
(1966) 12 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1851 of 1966

Mohindra Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 09-12-1966

Acts Referred:

Constitution of India, 1950 — Article 309(2) , 311(2)
Limitation Act, 1908 — Article 120, 84
Limitation Act, 1963 — Article 113
Punjab Civil Services Rules, 1963 — Rule 3.26
Punjab General Clauses Act, 1898 — Section 19

Citation : AIR 1967 P&H 450 : (1969) 1 LLJ 452

Hon'ble Judges : Mehar Singh, C.J;Shamsher Bahadur, J;P.C. Pandit, J

Bench : Full Bench

Advocate : Party in person, D.N. Awasthy, B.S. Khoji and K.S. Sachdeva, for the Appellant; B.R. Tuli and S.K. Tuli, General, for the Respondent

Judgement

Mehar Singh, C.J.—The petitioner, Mr. Mohindra Singh Pannu, Deputy Advocate General (Punjab), in this petition under Article 226 of the Constitution, holds the degree of Master of Laws and has had a brilliant academic career. After having been appointed a permanent Public Prosecutor on May 24, 1945, with his lien remaining on the post, he was appointed Assistant Advocate General, Anti-Corruption Department, on July 14, 1956. By an order of September 18/26, 1957, annexure "F", he was appointed an Assistant Advocate General, on the establishment of the Advocate General of Punjab, which office he joined on September 30, 1957. The letter of appointment said that the appointment was subject to the categorical condition that Shri Pannu will continue to work for the Punjab Government in the Anti-Corruption Department To this letter the terms of appointment were attached and those terms are --

"(1) Shri Pannu would formally be under the Advocate General though he would primarily be meant for the work in the Anti-Corruption Department under the Control of the Secretary, Anti-Corruption Department. The Anti-Corruption

Department would be sending intimation to the Advocate General regarding the days when Shri Pannu would be free and available for other work with the Advocate General and Shri Pannu will be subject to the orders of the Advocate General only in respect of these days.

(2) Shri Pannu will not be entitled to any extra fees for criminal work done by him in the High Court or any other Court. For such civil work as may be entrusted to him by the Advocate General or the State Government he will, however, be paid fees which are admissible to a part-time Assistant Advocate General.

(3) In respect of leave, Shri Pannu will be governed by the Punjab Civil Services Rules for the time being in force and all other rules and regulations issued from time to time by the State Government in this behalf.

(4) In matters relating to discipline, penalty and appeals, Shri Pannu shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, for the time being in force".

This appointment was for a period of three months. He was appointed to that very post on permanent basis by an order, annexure "G", of June 30, 1958, the order taking effect from December 31, 1957. In the letter of appointment it was stated that he was appointed "on the fixed salary and terms as mentioned in the aforesaid memorandum subject to modification regarding payment of fees for civil work", and this last matter obviously referred to condition (2) in the terms of appointment as reproduced above. In another letter, annexure "H", of December 30, 1958, the Punjab Government decided that he "will be allowed extra fee for such civil work as may be entrusted to him by the Advocate General or the State Government at the rates admissible to the part-time Assistant Advocate General, as laid down in the "terms of appointment" (Para 2) forwarded with the Punjab Government memorandum No. 8245-J-57/21210, dated September 18/26, 1957". On May 12, 1960, he was promoted Deputy Advocate General, Vigilance Department, by a letter, annexure "I", which said that he continued to have "the same terms and conditions which he enjoyed as Assistant Advocate General, Vigilance Department, Punjab".

2. The petitioner applied to the Punjab Government on November 15, 1961, that he be relieved of the work in the Vigilance Department and permitted to do whole-time work in the High Court from January 1, 1962, so that he may be in touch with his profession and on retirement may not be deprived of ease dealing with service matters arising from action taken by the Vigilance Department. The request was considered by the Government and the then Chief Minister, Sardar Pratap Singh Kairon, in appreciation of his work, instead of accepting his request, approved of an extension of three years of service after the date of superannuation.

The petitioner had pointed out that he was only interested in the extension of his service if he could earn pension and that he could only do if he was given three

years" extension. The extension was, therefore, given to him in appreciation of his work and so as to enable him to earn pension. With the extended service of three years, the petitioner was to put in a little over ten years or service, which was to qualify him for pension. The order is annexure "T" of December 21, 1962. Some considerable argument has centered round the meaning and scope of this order and paragraph 2 of this order, which is relevant for the matter, reads --

"The Governor of Punjab is pleased to accord sanction to the grant of three years" extension in service to Shri Mohindra Singh Pannu, Deputy Advocate General (Vigilance) beyond the date of his superannuation, viz., 29th August, 1963."

The date of birth of the petitioner is August 29, 1908. He was to reach the retirement age of 55 years on August 28, 1963. In the order, annexure "T", that date is referred to as August 29, 1963. This difference, however, is of no material consequence. So the effect of the order, annexure "T", was that the service of the petitioner having been extended by three years, he was to retire at the age of 58 on August 28, 1966.

3. There was a change in the policy of the Government with regard to the age of compulsory retirement. In a letter, annexure "U" of March 28, 1963, the Financial Commissioner (Planning) and Additional Chief Secretary to Government, Punjab, wrote to all Heads of Departments on that subject. That letter says --

"I am directed to say that the question of raising the age of compulsory retirement has been considered by the Government and it has been decided to raise the age of compulsory retirement of State Government employees from 55 years to 58 years with effect from 1st December 1962 subject to the exception that the age of retirement of Patwaris, ministerial staff and Class IV Government employees, including new entrants, will remain 60 years in case this practice is being followed according to the rules governing their service conditions.

(2) A Government employee who attained the age of compulsory retirement on or after 1-12-1962 or who was on leave preparatory to retirement or proceeded on such leave on or after 1-12-1962 will not be entitled to the benefit of the increased age of compulsory retirement unless he is permitted to resume duty after the appointing authority is satisfied that he is efficient and physically fit.

(3) Government employees who had already retired before 1-12-1962 or who were on refused leave on 1-12-1962 beyond the date of compulsory retirement are not entitled to resume duty under these orders. Those employees, however, who on 1-12-1962 were on refused leave beyond the date of compulsory retirement may be re-employed, if fit.

(4) Government employees who are on extension in service on the date of the issue of these orders may be allowed to continue in service up to the age of 58 years.

(5) Scientific and technical personnel may be given extension in service or re-employment up to 58 years subject to the instruction issued on the subject from time to time.

(6) Notwithstanding anything contained in the foregoing paragraphs, the appointing authority may require a Government employees to retire after he attains the age of 55 years on three months' notice without assigning any reason. This will be in addition to the provisions already contained in Rule 5.32 of the Punjab Civil Services Rules, Volume II, to retire an officer who has completed 10 years' qualifying service and will normally be exercised to weed out unsuitable employees after they have attained the age of 55 years. A Government employee may also after attaining the age of 55 years voluntarily retire after giving three months' notice to the appointing authority.

(7) Detailed instructions for regulating the period between the date of compulsory retirement of the Government employees who have already attained the age of compulsory retirement and the date they are permitted to resume duty by the appointing authority under paragraph 2 above, and other conditions will follow.

(8) The orders shall apply to all Government employees in the integrated State.

(9) Necessary amendments to the rules are issued separately, in due course.

(10) These orders issued in consultation with the Finance Department vide their U. O. No. 723-(2)-FRI-63, dated the 8th March, 1963, and U. O. No. 3736-FRI-63, dated the 28th March, 1963"

It is clear from paragraph 9 of this letter that in the wake of the decisions referred to in it, necessary amendments of the service rules were to follow, and, in fact, such amendments were duly made. There is notification No. 12086-(5) - FRII-63/12002 of November 11, 1963, under Article 309(2) of the Constitution making amendments in the Punjab Civil Services Rules, Volume I, Part I, in the wake of those decisions and particularly substituting the figure "58" for figure "55" in Rule 3.26. At the end there is this note, an integral part of the notification.--"These orders have effect from 28th March, 1963. Those who had attained the age of 55 years on or after 1st December, 1962, could be permitted to resume duty by the appointing authority". Another amendment was made by a notification No. 1243-5 FRI-65/1143 of February 4, 1964, and No. 3001-5 FRI-65/9091 of May 31, 1965, by adding clause (c) to Rule 5.32 of the Punjab Civil Services Rules, Volume II, and the amendment reads thus --

"(c) A retiring pension is also granted to a Government servant other than a Class IV Government servant --

(i) who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than three months' notice;

(ii) who retires on or after attaining the age of 55 years by giving not less than

three months" notice of his intention to retire to the appointing authority.

Provided that where the notice is given before the age of fifty-five years is attained, it shall be given effect to from a date not earlier than the date on which the age of fifty-five years is attained.

Note:-- Appointing authority retains an absolute right to retire any Government servant, except a Class IV Government servant, on or after he has attained the age of 55 years without assigning any reasons. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years."

The amended Rule 3.26 in the Punjab Civil Services Rules, Volume I, Part I, reads --

"3.26 (a) Except as provided in other clauses of this rule, the date of compulsory retirement of a Government servant other than a Class IV Government servant, is the date on which he attains the age of 58 years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of competent authority on public grounds, which must be recorded in writing".

There is a note appended to this which has already been reproduced above, saying that the order with regard to the enhanced age of superannuation as 58 years is effective from March 28, 1963, and that those, who had attained the age of 55 years on or after 1-12-1962 could be permitted to resume duty at the discretion of the Appointing Authority.

4. This change in the rules came into effect from 28-3-1963. With the age of superannuation at 55 years, the petitioner was due to retire on August 28, 1963. So this change in the rules came into effect before he reached the date of superannuation. So there were two situations, one that under the order, annexure "T", of December 21, 1962, the petitioner was given three years" extension, so that under that order he would retire on 28-8-1966 and the other that under the amended Rule 3.26 he was to retire at the superannuation age of 58 years and thus again on 28-8-1966. The petitioner says that he wanted to press his request for being relieved from the Vigilance Department work if the order, annexure "T", extending his service beyond the new age of superannuation, viz., 58 years, was to be cancelled by the Government. He seems to assume that the order, annexure "T", was, in the circumstances, to become operative after the age of 58 years in his case. Then he says that he approached the then Chief Minister, Sardar Pratap Singh Kairon, for clarification of the matter in April, 1963, and that the Chief Minister made it clear to him that the order of his extension in service shall continue to stand and will not be withdrawn simply because he was to get double benefit of the general raising of the age of superannuation as well as extension in service beyond the age of that superannuation

The petitioner avers that the Chief Minister then asked him not to press for relief from the Vigilance Department work, which he says that he accepted. All this was some kind of verbal conversation between the two and there is no official record of the same. The Chief Minister made no order in this respect. The version of the petitioner may be accepted that he did make such an approach to the Chief Minister who was sympathetic, but it is quite clear that the Chief Minister made no order in this respect whatsoever. So this does not carry the matter, so far as the petitioner is concerned, anywhere.

5. Sometime in July, 1966, the petitioner was offered appointment of a part-time lecturer in the Punjab University Law College. He sought approval of the Government to accept that appointment, but it was turned down by Government's letter, annexure "AA" of August 11, 1966. The petitioner says in paragraph 44 of his amended petition that on that letter the Senior Deputy Advocate General on 16-8-1966 noted that "on the one hand Government state that he (the petitioner) is to retire from 28th August, 1966, then what objection could there be to his accepting the appointment." When this was conveyed to the petitioner on August 18, 1966, the petitioner says that he was completely taken by surprise that the Government was going to retire him on and from August 28, 1966. He made enquiries in the office of the Advocate General and on August 20, 1966, he learnt that to that date no order in regard to his retirement had been made. So on August 24, 1966, he filed Civil Writ 1851 of 1966, saying that there were indications that the Government had decided to retire him from August 28, 1966, but that the orders were not likely to be communicated till the last date, so that the petitioner may have no time left either to make representation to the Governor or to obtain stay orders from this Court before the retirement became fait accompli.

In the petition he raised a number of other matters also to which reference will presently be made. On August 25, 1966, the Senior Deputy Advocate General conveyed to him the Government's order, annexure "EE", dated August 23/24, 1966, retiring him on and from August 28, 1966, and refusing leave preparatory to retirement for a period of six months applied for by him but saying that he is to be allowed benefit of a maximum period of 97 days under the proviso to Rule 8.21 of the Punjab Civil Services Rules, Volume I, Part I. The letter also pointed out that that period will not be treated as automatic extension in his service and he shall be relieved of his duties on August 28, 1966. This order was produced on August 26, 1966, before the admitting Bench when a rule nisi was issued in the petition of the petitioner and a stay order was made in so far as the order, annexure "EE", is concerned; in other words, staying the order of the Government relieving the petitioner of his duties on August 28, 1966. Subsequently, the petitioner filed an amended petition incorporating subsequent events as narrated above.

6. The petitioner challenges the Government's order, annexure "EE", to retire him from August 28, 1966, as unconstitutional, illegal, mala fide, unjust, void

and without jurisdiction. The details of the allegation about mala fide will be considered at the proper place. So far as the legality of the order is concerned, the main ground urged in the petition is that in view of the raising of the age of superannuation in the letter, annexure "U" of the Government, he was continuing in service up to August 28, 1969, because the order, annexure "T" of December 21, 1962, granting three years" extension in his service beyond the date of superannuation takes effect from August 29, 1966, when he reached the age of superannuation under the amended Rule 3.26. He points out that the age of superannuation has been raised to 58 years retrospectively from December 1, 1962, a date earlier to the date of the letter, annexure "T", and hence in annexure "T", the date of superannuation should be read as expiring at 58 years and not at 55 years. He seems to think that this is the automatic effect of the amendment of Rule 3.26 read with the Government's letters, annexures "T" and "U".

7. Another matter that has been taken by the petitioner in his petition is that a departmental enquiry was ordered by the Government against Mr. L. S. Gupta, I. S. E., former Chief Engineer, and some others, which commenced on November 12, 1956, and concluded sometime in 1959. There were 174 hearings in the enquiry, and the petitioner says that out of those he is entitled to extra fee for civil work done in that connection on 110 hearings. He made a claim for that at the rate of Rs. 100/- per hearing, the total claim coming to Rs. 11,000/-. The then Advocate General, now Mr. Justice Sikri in the Supreme Court, on an office note approved that the claim of the petitioner was admissible because the proceedings before the enquiry commissioner were of civil nature and the petitioner was entitled to fee for such civil work under the terms of his appointment. The claim was, however, rejected by the Government in its letter of May 22, 1963, annexure "J", which said that the petitioner was primarily employed to do the work in the Anti-Corruption Department (now Vigilance Department) under the control of the Secretary, Anti-Corruption Department, now Secretary, Vigilance Department, for which he is not entitled to any fee. Work may take the form of table work, or work before any Enquiry Officer. Moreover it is highly doubtful if the work was of civil nature within the meaning of para 2 of the terms of appointment. In view of the position explained above, Government regret their inability to agree to the proposal for the payment of Rs. 11,000/- as fee to him.

The petitioner, however, continued making representations with regard to this claim of his and the then Advocate-General (now Mr. Justice S. M. Sikri) on the office file again approved an office note supporting his claim. In the meantime the learned Advocate-General was appointed a Judge of the Supreme Court, and the then Additional Advocate General in his letter of February 17, 1964, annexure "M", said to the Government this --

"The matter was considered by Shri S. M. Sikri, the then Advocate-General and I am sending a reply as under in terms of his opinion :-- The Departmental

Enquiry proceedings are in the nature of civil proceedings and thus the Deputy Advocate General (Shri Pannu) is entitled to receive fee in such cases. The quantum of fee payable is, however, to be decided by the Government as there are no rules on the subject either in the Book of Financial Powers or in the Law Department Manual. The other matter arising in the representation is the interpretation of condition No. 1 of the terms of appointment of the Deputy Advocate General, i. e., whether work in connection with the enquiry proceedings before an Enquiry Officer is covered by the salary he is paid as Deputy Advocate General in the Vigilance Department. This is also a matter for the Government to decide -- if necessary in consultation with the Finance Department. They alone can say as to what was the intention at the time the terms were finalized. However, both the conditions Nos. 1 and 2 are independent of each other -- the first relates to the kind of work that the Deputy Advocate General is required to do and the second deals with the emoluments that he will receive for certain types of cases."

7-a. The petitioner then alleges strained relations on the part of Bawa Jagat Singh, at present Deputy Legal Remembrancer (Punjab), and the former Chief Minister, Mr. Ram Kishan, to the details of which reference will be made later, and contends that because of such relations his representation was rejected mala fide by the Government in its letter, annexure "NT, of July 30, 1964. He takes the position that this was the date of the final refusal of this part of his claim. He claims the amount as stated under condition (2) of the terms of his appointment, as already reproduced above, as fee for civil work done by him in conducting the departmental enquiry on behalf of the State against Mr. L. S. Gupta and others. Sometime in 1964 the Punjab Government ordered a departmental enquiry against Mr. R. I. N. Ahooja, I. A. S., and, under the directions of the Chief Secretary the petitioner attended some of the hearings of that enquiry on behalf of the State Government.

Another enquiry was ordered against Mr. P. S. Multani, I. A. S., and, although in that the petitioner appeared before the enquiry officer under the directions and orders of the Secretary in charge of the Vigilance Department, he says, he was appearing on behalf of the Government in that enquiry just as in the other two cases. The enquiry against Mr. R. I. N. Ahooja ended sometime in June, 1966, and that against Mr. P. S. Multani sometime in March, 1966. The petitioner's claim for fee in connection with the departmental enquiry against Mr. R. I. N. Ahooja was rejected by the Government, on the same ground as in the previous case, by its letter of May 19, 1966, annexure "S". The petitioner makes claim for the amounts of fees due to him under condition (2) of his terms of appointment in regard to those three enquiries.

8. There are two other matters which are - raised by the petitioner, one is that in the letter, annexure EE", of August 23/24, 1966, leave preparatory to retirement having been refused to him, he is entitled to 180 days of leave on retirement under the proviso to Rule 8.21, but the Government has only conceded 97 days"

such leave. In the replication the petitioner points out that in this respect there has been a mistake in calculation of which the Accountant-General has sought correction, but the same has not been made. The other matter raised is with regard to the manner and method of calculation of his qualifying service for pension and the quantum of pension.

9. In the return by the respondent, the State of Punjab, the factual statements in the petition are practically accepted barring those relating to allegations of mala fide, but the position taken on behalf of the respondent is that the extension of three years' service granted to the petitioner was by an order of a date earlier to the date on which the superannuation age has been raised to 58 years and it was granted to him on December 21, 1962, in reference to the then age of superannuation of 55 years under the unamended Rule 3.26. The order of extension in service, it is said, does not entitle the petitioner to extension of three years irrespective of the date of superannuation as stated in it and the order specifically mentions that date as August 29, 1963. It is pointed out that if on December 21, 1962, the rule had provided that the age of superannuation was 58 years, there would have been no occasion for the issue of the order of extension of the petitioner's service by three years so many years before the date of his superannuation.

Another stand taken on behalf of the respondent is that the order extending the service of the petitioner by three years has now merged with the order raising the age of superannuation to 58 years under Rule 3.26 by the amendment of this rule, and so the petitioner is not entitled to any extension beyond the age of 58 as of right. This is with regard to the first aspect of the case of the petitioner. On the second aspect, with regard to his claim as to fees for having conducted the three departmental enquiries on behalf of the State Government against three Government Officers, it is said that Mr. Justice S. M. Sikri took the view that the proceedings before the enquiry commission were of civil nature, but that it is denied that he categorically advised that the petitioner was entitled to fee in those cases. The Government considered that opinion and also the advice of the Law Department and Finance Department and rejected the claim of the petitioner with regard to the enquiry against Mr. L. S. Gupta by its letter, annexure "J". It is then pointed out in paragraph 22 of the return that on the representations of the petitioner the matter was examined by the then Advocate General, now Mr. Justice Jagan Nath Kaushal in this Court, who advised that the petitioner was not entitled to his claim for the fee in connection with the enquiry against Mr. L. S. Gupta. It has been stated that Mr. Justice Jagan Nath Kaushal was of the opinion that the question, whether the work before the enquiry officer was civil work or civil proceeding, is beside the point and the petitioner is not entitled to his claim because it was not work before a Court, as Mr. Justice Jagan Nath Kaushal thought that the second part of condition (2) of the terms of appointment also concerned civil work in or before a Court as the first part concerning criminal work.

It is admitted that the enquiry against Mr. L. S. Gupta and others was entrusted to the petitioner not by the Vigilance Department but by the State Government. Then it is said that at least so far as the claim with regard to the enquiry against Mr. L. S. Gupta is concerned, it is barred by time, the enquiry having completed sometime in 1959 and the claim of the petitioner in this respect having been finally rejected by the letter, annexure "J", of May 22, 1963. With regard to the claim for leave by the petitioner, it is said that under the proviso to Rule 8.21 the grant of benefit in lieu of leave refused is in the discretion of the Government and, in any case, the petitioner can be granted leave up to a maximum period of 120 days and not 180 days as claimed by him. The statement in the letter, annexure "EE", has been made on the basis of a letter of the Accountant General. With regard to the matter of pension, it is pointed out that the petitioner himself is responsible for the delay in the decision of the pension admissible to him under the rules. He was to make an application in the prescribed form about which intimation was given to the office of the Advocate General on August 28, 1966. The petitioner had also to perform some other formalities and now that the petitioner has completed all the formalities and put in proper application in the prescribed form on September 20, 1966, the Government will consider the matter with due regard to the merits and in accordance with the rules.

10. In the replication the petitioner has reiterated substantially what he has already stated in his amended petition, but with regard to the stand of the respondent that his claim for fees connected with the departmental enquiries against Mr. L. S. Gupta is barred by time, he says that it is not barred and points out that the return by the respondent ignores the basic fact that the quantum of fees is to be determined by the Government and only after the amount of fees has been fixed by the Government cause of action for recovery of the same arises. On the first aspect of his case, the petitioner says that the date of superannuation mentioned in the order of December 21, 1962, stood automatically amended to August 29, 1966, because of the amendment in Rule 3.26 raising the age of superannuation to 58 years and gave a legal right to him to continue in service up to August 29, 1969. He points out that the Government never withdrew the order extending his service by three years. There is reference also in the replication to take note of the Home Secretary, Mr. S. K. Chhibber, I. A. S., of September 9, 1966, to this effect -- "I presume that stay orders of the High Court have the effect of extension of service of Shri Pannu. If so, Shri Pannu need have no apprehension of any kind Shri Pannu has always been a most co-operative officer and hardworking even at times unsparing, and I am sure he will not let us down when the Department is short-handed". This the petitioner refers for this purpose that the extension of his service has been in public interest and not only the former Chief Minister, Sardar Pratap Singh Kairon, was appreciative of his work but so has been the present Home Secretary, and this is apart from recommendations for further extension of his service by the Legal Remembrancer and also by the Vigilance Commissioner, Mr. Tek Chand, a former

Judge of this Court, though the Government has not accepted those recommendations.

11. In the beginning of the return of the respondent it has rightly been pointed out that the petitioner has raised four distinct matters in his petition --

(a) that he has a right to an extension of three years' service beyond the date of superannuation as in the amended Rule 3.26, which now makes the age of superannuation to be 58 years;

(b) that the refusal of the fees by the Government in respect of the work done by the petitioner in connection with the departmental enquiries against Mr. L. S. Gupta, I. S. E., and others, Mr. R. I. N. Ahooja, I. A. S., and Mr. P. S. Multani, I. A. S. is illegal, being contrary to condition (2) of the terms of appointment of the petitioner;

(c) that leave preparatory to retirement having been refused to the petitioner, the Government has not been justified only in confining to a leave of 97 days after the date of retirement when he is entitled to a longer period of such leave under the proviso to Rule 8.21; and

(d) that the Government has so far been remiss in the matter of settlement of his claim to pension and the manner and method of determination of the period of qualifying service for that purpose and the calculation of the pension due.

12. The last two matters are briefly disposed of. It has now been conceded by the learned counsel for the State at the bar that the Accountant-General though he previously calculated that a shorter period of leave was due to the petitioner, has now come to state that the total period of leave that is due to the petitioner is 180 days. According to the rules, a person claiming leave preparatory to retirement has to make an application six months before and if he makes an application delayed, as in this case the petitioner did by 52 days, then those 52 days are to be deducted from the period of leave due. So deducting 52 days out of 180 days, the leave due to the petitioner remains of 128 days, but under the proviso to Rule 8.21 maximum leave that is admissible in such circumstances is 120 days. The learned counsel for the State has made a definite statement at the bar that on the retirement of the petitioner, if he is retired after the decision of this petition, this 120 days' leave due and admissible to him under that provision will be given to him. So in this respect no grievance of the petitioner remains.

On the question of pension, the petitioner has made a proper application for the grant of pension only during the pendency of the petition and his claim in this petition is obviously premature. The respondent has yet to process that application, determine the qualifying period of service of the petitioner for pension, and then calculate the pension due to him. Not until the whole process has been gone through and the amount of pension determined, can the petitioner possibly have any grievance against that. When that has been done and the petitioner still has some grievance and if he feels that there is a legal

remedy available against that, he may have recourse to such remedy, but the claim with regard to and in connection with the pension matter is at this stage premature. Of course the retirement of the petitioner will be, if the Government retires him after the decision of this petition, leaving aside the recommendations of the Legal Remembrancer and the Vigilance Commissioner and the appreciative remarks of the Home-Secretary effective from the date on which he is relieved of his duties as Deputy Advocate General. This leaves then the main two matters raised by the petitioner in this petition for consideration.

13. The first of those two matters is the one with regard to the question of extension of service allowed to the petitioner. The argument of the learned counsel for the petitioner is that the extension of three years' service beyond the date of superannuation in the order, annexure "T", be read as the superannuation age now given in the amended Rule 3.26 as 58 years and for the part of the order which is "viz., 29th August, 1963", be read as Viz., 29th August, 1966". It is said that the idea of giving extension of three years' service to the petitioner was in recognition of his service rendered as Deputy Advocate General and such recognition can only be given effect to if the order, annexure "T", is now read along with the amended Rule 3.26 so as to be operative after the superannuation age of 58 years, ignoring the date of superannuation stated in it and substituting for that date the date arrived at by adding three years to the service of the petitioner after the age of 58.

In this respect, support is first sought from the decision in *Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another*, . That was a case under the East Punjab General Sales Tax Act of 1948. The company in that case held a certificate of registration u/s 7 of that Act. Subsequently, there were amendments of the Act in Sections 5 and 7, and Rule 26 and Form S. T. XXII made under the provisions of it were amended, so that exemption was available in regard to sale to a registered dealer "of goods specified in his certificate of registration for the use by him in the manufacture in the State of Punjab of any goods for sale", and, as the registration certificate of the company did not contain a condition that the goods were for use by the dealer "in the manufacture in the State of Punjab of goods for sale", so the goods sent by the company for manufacture outside the State of Punjab were claimed to be exempt from sales-tax. This argument was not accepted by their Lordships and it was held that the words "in the manufacture in the State of Punjab of goods for sale" are to be read into the registration certificate of the company because of the appearance of those words by amendment of Sections 5 and 7 of the Act and Rule 26 and Form S. T. XXII made under the provisions of the Act. It is said that this case supports the argument on the side of the petitioner, but it is not quite clear how it does so. Here is a case in which order, annexure "T", allowed extension of three years' service to the petitioner from the date of superannuation and that date of superannuation is specifically stated in the order itself. There is nothing omitted which can be supplied by means of any rule of interpretation. Obviously, this case has no bearing on the merits of the

controversy in this respect. Again, reliance is placed on *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, , in which their Lordships held that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed in such a way that there is no need to refer to the amending Act at all; but, when the amended Rule 3.26 is read, after the amendment, it does not advance the argument on the side of the petitioner because that amendment is of no assistance to him since the date from which the order is operative is specifically stated in it. So this case is not relevant either. Another case referred to in this respect is *Sukh Dev Sarup Gupta Vs. Punjab State and Others*, but that was a case in which because of payment of excise duty under the Punjab Excise Act on certain medicinal and toilet preparations there was exemption of sales-tax under the East Punjab General Sales Tax Act, 1948; when, afterwards the Punjab Excise Act ceased to apply to such preparations and its place was taken by the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, it was held by the learned Judge that the exemption was still available because excise duty on such preparations was leviable under the latter Act and all that had happened was that the levy of the excise duty on such preparations was first under the Punjab Excise Act and then it has come under the Medicinal and Toilet Preparations (Excise Duties) Act, which has not made any difference in so far as the exemption entry under the East Punjab General Sales Tax Act, 1948, is concerned. Here, again, it is not clear how this is helpful to the argument on the side of the petitioner because so far as the interpretation of Rule 3.26 is concerned, there is no ambiguity as the rule stands amended, and in the order, annexure "T", the date of superannuation clearly and specifically stated cannot possibly be read as something other than what really it is.

There is then reliance upon *K. Shama Rao v. State of Mysore*, AIR 1963 Mys 208, to support this argument, but all that that case decides is that when the Government extends the period of service of a civil servant after reaching the conclusion that his record of service is satisfactory, he acquires the right to continue in service during the extended period, unless he is removed from his post by process known to law, a proposition in itself unexceptional, and has no bearing whatsoever on the present argument. The learned counsel for the petitioner has then referred to *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, and has relied upon this part of the decision of their Lordships that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Here, again, this has nothing to do with the present case. There is no subsequent explanation here. The case of the respondent is straight that look at the order, annexure "T", and give ordinary and normal meaning to it in that the date is stated in it expressly from which the extension of three years is operative. In reply, the learned counsel for the respondent has urged that the order, annexure

"T", has to be read as it is, and, as it specifically states the date from which the extension is to be operative, there is no question of the petitioner being given extension of three years after the age of 58 because when the order, annexure "T", was made, at that time the age of superannuation was 55 and no more was intended than to give him three years" extension from that age and the date from which the extension is operative is exactly stated in the order itself.

In this respect, the learned counsel also relies upon Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , that public orders made by public authorities must be construed objectively with reference to the language used in the order itself, and he says that that is exactly what the State Government is doing in this case and acting according to the very language of the order in question. He then points out that the meaning of the order has to be seen from the rule applicable at the time when the order was made and the circumstances in which it was made. The petitioner had said that he was only interested in extension of service if he was enabled to earn pension which he could only do if his service was extended by three years from the then age of superannuation of 55 years. His request was acceded to. The order gives the date from which the extension is operative On the date on which the order was made, it was operative for three years from the date on which the petitioner was to retire on the superannuation age of 55 years and, in the circumstances, that benefit was given to him to enable him to earn pension. The learned counsel for the petitioner has said that Extension cannot be given to enable a Government Servant to earn pension. In this case, however, there was appreciation of the service of the petitioner which led to the extension being granted to him, but in addition there was a consideration that he should be able to earn pension by completing at least ten years" qualifying service for that purpose.

So when the Rule 3.26 at the time, when the order, annexure "T", was made, is considered with the surrounding circumstances and the clear language of the order, annexure "T", is read, there can be no two opinions that that order on the date on which it was made had only one meaning and that was that the extension of three years" service was granted to the petitioner from the age of, superannuation of 55 years, as it then was made under Rule 3.26, & the date from which the extension was operative has been specifically stated in the order. It has already been pointed out that although the petitioner after the amendment of Rule 3.26 made an approach to the then Chief Minister, who was sympathetic to such approach, yet he made no order saying that the order, annexure "T", was to be operative from the age of superannuation of 58 years and the date from which it is operative as stated in that order should be changed. It has been contended by the learned counsel for the petitioner with reference to the letter, annexure "U", of March 28, 1963, that the decision of the Government was "to raise the age of compulsory retirement of State Government employees from 55 years to 58 years with effect from the 1st December, 1962, and hence retrospectively, and therefore, the raising of the age of superannuation to 58 years being operative from December 1, 1962, earlier to the date of the order,

annexure "T", which was made on December 21, 1962, the last-mentioned order must be read as if the date of superannuation stated in it is August 29, 1966, and not August 29, 1963, which is the date actually given in it.

This argument may possibly have had any meaning if the latter, annexure "U", had only one paragraph, that is to say, paragraph 1. But the letter has to be read as a whole and paragraph 2 of that latter makes it clear that the decision raising the age of superannuation to 58 was not to have retrospective effect from December 1, 1962, for in paragraph 2 it is clearly stated that a Government employee, who attained the age of compulsory retirement on or after December 1, 1962, or who was on leave preparatory to retirement or proceeded on such leave on or after December 1, 1962, will not be entitled to the benefit of the increased age of compulsory retirement unless he is permitted to resume duty after the appointing authority is satisfied that he is efficient and physically fit. It has already been shown that there is a note to the amended Rule 3.26 saying that the amendment in the rule is operative from March 28, 1963, though certain persons who retire on or after December 1, 1962, may be given benefit of the extended age of superannuation if certain condition to the satisfaction of the authority concerned was satisfied. Neither, therefore, the letter, annexure "U", of March 28, 1963, nor the amended Rule 3.26 support the stand on the side of the petitioner that the extended age of superannuation up to 58 years was in all cases operative retrospectively from December 1, 1962. So, this argument on the side of the petitioner is entirely without substance.

The order granting extension to the petitioner beyond his age of superannuation, that is to say, beyond August 29, 1963, was made on December 21, 1962, and the decision taken by the Government in letter, annexure "U", is of March 28, 1963, a much later date. It can not operate to affect the order so earlier made and the argument on the side of the petitioner that the decision in the letter, annexure "U" is retrospectively operative from December 1, 1962, has just been discarded. The learned counsel for the State very rightly presses that if the decision of the Government in the letter, annexure "U", of March 28, 1963, was the decision factually taken on December 1, 1962, there could possibly be no occasion for the respondent to give an extension of three years' service to the petitioner almost three years ahead of the question ever arising for consideration. If such had been the circumstances, the learned counsel urges that order of extension of service of the petitioner could not possibly have been made on December 21, 1962. There is then his further argument that the order in annexure "T" and the decision of the respondent in annexure "U" merged and have given only one period of three years to the petitioner up to the age of 58 years in service.

This is not correct because there is no question of the merger of the two. The decision in the letter, annexure "U", has been the basis of the amendment of Rule 3.26, and the order, annexure "T", was made under that very rule but on an earlier date when the rule had not been amended. In the circumstances there is

no question of merger of the order in annexure "T" and of the decision in annexure "U". At the same time both became operative from the very same date, that is to say, on the date on which the petitioner attained the age of 55 years, which was August 28, 1963. The petitioner could have choice of one of the two advantages available to him. He could either take advantage of the amended R. 3.26 with the age of superannuation raised to 58 years or continue to claim benefit of the terms of the order, annexure "T", but he cannot have those two operating respectively one after the other. There would have been a certain advantage to the petitioner in taking shelter of the order in annexure "T" should an occasion had arisen as explained in K. Shama Rao's case AIR 1963 Mys 208. For then he would have had protection of Article 311 in case of removal or dismissal, whereas the extended age of superannuation is subject to determination of three months' notice on either side. So that the only advantage of the two running together at the same time was that had any difficulty arisen with regard to the service of the petitioner he might have fallen back upon order in annexure "T".

There is an anomaly created if the argument of the petitioner were to be accepted that that the order, annexure "T", should now be read to take a start where the period of superannuation has reached under the amended Rule 3.26. Up to the age of 55 years the petitioner had protection of Article 311, between the age of 55 and 58 years his service could be terminated by three months' notice or he could quit service by similar notice, and after 58 years of his age he has the order extending his service, if his argument is, to be accepted which again attracts Article 311. But this last part could be rendered meaningless by determination of the service of the petitioner during the second period between 55 and 58 years by a notice of three months, so that any protection available under the order, annexure "T", if so read as the petitioner says it should be read, could have been rendered nugatory and illusory. This indicates that the approach of the petitioner in this respect is unsound.

The learned counsel for the respondent has referred to Section 19 of the Punjab General Clauses Act, 1898, (Punjab Act I of 1898), which says:

"Where, by any Punjab Act, a power to issue notifications or make orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, Rules or bye-laws so issued or made",

and contends that under this provision the respondent has had the power to cancel the order, annexure "T", and the order conveyed to the petitioner by the respondent's letter of August 23/24, 1966, that he was going to be relieved of his duty on August 28, 1966, was in substance a cancellation of the order in annexure "T" under the section just reproduced. It is enough to say that section 19 of Punjab Act 1 of 1898 concerns "any Punjab Act", and no action has been taken by the order upon which the learned counsel for the respondent relies

under any such Act. That order may be said to have been made under Rule 3.26 but not under any Act. So, Section 19 of the Punjab Act I of 1898 has no application to the facts of the present case.

It is obvious then that the order in annexure "T" extending the service of the petitioner from the date of his superannuation, which date as stated in that order is August 29, 1963, can only be read as it literally reads and nothing more can be read into it even in the wake of the decision of the respondent in the letter annexure "U" or the amendment of Rule 3.26. On December 21, 1962, on which date the order annexure "T", was made, this was the meaning it had, and it has not been made clear how the meaning of that order has changed on and after March 28, 1963, by the decision of the Government which is incorporated in the letter annexure "U". If it had one meaning on the date on which it was made, it cannot have different meaning on a different date, unless there is an express order to that effect or unless the language is so clear that it unequivocally leads to that inference, which, as has already been pointed out, is not the case here. On these considerations this first aspect of the case of the petitioner obviously fails. In this approach it seems clear that the question of mala fides in the order in respondent's letter of August 23/24, 1966, informing him that he was retiring on August 28, 1966, ought not possibly to arise. The petitioner was retiring on August 28, 1966, and if he was formally informed of that date, it is next to impossible to appreciate how any mala fides entered into the conveyance of any such information or can possibly affect the date of retirement of the petitioner.

14. So, in so far as the allegations of mala fides on this aspect of the matter are concerned, the same may briefly be considered. Those allegations are incorporated in paragraph 47 (viii) of the petition. The first allegation is that Mr. Ram Kishan, who was Chief Minister till July, 1966, bore grudge against the petitioner because some years earlier the petitioner was member of an Election Tribunal at Jullundur, when the election of Mr. Ram Kishan was challenged by a Jan Sangh leader, and the petitioner delivered a judgment against Mr. Ram Kishan, though the majority decided in favour of Mr. Ram Kishan. The petitioner has alleged that because of his opinion the publication of the result of the decision of the Tribunal was considerably delayed thus causing anxiety to Mr. Ram Kishan. Subsequently, he says, when Mr. Ram Kishan became Chief Minister, although the petitioner was dealing with vigilance work, he never called the petitioner for discussion of any case. Mr. Ram Kishan has made an affidavit denying any ill will or grudge against the petitioner because of dissenting judgment given by the petitioner in his election case. It is not clear that he ever had any case which needed a direct discussion between the petitioner and the Chief Minister. So, this is no evidence of any mala fide by Mr. Ram Kishan against the petitioner so far as the question of the retirement of the petitioner on August 28, 1966, is concerned. Besides by the time occasion arose for information being given to the petitioner with regard to that date, Mr. Ram Kishan was no longer in power. The information was conveyed under the orders of the Home Secretary and no allegation of mala fide has been alleged against him.

The second allegation is that persons in the official hierarchy have borne malice to the petitioner, persons to whom he unwittingly gave offence by dealing with numerous vigilance cases and other service matters without fear or favour for a period of over 10 years. Nothing could have been more vague or frivolous than this allegation which has no basis in itself. The third allegation is that soon before August 28, 1966, when the petitioner asked for permission of the Government to take up part-time law lecturership, the permission was not granted, but it is not clear how the withholding of such permission is indicative of any mala fide on the part of anybody in the Government. While a person is in Government service it is for the Government, looking to its own interests, while the service of the person lasts with it, to allow or not to allow him to take up any additional job. The fourth matter taken in this respect is of not sanctioning leave preparatory to retirement or giving full benefit of refusal thereof under the rules. There is no mala fide ever involved in refusal to give leave preparatory to retirement where the Government for exigencies of service is unable to grant such leave, for in a contingency like that the Government servant is entitled to leave under proviso to Rule 8.12 after retirement, and although at one time on a wrong calculation the Accountant General had recommended a lesser period of leave to the petitioner, now the correction has been made, and the petitioner is going to be given his due leave after and on retirement. A mistake cannot possibly be any indication of mala fide whatsoever.

The fifth allegation is that the Government has acted mala fide in not sanctioning anticipatory pension, but this is something in the normal and has happened in very many cases and it would be reckless to suggest that in such cases if the Government is unable to sanction anticipatory pension it exhibits general mala fide. Then there is in the sixth place allegation that the Government has not taken a decision on the joint representation of Law Officers for extension of their service up to the age of 62 years, but this is a matter for the Government to decide or not to decide or take its time in making the decision and it does not lead to any inference of mala fide in any respect so far as the petitioner is concerned. The seventh and eighth are perhaps most extraordinary allegations because it is stated that the Government has acted mala fide towards the petitioner in ignoring the strong recommendations of the Legal Remembrancer and the Vigilance Commissioner, Mr. Tek Chand, a former Judge of this Court, for the grant of extension of service to the petitioner, and if any such thing was ever accepted it would mean that whenever a recommendation is made by somebody the Government must proceed to accept that recommendation under threat of being charged with mala fide. Nothing more absurd can possibly be imagined.

It is then said that the Government has acted mala fide in deliberately delaying the communication of its orders about the retirement of the petitioner down to August 23/24, 1966, but it must be to the knowledge of the petitioner, who has been for many years in the service of the Government and working also on the administrative side, that such delays are of every day occurrence. Lastly it is said that the order that the petitioner shall be deemed to have been retired from

August 28, 1966, is vitiated by mala fides inasmuch as it is motivated by an improper purpose which was outside that for which a power of discretion was conferred on the Government. Only the petitioner can possibly appreciate and understand this. So that all the allegations of mala fide in this respect are quite utterly meaningless. It is this type of allegation which meets the observation of their Lordships in C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, , in which their Lordships point out that it is true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before the Supreme Court and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not, some of it at least might stick. This is eminently a case in which allegations of mala fide without basis have been made to deliberately cause prejudice and nothing else.

15. The result is that on the first matter that the extension in the service of the petitioner should be read as three wears beginning after he reaches the age of 58, the petitioner does not succeed and his claim in this respect fails.

16. The only other matter that remains for consideration is the claim with regard to fee for work done in connection with three departmental enquiries by the petitioner while either being Assistant Advocate General or Deputy Advocate General. The details of those three cases have already been given and so also the rather conflicting opinions of the two Advocates General. Disciplinary Tribunal making an enquiry against a public servant in disciplinary matters whether under the Service Regulations or under the Public Servants (Enquiries) Act, 1850, though a quasi judicial tribunal, is not a "Court" in the strict sense because it is merely a fact finding body and the expression of its opinion lacks both finality and authoritativeness which are the essential tests of a judicial pronouncement: S.A. Venkataraman Vs. The Union of India (UOI) and Another, , and Brajnandan Sinha Vs. Jyoti Narain, . So the opinion of Mr. Justice Kaushal, that the proceedings before the Inquiry Officers before whom the petitioner conducted the enquiries on behalf of the State were not proceedings before a Court is correct, but while the learned Judge, in his capacity as an Advocate General, considered that that was a decisive matter in considering the conditions of the terms of the appointment of the petitioner whether he is or is not entitled to fee for such work, it is apparent that in view of condition (2) of the terms of appointment that is not so. The first sentence in condition (2) says that the petitioner "will not be entitled to any extra fees for criminal work done by him in the High Court or any other Courts, and the use of the word "Court" is limited only to and within the scope of this sentence.

In the next or second sentence in this condition which is -- "For such civil work as may be entrusted to him by the Advocate General or the State Government he

will, however, be paid fees which are admissible to a part-time Assistant Advocate General" --the word "Court" does not appear and cannot be read into it by any manner of reading that sentence in this condition. Where the Advocate General was thus wrong was in reading the word "Court" into the second sentence of condition (2) as well. It is obvious when conditions (1) and (2) in the terms of appointment of the petitioner are read that the view taken by the former Advocate General, now Mr. Justice Sikri in the Supreme Court, on the office note, is sound that each one of those clauses reads distinctively, the first dealing with the matter of control, and the second dealing with the matter of remuneration for work done. The second sentence in condition (2) deals with "civil work" that may have been assigned to the petitioner either by the Advocate General or by the State Government.

The question then is -- whether the petitioner when conducting the prosecution side on behalf of the State Government in departmental enquiries, was engaged for civil work?

Mr. Justice Sikri was of the opinion that the work done by him in those proceedings was done in civil proceedings. It has to be remembered when condition 72) is read as a whole, that is to say, when both the sentences in condition (2) are read at one and the same time, that the juxtaposition is between "criminal work" and civil work", and no other kind of work is described in either that condition or in other conditions of the terms of appointment. So, in so far as the petitioner was doing work for the State, he was doing either criminal work or civil work, and what obviously was not criminal work, will have to be considered in the class of civil work, because there is no other type of work to which the conditions in the terms of appointment refer. In *S.A. Venkataraman Vs. The Union of India (UOI)* and *Another*, their Lordships considered whether a departmental enquiry involved the doctrine of double jeopardy in view of Article 20(2) of the Constitution and their Lordships held that it did not, pointing out that an Inquiry Officer in a departmental enquiry concerning disciplinary proceedings was only carrying out a fact finding enquiry which did not lead to any finality or authoritativeness and in which he was only authorised to express an opinion on facts, with which the Government could either agree or disagree, and it could even order a further enquiry. Therefore their Lordships came to the conclusion that proceedings in a departmental enquiry were not criminal in the sense of leading to punishment for an offence.

In *Kapur Singh v. Union of India*, AIR 1957 Punj 173 (FB), which was a case of a petition under Article 226 of the Constitution challenging the constitutional validity and legality of dismissal after a departmental enquiry, this is what the learned Judges said, on this aspect of the matter as is now under consideration.

"It was contended that the proceedings against which Kapur Singh made an application under Article 226 of the Constitution of India were merely executive proceedings. One cannot lose sight of the question that Kapur Singh was agitating the question of his right to remain in service and u/s 9 of the CPC a suit

in which the right to property or to office is contested is a suit of a civil nature and if the test laid down by Mahajan J. in *Province of Bombay Vs. Kusaldas S. Advani and Others*, is correct, as we must hold it to be, then any proceeding brought to establish and vindicate his right to an office must be considered to be a civil proceeding even though the final order of dismissal and therefore determining his right to office is made by the President in the exercise of his administrative and executive powers. Merely because an act is purely ministerial does not take it out of the definition of the words "civil proceeding".

These observations of the learned Judges clearly have the meaning and scope of saying that proceedings in a departmental enquiry are of the nature of civil proceedings and, in any case, it is admissible by those observations to come to the conclusion that they are proceedings in the nature of civil work. This case was before the Supreme Court and is reported as *S. Kapur Singh Vs. Union of India (UOI)*, , but all that is relevant therein for the present purpose is that an enquiry under the Civil Service Regulations and one under the Public Servants (Enquiries) Act of 1850 are of the same nature and there is no material difference in them. In *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, , their Lordships have held that Article 133 must cover all civil proceedings because no exception is indicated. The term "civil proceedings" has been held to include, at least, all proceedings affecting civil rights, which are not criminal, and that the proceedings in the High Court must also be regarded as of the same nature as the original proceedings. Their Lordships held that a proceeding under Article 226 for a writ to bring up a proceeding for consideration must be a civil proceeding, if the original proceeding concerned civil rights. This also supports the opinion that the proceedings out of which this petition under Article 226 has arisen, so far as the claim relating to fees is concerned, have to be taken as proceedings arising out of departmental proceedings which must be considered as civil work, for unless it is criminal work, the conclusion will have to be that.

In *Motising Chhagasing Vaghela Vs. S.D. Mehta*, , the learned Judges have pointed out that "the two proceedings, the departmental and the criminal, are entirely different in nature, they operate in different fields and they have different objectives." In *V.R. Kelkar v. The State of Mysore*, AIR 1966 Mys 218, the learned Judges held that "a delinquent Government servant cannot be equated to an accused facing a criminal prosecution. A Government servant is in a responsible and privileged position. The opportunity that can be afforded to him to explain the charges against him need not be identical with that which is allowed to an ordinary accused. It is sufficient if the opportunity is a reasonable opportunity". These two cases read with the observations of their Lordships of the Supreme Court in the above cases make clear at least one thing that proceedings in a departmental enquiry are not criminal proceedings and hence cannot be criminal work. As has been pointed out in *The Gram Panchayat, Ponahana Vs. The Judicial Magistrate, Palwal and Others*, criminal cause or matter are words that are not confined to proceedings the actual final result of

which would be the infliction of a penalty, but extend to any dispute which at any time, and at any stage, might end in a penalty.

The departmental proceedings as such do not end in a penalty or a punishment as in a criminal case. They end in an opinion of the Inquiry Officer which opinion may or may not be accepted by the Government and when accepted it leads to disciplinary action according to the rules and not to punishment in the sense as punishment for a criminal offence or in a criminal case. The learned counsel for the State has referred to the following observation in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, :--

". . . . the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceeding was civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of Court, and for exercise or disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal", and he contends that in view of these observations of their Lordships departmental proceedings cannot possibly be held to be civil proceedings. In fact in *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, , paragraph 16 of the judgment, their Lordships have pointed out the analogous nature of the disciplinary proceedings against a member of the Bar on the ground of professional misconduct with the disciplinary proceedings against a Government servant for misconduct. Their Lordships have not conclusively said in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, , that such proceedings are not civil proceedings at all, what their Lordships have said is that the same may not fall within that classification. But one thing is clear that such proceedings are not criminal proceedings or proceedings in a criminal case, & therefore, they cannot fall within the words "criminal work" as used in condition (2) of the terms of appointment of the petitioner. If they do not fall within these words, then for the matter of the reading the meaning of condition (2) of those terms of appointment they can only possibly fall under the words "civil work", for, as pointed out, that clause refers to no other kind of work but those two kinds of work.

The learned counsel for the respondent then relies upon Rule 3.3 of the Punjab Law Department Manual, 1938 Edition, which in the marginal heading describes disciplinary proceedings as "quasi-criminal proceedings", but even there such proceedings are not described as criminal proceedings or criminal work. In the same manual Rules 4.6 and 11.4 show that Public Prosecutors, whose principal duties in a district are the conduct of criminal work of the State, are paid fixed retaining salary for that purpose, and further Rule 12-A(1) and (2) shows that for work in connection with departmental or disciplinary enquiry they are paid extra fee. Similarly under Rule 11.1(3) the Advocate General is paid fee for quasi-criminal cases, apart from his retaining salary which is for opinion work of the Government and criminal cases in the High Court including cases of contempt of

Court. So this classification of disciplinary proceedings as quasi-criminal proceedings is not helpful to negative the claim of the petitioner in this respect because even for such work those who are principally engaged for criminal work and paid for that are paid extra fees. If such a classification was admissible, nothing stopped the respondent from incorporating it in condition (2) of the terms of appointment of the petitioner, which has not been done. This is, therefore, no argument against the claim of the petitioner.

Whether proceedings in a departmental or disciplinary enquiry are civil proceedings or not, since the same are not criminal proceedings definitely, and thus not criminal work, within the meaning and scope of condition (2) of the terms of appointment of the petitioner, the same have to be held to be civil work, for which the petitioner is entitled to be paid fee according to that condition.

17. There is one other argument of the learned counsel for the respondent that in relation to a departmental enquiry for disciplinary proceedings the words used are charges, prosecution, and accused", words which are used in relation to an accused person tried for a criminal offence. The learned counsel contends that that is some indication that such proceedings cannot be described as civil work. In this connection the learned counsel has referred to *Brajnandan Sinha Vs. Jyoti Narain*, , and this observation of their Lordships -- "It may be noted that this procedure (that relating to conduct of a departmental enquiry) is assimilated as far as possible to the conduct of a prosecution in a criminal Court of law and the person accused is given the fullest opportunity to enter upon his defence and lead evidence in order to clear himself of the charges levelled against him". This argument was precisely urged in *S.A. Venkataraman Vs. The Union of India (UOI)* and *Another*, , and is referred to in paragraph 8 of the Judgment, but was not accepted by their Lordships So the conclusion in this respect is that within the scope of condition (2) of the terms of appointment of the petitioner the work done by him in representing the State Government on the prosecution side in the departmental enquiries was not criminal work, but was civil work.

18. In this connection also the petitioner had made certain allegations of mala fide. His claim to fee in regard to attendance at the departmental enquiry against Mr. L. S. Gupta was rejected on May 22, 1963, by the letter of the Government, annexure "J". It is first said that Mr. Ram Kishan, the former Chief Minister, was actuated by malice and ill-will towards the petitioner an allegation which has already been considered and found of no substance, but when this claim of the petitioner was rejected at that time the Chief Minister was Shri Partap Singh Kairon. So that rejection could have nothing to do with Mr. Ram Kishan. It is then said that Bawa Jagat Singh, who is at present Deputy Legal Remembrancer, gave an opinion at the time when the claim was made, which opinion is in substance reproduced in letter, annexure "J", where reasons for the rejection of the claim are stated.

The petitioner has alleged that when Bawa Jagat Singh was appointed Assistant Legal Remembrancer, he held a meeting of Public Prosecutors in protest against

an appointment in the Legal Remembrancer's Department from any source other than the Public Prosecutors. This, the petitioner says, set Bawa Jagat Singh against him particularly because he was in the forefront of the movement to obtain a place for the Public Prosecutors in the Legal Remembrancer's Department exclusively leaving out any other source for recruitment to that Department. Bawa Jagat Singh in his affidavit of course denies this. But, although Bawa Jagat Singh did give opinion on the claim of the petitioner, and the reasons given by him are reproduced in the letter, annexure "J", it was an opinion approved by the Legal Remembrancer. It would be much too much to say that the Legal Remembrancer did not apply his mind to the note put up by Bawa Jagat Singh and was just carried away by his opinion. No allegation of mala fide has been made against the Legal Remembrancer. So nothing turns upon this allegation. The third statement in this respect is that the reasons given in the letter, annexure "J", for turning down the claim are perverse and contrary to the opinion of Mr. Justice S. M. Sikri. It has been found above that the opinion given by Mr. Justice S. M. Sikri is the correct opinion. But merely because the Government proceeded on the advice of its Legal Remembrancer, although on an office note by Bawa Jagat Singh, does not render that advice perverse. There can be genuine difference of opinion and it is not shown that this was not a case of that type. Subsequent claim with regard to the enquiry against Mr. R. I. N. Ahooja was also rejected and same argument is pressed in that connection. This is about all so far as the allegations about mala fide are concerned in this connection and obviously the same are without substance.

19. The enquiry against Mr. L. S. Gupta was completed some time in 1959. The claim in regard to that was rejected by the Government on May 22, 1963, by letter, annexure "J". The petitioner has filed his petition in August, 1966. Obviously there is substance in the approach on the side of the respondent that this claim is barred by time, whether the starting point of limitation is reckoned from the year 1959 or from the date of the letter, annexure "J". But the learned counsel for the petitioner has urged that the refusal of the claim of the petitioner in the letter, annexure "J", was not final. The reason given is that it is based on the ground that if it was doubted whether the work done by him was of civil nature. This hardly is a reason to say that the refusal in that letter was not final. Whatever may have been the basis for the refusal of the claim, the Government has in unmistakable terms said clearly that it was refusing the claim of the petitioner in its letter of May 22, 1963, annexure "J". The petitioner continued making subsequent representations and he was ultimately informed by letter, annexure "N", of July 30, 1964, that the claim could not be entertained in view of what was already stated in annexure "J". The petitioner considers that it is the letter, annexure "N" of July 30, 1964, which is the final refusal, but this is not so.

The final refusal was by letter, annexure "J" of May 22, 1963. To this part of the claim of the petitioner applies the Indian Limitation Act of 1908.

It has been urged on the side of the petitioner that to this claim Article 120 of

that Act applies because the petitioner has to seek a declaration with regard to this claim of his and the period has to be reckoned as six years from the date when the right to sue accrued. The petitioner has explained that the type of declaration he is to seek is with regard to the quantum of the fee, but according to condition (2) of the terms of appointment the fee is to be that admissible to a part-time Assistant Advocate General, and it is obvious that if so far the Government has provided no schedule of fees payable to a part-time Assistant Advocate General, then it will have to take a decision in that respect. No declaration for that can be obtained. A declaration is available to establish a right, but not to force an authority to take a decision as to the quantum of fee it considers proper to allow to its officers such as those assisting the Advocate General in the attendance to civil work of the Government. So Article 120 of that Act can possibly have no application to this claim of the petitioner.

In *K.R. Venkatarama Ayyar Vs. Sri Varaguna Pandia Chinnathambiar Avergal Zamindar of Sivagiri*, *Chandrashekhara Ayer J.*, held that a suit by an advocate for fees due to him is governed by Article 84 and limitation commences to run from the date when judgment is pronounced in the suit because it is on that date that the suit can be said to have terminated within Article 84. Article 84 of the Indian Limitation Act of 1908 provides three years' limitation from the date of the termination of the suit or business for a claim by an attorney or Vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid. So obviously it is this Article which applies and under it this claim of the petitioner is barred by time. The learned counsel for the State has also referred to *Punjab Province v. Tara Chand* AIR 1947 FC 23 in which it was held that the term "wages" in Article 102 includes pay or salary of a Government servant and, therefore, the period of limitation for a suit to recover arrears of pay is governed by that Article and not by Articles 115, 120 or 131 of the Indian Limitation Act, 1908. This case was approved by their Lordships of the Supreme Court in *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, . But these cases do not seem to be attracted to the present case because the claim of the petitioner is not for a salary but for a fee as an Advocate for civil work done for the respondent in accordance with condition (2) of his terms of appointment, but if it is considered analogous to wages, then of course the ratio of these two cases applies, and even on this consideration this claim of the petitioner is barred by time.

It has been held in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, , that a claim barred by the law of limitation cannot be considered in a writ petition under Article 226 of the Constitution. Therefore, so far as the claim with regard to the enquiry against Mr. L. S. Gupta is concerned, it is barred by time. The enquiry against Mr. P. S. Multani concluded sometime in March and against Mr. R. I. N. Ahooja sometime in June, 1966. The claim with regard to those two enquiries is within time. The petitioner, is, on the conclusion as above, entitled to payment of fee under condition (2) of his terms of appointment for civil work done by him in connection with those enquiries and for the days he attended those enquiries on

behalf of the respondent. In so far as the matter of quantum of fee is concerned, the respondent is to determine it also in accordance with that condition, that is to say, on the basis of fees payable to a part-time Assistant Advocate General. If a schedule of such fees exists then the claim of the petitioner will be determined on the basis of that schedule. But if no such schedule of fees exists, then obviously the respondent will have to take a decision in regard to the quantum of fee payable to the petitioner in this respect, and that at present can be said is that the approach will have to be reasonable and on the same basis as schedules of fees have already been fixed for somewhat similar work done under the Advocate General. A certain measure of consistency will have to be observed by the respondent in this respect. This is being pointed out to avoid an arbitrary decision so that the petitioner may not be compelled to have recourse to a Court of law again in this respect.

20. The consequence then is that the petitioner's petition only succeeds on two points, (a) that he will have leave after the date of retirement in accordance with the proviso to Rule 8.21 of the Punjab Civil Services Rules, Volume I, Part I, of 120 days as has been stated by the learned counsel for the respondent at the Bar, and (b) that the petitioner is entitled to the claim of his fees for conducting departmental enquiries for the respondent against Mr. P. S. Multani and Mr. R. I. N. Ahooja, the quantum of fees will be determined by the Government in view of the observations made above, and otherwise the petition of the petitioner fails. In view of the part success of the petition of the petitioner, the parties are left to bear their own costs.

Shamsher Bahadur, J.

21. I agree

P.C. Pandit, J.

22. I also agree.