

(1962) 12 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 78 of 1961

State of Punjab

APPELLANT

Vs

Ram Parshad
 Ram Parshad Vs State of Punjab

RESPONDENT

Date of Decision : 19-12-1962

Acts Referred:

Bank of Patiala (Staff) Rules, 1954 — Rule 27
Bank of Patiala Regulation and Management Order, 1954 — Rule 30
Constitution of India, 1950 — Article 166, 238, 309, 311, 313

Citation : AIR 1963 P&H 345

Hon'ble Judges : Tek Chand, J;P.D. Sharma, J

Bench : Division Bench

Advocate : S.M. Sikri, General and K.L. Jagga, Asst. Advocate General, for the Appellant;

Final Decision : Allowed

Judgement

P.D. Sharma, J.—This is an appeal from the judgment and decree of She Subordinate Judge First Class, Patiala, by which he granted Ram Pershad plaintiff the relief prayed for against the Punjab State-defendant, facts necessary for the disposal thereof are these:

Ram Pershad plaintiff joined as a clerk in the Patiala Saddar Treasury on 4-10-81 Bk. and was transferred in the same capacity to the Patiala State Bank on 27-2-84 Bk. and was confirmed from the same date. He was born on 5-4-1964 Bk. (20th July, 1907 A. D.). He was allowed the next grade 40-4-60 on the establishment of the Patiala State Bank with effect from 1-9-85 Bk. He was promoted as Manager and posted at Bhatinda Branch of the Bank on 1st April, 1944. On 1st April, 1949, the Board of Directors promoted him as Selection Grade Manager in the grade 340-20-500/25-700. He earned his grade increments regularly till 31st March, 1958, He was compulsorily retired from service on 23rd September, 1953, but was subsequently reinstated by the Government on 10th June, 1954. He went on leave while working as Manager of

the Bank at Yamunanagar on 23rd November, 1957. Mr. Lashkri Mal Kochhar, a 2nd grade officer, succeeded him. On return from leave in the month of December, 1957, the plaintiff was posted as an attached officer at Yamunanagar, where he joined in that capacity on 2nd January, 1958. He was not given the house allowance which was admissible to him as Manager of the Branch at the rate of Rs. 50/- per mensem.

2. The plaintiff on 17th March, 1958, submitted a claim for Rs. 13.98 np. as the expenses incurred by him on the treatment of his wife by a doctor of the New Rajindra Hospital, Patiala. The Bank declined to pay him this amount. He was also not allowed to cross the efficiency bar which he was entitled to do on 1st April, 1958, and was ultimately compulsorily retired from service on 11th June, 1958, under Rule 27 of the Bank of Patiala (Staff) Rules, 1954. His appeals to the higher authorities against the order of compulsory retirement failed. Thereupon he instituted the present suit impugning the above order on the grounds as given below:

"(a) That the plaintiff has been removed from service without affording a reasonable opportunity of showing cause secured by Article 311 of the Constitution, therefore the said order is violative of the provisions of Article 311(2) of the Constitution of India.

(b) That plaintiff's conditions of service are governed by Patiala State Regulations and other State Rules or Orders (with the exception of pension rules) which were made applicable expressly to the Bank Staff by His Highness The Maharaja Dhiraj of Patiala vide his orders dated April 1941. The Patiala State Regulations volume I were sanctioned and issued by His Highness the Maharaja of Patiala in his sovereign capacity and therefore it is the law for the services in the State. Accordingly as provided in Regulation No. 9 of these Regulations, Plaintiff is entitled to continue in service under the State till the attainment of the age of 55 years. So the action taken against the plaintiff contrary to these statutory conditions Of service, is wholly illegal, inoperative and ineffective,

(c) That according to settled principles of the law of master and servant which equally govern the civil servants in the service of the State, it is not legally permissible to alter, modify, or vary the conditions of service by any unilateral action. The plaintiff never opted for the Bank of Patiala (Staff) Rules, 1954. He also never agreed and executed any agreement in terms of mandatory provisions of Rule 5 of these Rules to subject his service in the Bank to these rules. He rather expressed to the contrary and Intimated that he was governed by the Patiala State Regulations and other State Rules or Orders -- conditions of service, which stand secured and guaranteed to him by law. So Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, is wholly inapplicable to the plaintiff, and any action based thereon is completely illegal and null and void.

(d) That premature compulsory retirement amounts to forfeiture of plaintiff's term of service for there being no valid rule forming part of plaintiff's conditions

or service, empowering the authorities to order premature compulsory retirement. So obviously in the present circumstances premature compulsory retirement of plaintiff amounts to removal from service within the meaning of Article 311 of the Constitution of India. Before passing the order of removal from service against plaintiff he was not afforded a reasonable opportunity of showing cause against this action as secured to him by Article 311 of the Constitution. The failure to observe the mandatory provisions of law has also rendered the order of premature compulsory retirement wholly null and void.

(e) That in the case of plaintiff the expression "compulsory retirement has been deliberately used to contuse and mislead a clear case of removal from service for which Article 311 of the Constitution of India is immediately attracted.

(f) That Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, is wholly unconstitutional and null and void inter alia:

(i) That the Bank of Patiala (Staff) Rules, 1954, have been made in pursuance of delegation under Clause 4p) of the Bank of Patiala Regulation and Management Order, 1954, as published in the Pepsu Government Gazette dated 14th March, 1954. The delegation in favour of the Board lapsed on 7th March, 1954 with the termination of President's rule in Pepsu by revoking the proclamation dated 4th March, 1953, issued under Article 356 of the Constitution for the simple reason that thereafter the President could not exercise any power himself; therefore any authorisation by him for exercise of any power on his behalf is altogether out of question. So the Board of Directors of the Bank of Patiala had no authority, power or jurisdiction to approve the Bank of Patiala (Staff) Rules, 1954. on 25th March, 1954, and to enforce these from 1st April, 1954. Therefore the said Rules are ultra vires of the Article 309 of the Constitution of India.

(ii) That the Board of Directors of the Bank of Patiala had no power even before the delegation sought to be made through Clause 4(iii) of the Bank of Patiala Regulation and Management Order, 1954, to impose any conditions of service and recruitment of any type whatsoever except Provident Fund Rules on the staff serving in the Bank including the plaintiff and were to only follow vide orders of April, 1941, of the Maharaja of Patiala, Patiala State Regulations and other State rules or Orders to regulate the service conditions and recruitment of the staff serving in the Band.

(iii) That the plaintiff understands that the Bank or Patiala Management and Regulation Order, 1954, has been issued under the authority of the Advisor to the Raj Pramukh. The plaintiff maintains that any delegation in favour of the Board by the Advisor to His Highness the Raj Pramukh is wholly invalid and ineffective. So the Bank of Patiala (Staff) Rules, 1954, which derive their authority from an alleged delegation under Clause 4(iii) of the Bank of Patiala Regulation and Management Order, 1954, are also ipso facto rendered null and void.

(iv) That the plaintiff also maintains that the President was not satisfied as to the

provisions of the Bank of Patiala Regulation and Management Order, 1914.

(v) That the Bank of Patiala (Staff) Rules, 1954, seen to supersede provisions of Regulation No. 9 of the Patiala State Regulations, Volume I. It is the most elementary principle of law that rules made by a subordinate authority cannot abrogate the provisions of statute promulgated by Sovereign Legislature. So Rule No. 27 of the said Rules cannot alter the provisions of Regulation No. 9 of the Patiala State Regulations, Volume I, and thus stands framed illegally and without any authority of law.

(vi) That Bank of Patiala (Staff) Rules, 1954, also seek to supersede the Pepsu Punishment and Appeal Rules, 1953, promulgated by the President of India under Article 309 of the Constitution. According to Rule 4 of the said Rules the termination of plaintiff's services amounts to removal from service and it could only be ordered in accordance with the imperative procedure laid down in Rule 7 of the same Rules. The Board of Directors, a subordinate authority, cannot supersede the law and rules promulgated by a superior authority more specially when no express power "to repeal" has been conferred on the Board in terms of the delegation on the basis of which the Board claims power to make and amend rules. In the context of this legal position it is obvious, the Board, if at all given some powers, was only empowered to frame and lay down subsidiary rules in consonance with the general law issued by the superior Legislative authority from time to time. So Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, is illegal, void and inoperative.

(vii) That an authority which has power to make orders, rules or bye-laws can only exercise the power in the like manner and subject to the like sanction and conditions, to add to, amend, vary or rescind the rules, orders or bye-laws so made or issued by it. Bank of Patiala (Staff) Rules cannot supersede the Patiala State Regulations and other State Rules or Orders, which were not, issued by the Board of Directors of the Bank. These were made one of the conditions by the Sovereign to be complied with by the management for managing the affairs of the Bank, (viii) That even according to the terms of delegation, assuming it to be valid for the sake of argument, the Board has not been conferred any powers to make rules regarding compulsory retirement of Government servants, a power by itself distinct from the powers of dismissal and removal. Since the Board has not been delegated any power to make rules for compulsory retirement, therefore Rule 27 of the Bank of Patiala (Staff) Rules, 1954, is also wholly void and unenforceable.

(ix) That Article 309 itself is prospective in character. It is equally an established principle of law that subordinate legislation cannot operate retrospectively unless the statute expressly authorises the framing of Rules having retrospective effect. The Bank of Patiala (Staff) Rules, 1954, in so far as they are meant to apply to the Government employees serving in the Bank prior to 26th January, 1950, in supersession of their previous conditions of service are wholly unauthorised and illegal.

(x) That the Bank of Patiala (Staff) Rules, 1954, are also Invalid for they violate Article 320 of the Constitution of India. The Board has no authority to exclude the Government employees serving in the Bank of Patiala from the purview of the Public Service Commission.

(xi) That premature compulsory retirement under Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, in so far as it concerns a Government employee serving in the Bank prior to 26th January, 1950, clearly amounts to removal from service within the meaning of Article 311 of the Constitution of India because under plaintiffs conditions of service he had a right to continue in service till the attainment of age of 55 years. Consequently, Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, is a deliberate attempt to circumvent the constitutional safeguards provided under Article 311 and is, therefore, wholly illegal and void.

(xii) That Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, contravenes the guarantee Even to the public servants under Article 16 of the covenant entered into on 5th May, 1948, between the Rulers of pepsu Covenantee States and Government of India, a guarantee clearly held out to the Government servants and acted upon by the Government in favour of the public servants.

(xiii) That the Bank of Patiala (Staff) Rules, 1954, relate to the number, grading, cadre of posts, emoluments and other conditions of service and thus involve financial implications of far-reaching character and therefore according to the Pepsu Rules of Business, 1954, made under Article 166 of the Constitution of India it was mandatory to obtain previous concurrence of the Finance Department and place the proposal before the Chief Minister through the Chief Secretary before putting the rules in operation. In the absence of concurrence and the procedural requirements enjoined by the mandatory rules of business the order of the Board approving and authorising the promulgation of these Rules is wholly inoperative and without jurisdiction. So as a matter of law the Bank of Patiala (Staff) Rules, 1954, have not been put into operation and made in the way required by law.

(xiv) That Rule 27 of the Bank of Patiala (Staff) Rules, 1954, confers a very wide, vague, indefinite and mighty unreasonable power on the authorities in the Bank to pick and choose Govt. employees for hostile action of ordering premature compulsory retirement in a manner contrary to the mandatory provisions of procedural safeguards provided by Statutory Rules or Orders to Government employees in other Departments of the State. The Rule does not regulate the discretion on any rational principles. The conferment of such naked powers on a subordinate authority, subordinate to the Governor, is subversive of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. So Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954, on the face of it violates Articles 14 and 16 of the Constitution of India and is, therefore, void under Article 13 of the Constitution."

3. The plaintiff also made a grievance of the order by which he was posted as an

attached officer at Yamunanagar Branch of the Bank as in his opinion it amounted to reduction in rank and occasioned him a loss at the rate of Rs. 50/- per mensem to which he was entitled as house allowance. He went on to state that the Pepsu Government Servants Medical Attendance Rules, 1954, as published in Pepsu Government Gazette dated 15th August, 1954, governed his case and so the Bank was not justified in refusing him the payment of Rs. 13.98 np. spent by him on the treatment of his wife. He further averred that the Bank had not furnished him any reason for withholding his annual increment which fell due on 1st April, 1958, which was necessary under the Rules. He prayed that it might be held:

"(a) That his posting as "attached officer" reducing him in rank and status and depriving him of the Benefit of house allowance is illegal and unauthorised.

(b) That his order of premature compulsory retirement which is a pure and simple case of removal from service is illegal, ultra vires, -void and inoperative and further it be directed that notwithstanding this illegal order he is continuing in service enjoying all benefits privileges and rights available to him as a member of the service in his cadre.

(c) That his conditions of service are governed by Patiala State Regulations and other State Rules or Orders [with the exception of pension rules) and these conditions of service are not affected in any manner by the Bank of Patiala (Staff) Rules, 1954.

(d) That his grade increment at Rs. 25/- per mensem in his grade 340-20-5.00725-700 stands illegally withheld and be paid to him with effect from 1st April, 1958." and also claimed Rs. 969.05 nP. as arrears of pay, Provident Fund contribution, house allowance, medical aid dues and damages as detailed in the last paragraph of the plaint.

4. The defendant pleaded that the plaintiff's posting as attached officer at Yamunanagar did not amount to his reduction in rank as he continued to draw his salary in his own grade and added that he was not entitled to any house allowance during the period he functioned as attached officer since the allowance was admissible to the Manager of the Bank at Yamunanagar. As regards the payment of Rs. 13.98 nP. it was urged that the Pepsu Government Servants Medical Attendance Rules, 1954, were not applicable to the employees of the Bank and so the plaintiff was not entitled to the payment of this amount. The order of compulsory retirement is said to have been passed by the Board of Directors of the Bank on merits and under the Rules.

5. The learned Subordinate Judge settled the following issues:

(1) Whether the posting of the plaintiff as an Attached Officer from 2nd January, 1958, at Yamunanagar Office of the Bank amounted to reduction in his rank within the meaning of Article 311 of the Constitution of India? If so, what is its effect? If issue No. 1 is proved then:

(2) Whether the plaintiff was reduced in rank by the competent authority without giving him reasonable opportunity to show cause?

(3) Whether the plaintiff was reduced as an Attached Officer by the Chief Accountant of the Bank of Patiala who was not a competent authority to pass that" order?

(4) Whether according to the conditions of the service of the plaintiff the plaintiff is entitled to a sum of Rs. 361.66 nP. as the arrears of House Allowance from 24th November, 1957, to 30th June, 1958?

(5) Whether the medical relief claim for Rs. 13.98 nP. submitted by the plaintiff was detained by the Bank in an illegal manner and the plaintiff is entitled to get that sum under Pepsu Government Servants Medical Attendance Rules, 1954?

(6) Whether the plaintiff is entitled to arrears of increment amounting to Rs. 757- for three months which

accrued to him at the rate of Rs. 257- per mensem from 1st April, 1958, and also along with, it a sum 01 Rs. 54.75 nP. as the arrears of dearness allowance and Provident Fund which had increased because of the increase in his pay due to the above said increment?

(7) Whether the order of premature compulsory retirement dated 7th June, 1958, of the plaintiff amounted to removal according to the provisions of Article 311 of the Constitution of India, and as such, the removal of the plaintiff was illegal and ultra vires?

If issue No. 7 is proved then:

(8) Whether the plaintiff was given reasonable opportunity to show cause by the competent authority while passing the order dated 7th June, 1958, which resulted in the premature compulsory retirement of the plaintiff?

(9) Whether the conditions of service as given in Patiala State Regulations (9.1) were applicable on the plaintiff and as such his retirement before his attaining the age of 55 is illegal, inoperative and ineffective?

(10) Whether the Bank of Patiala (Staff) Rules, 1954, are ultra vires and unconstitutional and, therefore, the retirement of the plaintiff under Rule 27 is illegal and void? In case issue No. 10 is not proved then:

(11) Whether Rule 27 of the Bank of Patiala (Staff), Rules, 1954, is not binding on the plaintiff?

(12) Whether the Board of Directors of the Bank of Patiala was not properly and legally constituted and, therefore, order of the Board of Directors dated 7th June, 1958, of retiring the plaintiff prematurely is illegal, mala fide and ineffective?

(13) (i) Whether the Court has jurisdiction to give a finding on any other matter of plea taken in the plaint except that the premature compulsory retirement of

the plaintiff amounts to removal or not?

(it) If issue No. 13 (1) is decided in favour of the plaintiff whether the suit in the present form is not maintainable because certain acts of the President are challenged?

(iii) Is the plaintiff competent to challenge the Rules or the Rule making powers detailed in the plaint and the Court can go into this matter or entertain the suit 4ua these matters?

(14) Relief.

(15) Whether the order of premature compulsory retirement is wholly illegal, mala fide, unreasonable ana against the conditions of service, if so, what is its effect?

6. Issues Nos. 2 and 8 were decided against the defendant and the other issues were found in favour of the -plaintiff. As a result the plaintiff was granted the decree prayed for with costs except that he was not allowed the sum of Rs. 1007- claimed by him as damages in paragraph No. 23 of the plaint. The learned counsel for the defendant-appellant impugned its correctness and in doing so reiterated the arguments pressed before the trial Court.

7. The plaintiff-respondent was compulsorily retired from service under Rule 27 of the Bank of Patiala (Stall) Rules, 1954, Exhibit P. 67, which runs as:

"An employee shall retire at 55 years of age provided that:

(i) The Bank may, at its discretion and without giving reasons, retire any employee from the Bank's service after he has completed the age of 50 years or the service of 25 years whichever happens first and no claim to special compensation on this account will be entertained,

(ii) The Bank retains the absolute right to retire any employee after he has completed 10 years of service without giving any reasons and no claim to special compensation on this account win be entertained, This right will not be exercised except when it is in the interest of the Bank to dispense with the further services of an employee such as on account of inefficiency, dishonesty, corruption or infamous conduct."

These rules were made by the Board of Directors of the Bank by virtue of the powers conferred upon them by the State Government, vide Clause 4 (iii) of "The Bank of patiala Regulation and Management Order, 1954," Exhibit P.52, promulgated by the President on 27th February, 1954, in exercise of the powers vested in him in relation to Patiala and East Punjab States Union by proclamation Dated 4th March, 1953, issued under Article 356 of the Constitution. It amongst other things also provides:

"Whereas it is expedient to provide for the better regulation and management of the affairs of the Bank of patiala, the President is pleased to promulgate the

following order:

1. Short title and commencement.

(a) This order may be called the Bank of Patiala Regulation and Management Order, 1954.

(b) it shall come into force at once and repeal an previous orders and instructions in so far as they are inconsistent with the provisions of this order.

3. Management;

(1) The management, control, supervision and direction of the affairs and business of the Bank shaw vest in a Board constituted as follows:

(1) Finance Secretary to the State Government -- Chairman Ex-officio.

(2) One representative of the Reserve Bank of India.

(3-5) Three members appointed by the State Government.

(6) Managing Director of the Bank of Patiala.

Provided that the Board may appoint a committee consisting of the Chairman and such other member or members of the "Board as it may select and vest in "he committee thus appointed such of its powers and functions as it may deem necessary to carry on the day to day work of the Bank.

(2) * * * * *

(3) * * * * *

(4) The Managing Director shall be appointed or removed and his terms of service determined by the Slate Government.

4. Functions of the Board:

(1) Without prejudice to the generality of the provisions of Clause 3(1), the Board shall--

(i) *****

(ii) *****

(iii) appoint, remove, dismiss and lay down the general conditions of service of the employees of the Bank ether than the Managing Director, and frame rules in this behalf"

Previous to the promulgation of the above Bank of Patiala Regulation and Management Order, 1954, the Patiala State Regulations and other-State Rules or Orders (except the pension rules) were applicable to the Bank "Staff in obedience to the commands of the Ruler of Patiala state dated 8th April, 1941, Exhibit P. 8.

8. The learned counsel for the plaintiff-respondent and also the Court below assailed validity of Rule 27 on the grounds that the Bank of Patiala Regulation and Management Order, 1954, Exhibit P.52, could not have superseded the commands of the Ruler of erstwhile Patiala State, dated 8th April, 1941, Exhibit P. 8, that the Bank of Patiala Regulation and Management Order, 1954, was published in the official gazette after termination of the President's rule and thus stood spent up when the Bank of Patiala (Staff) Rules, 1954, were made, and that the Bank of Patiala Regulation and Management Order, 1954, did not authorise the Board of Directors to make Rule 27, Exhibit P. 67.

9. There can be no dispute about the fact that the commands of the Ruler of erstwhile Patiala State, dated 8th April, 1941, Exhibit P.8, had the force of law since he exercised all the powers of a sovereign and discharges all his functions as such in matters, judicial, executive and administrative. In this connection reference may be made to *S. Anup Singh v. Sardarni Harbans Kaur*, AIR 1958 Punj 116, which laid down,

"The erstwhile Patiala State was an independent and sovereign State, and its Ruler, so far as internal matters were concerned, exercised powers identical with those exercised by the Parliament in England. So far as internal matters were concerned his words had the weight and authority of law, and he exercised all the powers of a sovereign and discharged all his functions as such in matters judicial, executive and administrative."

The Supreme Court in *Madhaorao Phalke Vs. The State of Madhya Bharat*, while dealing with similar question observed,

"The Maharaja of Gwalior being an absolute monarch in an Indian State there was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens."

The learned counsel for the defendant appellant did not contest correctness of this proposition of law but added that in spite of it the relevant clauses of the Bank of Patiala Regulation and Management Order, 1954, Exhibit P. 52, could be promulgated by the President under Article 309 of the Constitution of India which runs as:

"309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs at the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make

rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

10. The President and the Governors in their spheres enjoyed plenary powers to make rules regulating the recruitment and the conditions of service of persons appointed to the posts enumerated in the aforesaid Article. It is nowhere mentioned that the President and the Governors were precluded from exercising these powers in cases where rules regulating the recruitment and the conditions of service were incorporated in any Act before the coming into force of the Constitution of India. This view finds further support from the provisions made in Articles 313 and 372 of the Constitution. Article 313 provides,

"Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution".

The previous laws in the matter were to remain operative till the framing of the new rules under the Constitution. According to Article 372 all the law in force immediately before the commencement of this Constitution was to continue in force until altered or repealed or amended by a competent Legislature or other competent authority." The law in force could be repealed or amended by competent authority when permissible under the Constitution. The President was thus competent to promulgate the Bank of Patiala Regulation and Management Order, 1954. Exhibit P. 52, under Article 309 when read in the light of provisions made in Articles 311 and 372. The learned counsel for the plaintiff-respondent could not cite any authority to the contrary.

11. The Bank of Patiala Regulation and Management Order, 1954, was made on 27th February, 1954, and published in the official Gazette on 14th March, 1954. The Board of Directors framed the Bank of Patiala (Staff) Rules on 25th March, 1954. The President's rule under Article 356 of the Constitution in Pepsu was revoked on 7th March, 1954. It has been made out that the Bank of Patiala Regulation and Management Order, 1954, stood spent up on the date the President's rule came to an end, particularly when the same was not published in the official Gazette during continuance thereof and as such the Bank of Patiala (Staff) Rules, 1954, Exhibit P. 67, are without any authority. The President's order came into force on the date the same was made and operation of the same cannot be said to have been postponed till the date of its publication in the official Gazette. The publication in no way added to its authority but only brought contents thereof to the notice of all concerned in a recognised and authorised manner and no more. There is no warranty for holding that the order ceased to be operative on the date, i. e., 7th March, 1954, when the President's rule in

pepsu was revoked.

The authorities relied upon by the learned counsel for the" plaintiff-respondent (1) The State of Uttar Pradesh Vs. Seth Jagamander Das and Others, Gopi Chand Vs. The Delhi Administration, Tarak Chandra Mukherjee and Others Vs. Ratan Lal Ghosal and Others, and (4) The Government of Andhra (Now Andhra Pradesh) Vs. East India Commercial Co. Ltd., in support of his view-point are not applicable to the facts of the instant case. All these cases relate to the effect of the repeal or an automatic end by efflux of time of a statute, in the instant case the President's order Exhibit p. 52, does not fall in the above category and in no way came to in and on She relocation of the president's rule in the Pepsu.

12. The learned counsel for the defendant-appellant urged that the Board of Directors were competent to frame Rule 27 by virtue of the power vested in them under Clause 4 (iii) of the President's Regulation and Management of the Bank of Patiala Order, Exhibit P. 52, which is as under : --

"4 (1) Without prejudice to the generality of the provisions of Clause 3 (1), the Board shall --

(iii) appoint, remove, dismiss and lay down the general conditions of service of the employees of the Bank, other than the Managing Director, and frame rules in this behalf".

13. The trial Judge observed that the above clause empowered the Board of Directors to appoint, remove and dismiss the employees of the Bank and also to lay down the general conditions of their service. According to him the Board was not competent to lay down the-conditions under which the employees were to be appointed, removed or dismissed from service. He also remarked that the term, "General conditions of service," should be understood in the sense it had been used in "The Pepsu Services Regulations, 1952", and that only these rules could have been made by the Board which find their place under this heading in Chapter 111 thereof. A cursory perusal of this chapter will show that it embodies, rules regarding the age of entering Government service, temporary service, date of reckoning allowance, charge of office, leaving jurisdiction, personal allowance, local allowance, and transfer on duty. These are all of very minor importance so far as the management of the Bank of Patiala are concerned. There was hardly any occasion for the President to disturb the existing state of affairs by delegating powers to the Board of Directors to frame rules on such trivial matters which were not of any special interest to the management of the Bank.

The restricted interpretation to the clause as suggested by the learned counsel for the plaintiff-respondent and accepted by the trial Court is not borne out by the plain reading of the clause. The words "and frame rules in this behalf" at the end of the clause are very significant. These connote that the Board was empowered to frame rules re: appointment, removal, dismissal and general conditions of service of the employees of the Bank which obviously included compulsory retirement as well. in fact Clause 4 (iii) and (v) of Exhibit P. 52 (The

Bank of Patiala Regulation and Management Order, 19M) replaced Clause (a) of the Ruler's command, Exhibit P. 8. It can best be understood when these provisions in the two documents are read side by side.

14. The learned Subordinate Judge has drawn on Rule 30 of the Government of Patiala and East Punjab States Union Rules of Business made by the Rajpramukh under Article 166 read with Article 238 of the Constitution of India for holding that the Board could not frame Rule 27 of the Bank of Patiala (Staff Rules, 1954. Rule 30 amongst other things also provides that cases relating to the proposals for making or amending of rules regulating the recruitment and the conditions of service of persons appointed to the public services and posts in connection with, the affairs of the State (Proviso to Article 309) should be submitted to the Chief Minister. The President by his Management and Regulation of the Bank of Patiala Order, Exhibit P. 52, has delegated his powers to frame rules regulating the recruitment and the conditions of service of the employees of the Bank to the Board of Directors, and so the Bank of Patiala (Staff) Rules, 1954, Exhibit P. 67, were not to be submitted to the Chief Minister. It was only in those cases where Governor had not delegated such powers that orders of the Chief Minister were to be obtained. Therefore, Rule 30 is not indicative of the fact that the President's order, Exhibit P. 52, did not confer powers on the Board of Directors to frame Rule 27. It may also be mentioned here that the word "frame" used in Exhibit P. 52 meant make and not merely draft as is apparent from the context. The Board of Directors made the Rule under proper authority.

15. The learned counsel for the defendant-appellant further assailed the learned Subordinate Judge's conclusions that the Board of Directors of the Bank had not been properly constituted, that all the Directors were not present in the meeting when the Bank of Patiala (Staff) Rules, 1954, were passed, that the said Rules were neither published in the official Gazette nor brought to the notice of the plaintiff-respondent, and that these were ultra vires of the Constitution and also contravened para 16 of the covenant entered into by the Rulers of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsta and Hafagarh for the formation of Patiala and East Punjab States Union.

16. The President's order, Exhibit P. 52, in Clause (3) lays down that the management, control, supervision and direction of the affairs and business of the Bank shall vest in a Board comprising of (1) Finance Secretary to the State Government (Chairman Ex-officio), (2) One representative of the Reserve Bank of India, (3 to 5) Three members appointed by the State Government, and (6) Managing Director of the Bank of Patiala. It is common ground that name of the representative of the Reserve Bank of India who was to serve as one of the directors of the Bank had not been notified in the official Gazette. The trial Judge observed that in the absence of such a notification the Board could not be said to have been properly constituted. He entirely misconceived the true implications of the President's order, Exhibit P. 52. The names of the Finance Secretary, one representative of the Reserve Bank of India, and the Managing Director of the

Bank of Patiala were not required to be separately notified in the official Gazette. They were to be members of the Board by virtue of their office. It was for the Reserve Bank of India to depute their representative on receipt of agenda of each meeting to attend the particular meeting. They were not required to restrict their choice to one person who alone could attend all meetings of the Board and that being so, the question of notifying his name in the Gazette did not arise.

17. The plaintiff-respondent conceded as was also evident, from a copy of extract from the Minute Book of the Board of Directors, Exhibit P. 66, that four out of six directors were present in the meeting held on 25th March, 1954, when the Bank of Patiala (Staff) Rules, 1954, were passed. The learned Subordinate Judge observed that as management and control of the Bank affairs vested in all the six directors, therefore, four out of them were not competent to make the Rules. The Bank of Patiala Regulation and Management order, Exhibit P. 52, did not provide that six directors and not a lesser number would be competent to transact the business. In *Ganesh Flour Mills Co., Ltd. v. Jag Mohan Saran* AIR 1942 Lah 68, it was laid down,

"It is a cardinal rule of corporation law that prima facie a majority of its members is entitled to exercise the powers of the corporation and where no special provision is made, the whole are bound not only by the major part, but by the major part of those present at a regular corporate meeting whether the number present be a majority of the whole or not. This rule is equally applicable to a company under the Companies Act, save so far as its constitution or articles, or the Act itself, exclude or modify it. The same rule applies where a corporate power is delegated to a smaller body. Therefore, unless a construction of the articles of association of a company leads to the conclusion that there was an intention to supersede the ordinary rule, it must be held that, where no quorum, has in fact been fixed, the acts of a major part of the directors for the time being are valid".

In the instant case four of the Six directors could, therefore, make the Rules.

The learned counsel for the plaintiff-respondent in support of his view to the contrary relied upon AIR 1945 23 (Privy Council) , which laid down,

"In England as well as in India in the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form, as it were but one collective trustee, and therefore must execute the duties of the office in their joint capacity. It is not uncommon to hear one of several trustees speak of as the acting trustee but the Court knows no such distinction; all who accept the office are in the eyes of the law acting trustees. If any one refuse or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. The act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved. Therefore the transfer of the idol's property executed by one only of the

trustees of the idol cannot bind the idol".

The ruling is not applicable to the facts of the present case because legal status of trustees is not the same as of directors of an incorporate body.

18. The learned Subordinate Judge has tried to make much of the Board of Directors' omission to notify the Rules, Exhibit P. 67, in the official Gazette. In his opinion the omission was fatal to the validity of the Rules. We are not inclined to agree with him. Neither the President's order, Exhibit P. 52, nor the Bank of Patiala (Staff) Rules, 1954, Exhibit P. 67, or any other provision having the force of law made publication of the Rules obligatory. The learned counsel for the plaintiff-respondent, however, maintained that the publication was essential and in support of his view referred to the case Commissioner of Income Tax, Bombay Vs. Finlay Mills Ltd., which enunciated,

"Natural justice required that before a law (Jaipur Opium Act) can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is : or at least there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence".

The Bank of Patiala (Staff) Rules, 1954, cannot be equated with a statute like Jaipur Opium Act. What was essential for giving publicity to Jaipur Opium Act could not be adjudged as essential for publicity of the Rules, Exhibit P. 67, which indeed concerned only a handful of citizens employed by the Bank of Patiala, A summary of the Rules was circulated to all branches of the Bank (or information of the staff vide circular No. 1733, copy Exhibit P. 10. The Rules received the due publicity and their validity cannot be impugned to the want of the same. The plaintiff-respondent, as is patent from Exhibit P. 11, was informed of the promulgation of these Rules. He wrote to the Managing Director that he would like to be governed by the old service conditions which stood extended and guaranteed to him by law. He could not, therefore, plead with any justification that his attention was not drawn to the Rules.

19. Article 16 of the covenant entered into by the Rulers of Faridkot, Jind, Kapurthala, Malerkotia, Nadha, Patiala, Kalsia and Nalagarh for the formation of Patiala and East Punjab States Union is in the following terms : --

"(1) The Union hereby guarantees either the continuance in service of the permanent members of the public services of each of the Covenantee States on conditions which will be not less advantageous than those on which they were serving on the 1st of February, 1948, or the payment of reasonable compensation or retirement or proportionate pension.

(2) The Union further guarantees the continuance of pensions and leave salaries sanctioned by competent authorities in any of the Covenantee States to members of the public services of that State who have retired, or proceeded on leave preparatory to retirement, and " the compassionate allowances granted to

dependents or deceased members of those services, before the date on which the administration of that State is handed over to the Raj Pramukh."

The plaintiff-respondent urged that Rule 27 contravened the guarantee given to him by the above Article and so was not binding on him. In this connection suffice it to say as held by the Supreme Court in *Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax*,

"that a clause in a treaty between high contracting parties does not confer any right on the subjects which could be made the subject-matter of action in the Courts, and that the Patiala Union is not bound by it, because it was not a party to the Covenant".

The Rule on this score cannot be struck down.

20. The question whether Rule 165-A (Bombay Civil "Services Rules) permitting the State Government to compulsorily retire its servants on attaining the age of 50 years was *intra vires* or otherwise was considered by the Supreme Court In *The State of Bombay Vs. Saubhagchand M. Doshi*, , and it was enunciated that the rule was *intra vires* of the Constitution. Rule 27 of the Bank of Patiala (Staff) Rules, 1954, is similar to Rule 165-A of the Bombay Civil Services Rules and does not offend the Constitution of India,

21. The trial Court's findings that the Bank of Patiala (Staff) Rules, 1954, Exhibit P. 67 might have been framed by the Board of Directors but were not put into operation, that the order of the plaintiff's compulsory retirement was in fact an order of removal from service, and that the order was *mala fide*, came in for severe criticism by the defendant-appellant.

22. There is no doubt that the Rules, Exhibit P. 67, nowhere mentioned in so many words that those would come into force on a particular date but this did not mean and connote that their enforcement was kept in abeyance or postponed to some undefined future date. The preamble to the Rules mentions that the Rules would supersede all the rules previously in force. Rule 2 lays down that the Rules shall apply to every whole time employee in the service of the Bank as on 1st April, 1954, or appointed thereafter. The Board of Directors passed the Rules on 25th March, 1954, Exhibit P. 66, and a circular letter Exhibit P. 10 was issued by the Managing Director to all concerned on 27th March, 1954, that the Rules would come into force with effect from 1st April, 1954, and replaced the "P. S. R." so far as the employees in the Bank were concerned. The Board of Directors ordered compulsory retirement of the plaintiff-respondent on 7th June, 1958, and the order was conveyed to him on 11th June, 1958. These facts abundantly established that the Rules, Exhibit P, 67, were made applicable to the staff with effect from 1st April, 1954, and were very much in force at the time the order compulsorily retiring the plaintiff-respondent from service was passed.

The order, Exhibit P. 51, runs as:

"Resolved that Shri Ram Pershad Grade 1 Officer having completed 50 years of

age and more than 25 years of service, be retired from the service of the Bank under Rule No. 27 of the Bank of Patiala (Staff) Rules, 1954.

Resolved further that Shri Ram Pershad be allowed to avail of privilege leave, if any, due to him and that he be deemed to retire from the service of the Bank as from the date of expiry of such leave".

The order did not visit the plaintiff-respondent with any penal consequences, inasmuch as he was entitled to all the benefits that had accrued to him by remaining in set vice till the date of his retirement and that being so, it did not attract Article 311(2) of the Constitution. The mere fact that he was served with a notice to show cause as to why he should not be compulsorily retired from service did not alter merits of the case. The notice was served by way of abundant precaution to enable the Board of Directors to correctly ascertain whether it would be in the interest of the Bank to retain him in service and longer. The Supreme Court in *The State of Bombay Vs. Saubhagchand M. Doshi*, while dealing with the rights of State Government to retire their servants compulsorily before attaining the age of superannuation laid down : --

"The ratio decidendi of *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, is this : Under the rules an order of dismissal is a punishment laid on a Government servant, when it is found that he has been guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal, and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment one who is removed, is. An order of retirement differs both from an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit.

The policy underlying Article 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect to. Thus, the real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss of benefits previously earned. Applying this test, an order under Rule 165-A compulsorily retiring servant before superannuation cannot be held to be one of dismissal or removal, as it does not entail forfeiture of the proportionate pension due for past services.

It does not make any difference in the position, that Rule 165-A provides, unlike

Note I to All 465-A in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), that the power is not to be exercised except in cases of misconduct or inefficiency. When the Government decides to retire a servant before the age of superannuation, it does so for some good reason, and that, In general would be misconduct or inefficiency. In providing that an action would be taken except in case of misconduct or inefficiency, Rule 165-A only made explicit what was implicit in Note I to Article 465A. The fact to be noted is that while misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held -- and there is no duty to hold an enquiry -- is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311(2). It should be added that questions of the above character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311(2).

The provision in Rule 165-A does not, on its true construction, impose any fetter on the power previously conferred on the State in terms absolute, to terminate the services of its servant without assigning any reason. It is really in the nature of departmental instructions to be followed when action is proposed to be taken under that rule, and makes it clear that the enquiry into the charges is only for the satisfaction of the authorities. Consequently Rule 165-A is not violative of Article 311(2) and is intra vires, and the order compulsorily retiring the civil servant who had attained the age of 50 years, but before superannuation, without holding an inquiry is valid."

The plaintiff's case answers all the tests mentioned in the above authority for compulsory retirement in the affirmative. He can by no stretch of law be said to have been removed or dismissed from service.

23. There is no denying the fact that the Managing Director while putting up the case of the plaintiff's compulsory retirement along with similar cases of other employees before the Board of Directors included in his note, copy Exhibit P. 37, some incidents which previously had been subject-matter of disciplinary action against the plaintiff and on this score it was held by the Court below that the order of the plaintiff's compulsory retirement was mala fide. In the nature of the proceedings initiated against the plaintiff it was incumbent on the Managing Director to bring briefly the entire record of his service to the notice of the Board and no adverse conclusion could indeed be drawn for his having done so. The plaintiff was given an opportunity by a show-cause notice to study it and give his

viewpoint to the Board. The Managing Director did not keep back the material incorporated in the note from him. It may be stated here that a committee was constituted to go through the service record of all employees who had completed 25 years of service or more in the Bank and/or were 50 years of age or above to find out whether in the interest of the Bank all or any one of them should be made to compulsorily retire from service in terms of Rule 27 or not. This committee recommended that the plaintiff's retention in service would not be in the Interest of the Bank and as a result of their recommendation the Managing Director put up the case before the Board for orders.

It is correct that previously also the Bank (Exhibit P. 28) on 23rd September, 1953, had retired the plaintiff from service but was reinstated on appeal (Exhibit P. 29) by the Government, but this did not bar the Board from taking a similar action on some future date particularly when the first order of retirement was found defective on legal grounds as is evident from a copy of the letter dated 10th June, 1954, from the Finance Secretary to the Managing Director (Exhibit P. 30). It has neither been alleged and much less proved that the Managing Director or any other Director of the Bank took the decision with some ulterior motive. The record of plaintiff's service is not free from blemish and a perusal thereof will not justify an inference that he was made to retire before time without sufficient reason, although it could have been so done in terms of Rule 27. The order did not suffer from this infirmity as alleged by the plaintiff and upheld by the trial Judge.

24. The learned counsel for the defendant-appellant finally impugned the trial Court's decision that the plaintiff's posting as an attached officer at Yamunanagar Branch of the Bank meant reduction in rank and that he was entitled to (i) house allowance for the period he functioned in that capacity, (ii) medical expenses incurred on the treatment of his wife, and (iii) cross the efficiency bar on 1st April, 1958.

25. Rule 6 of the Bank of Patiala (Staff) Rules, 1954, provides that the staff of the Bank shall be classified as mentioned therein or in any other grade by the Board from time to time. It then proceeds to give the different classes which also includes officers, 1st, 2nd and 3rd Grades. The learned counsel for the defendant-appellant contended that the Rules nowhere indicated that officers of the 1st Grade should always be posted as Managers and while referring to Rules 76 and 77 further maintained that transfers of the employees were left at the discretion of the Bank keeping in view the exigencies of service and efficiency and were to be effected under orders of the Managing Director. The plaintiff conceded that as an attached officer he continued to draw his grade pay but he made a grievance of the fact that he was posted under a Manager who was a 2nd Grade officer which amounted to his reduction in rank. The Rules permitted the course adopted by the Bank which was also in conformity with the canons of administrative propriety and exigencies of service. The Courts are not competent to scan the wisdom of such administrative orders, particularly when these have

been passed in consonance with the Rules and thereby have not materially affected rights of persons guaranteed by their conditions of service. The plaintiff in the circumstances cannot be said to have been reduced in rank by his posting as an attached officer at Yamunanagar Branch of the Bank.

26. It is common ground that house allowance is admissible to the Manager of a Branch of the Bank and some other posts but not to an attached officer. The Rules do not state that every 1st Grade officer wherever he may be stationed and whatever post he may hold will be entitled to house allowance. The plaintiff respondent thus could not legitimately claim house allowance for the period he worked as an attached officer at Yamunanagar Branch office of the Bank. Similarly the Rules which are a self-contained code in no way entitles an employee of the Bank to claim expenses incurred by him on the treatment of his wife. The Government instructions extending such a concession to other classes of their employees cannot be availed of by the plaintiff. His claim for reimbursement of the amount spent by him on the treatment of his wife was misconceived and ill-founded and deserved to be ignored. He was due to cross the efficiency bar in the time scale 340-20-500/25-700 on 1st April, 1958. This was withheld by the Board in all certainty for his bad record of service. It was not a case of mere delay or stoppage of increment. The Board in the nature of things could stop his crossing of the efficiency bar. He is precluded from making a grouse of it.

27. For the above reasons, the appeal succeeds and the judgment and decree of the learned Subordinate Judge are set aside. The plaintiff-respondent's suit is dismissed keeping in view the intricate questions of law and facts involved in the matter, the parties are left to bear their own costs.

Tek Chand, J.

28. I agree.