :

The proviso cannot be construed to mean that no judicial proceeding against an officer who has retired can at all be instituted in respect of fraud or negligence committed by him during his service except within the period indicated in clauses (ii) and (iii) of proviso (1). There are various reasons for reaching this conclusion. The first and the foremost reason is that the proviso does not say so. If the intention of the Governor was to frame a rule prescribing a rule of limitation for institution of judicial proceedings (civil and criminal), the rule would have clearly said that in spite of anything contained in the law relating to limitation a judicial proceeding against a retired officer shall not be instituted in respect of causes of action or events that arose or took place a year before the date on which he was last on duty.

It was further held by Justice Singh that--

The normal presumption in case of a proviso is that it is limited to the subject-matter covered by the substantive enactment and is intended to carve out some exceptions to it or to lay down conditions for its operation. The subject-matter of the substantive part of Article 351. A is the right of the Government to make recoveries from pension. The proviso appended to the Article has prima facie to be construed as laying down conditions restricting the right dealt with by the substantive part of the Article and not as a substantive enactment prescribing periods of limitation for institution of civil and criminal proceedings contrary to the general law of limitation.

I am in entire agreement with the two reasons given by Justice Singh. The object of Civil Service Regulations is to provide conditions relating to salaries, leave and pension and other allowances. Article 351-A is a regulation prescribing the conditions under which the Government can get itself reimbursed from the pension if the Government servant is found guilty after prosecution or after departmental enquiry, but while conferring that right on the Government a limitation has been prescribed that the departmental enquiry or the prosecution should have been initiated within a prescribed period. If that is not done, the only effect would be that the Government would not be entitled to make recoveries from the pension and nothing more. Article 351-A cannot be interpreted to mean that it prescribes a general rule of limitation. Justice Golwalker thought that it would be absorbed to believe that the Government contemplated that a person would get full pension notwithstanding his conviction in a criminal Court while the regulations were framed. Consistently with this view, Justice Golwalker thought that Regulation 351-A should be interpreted to mean that it not only authorizes the State Government to get itself reimbursed for the defalcations made by the servant from his pension but it also prescribes a limitation for prosecution of a Government servant. Justice Golwalker has also referred to the decision of the Supreme Court in *Virupaxappa Veerappa Kadampur Vs. The State of Mysore*, wherein provisions of the Bombay Police Act were interpreted and it was held that the provisions not only prescribed limitation for the offence committed under the Police Act but also for offences committed under other enactments as well. It is, no doubt, true that a statute may not only provide for limitation for prosecution for the offences committed under the Act but limitation may also be prescribed for offences under any law committed while acting under the statute prescribing the limitation, but this must be explicitly provided for and must necessarily be spelt out from the provisions of the Act. In the Supreme Court case of *Virupaxappa*, section 161 of the Police Act specifically makes such a provision. That case is not any authority for the proposition that even impliedly any limitation can be inferred when the object is not to prevent prosecution but to prevent certain action being taken by the Government against its employees.

2. Under the circumstances, I find it difficult to agree with Golwalker J. and

express my complete agreement with Singh J. and hold that Article 351-A (Old) does not prescribe any general limitation for starting prosecution or initiating any other proceeding.

3. The case may be put up before the learned Single Judge for disposal according to law.