
(1997) 09 BOM CK 0017

In the Bombay High Court

Case No : Appeal No. 149 of 1997 in Writ Petition No. 1384/96, Appeal No. 645 of 97 in Writ Petition No. 1385/96, Appeal No. 646 of 97 in Writ Petition No. 1386/96, Appeal No. 647 of 97 in Writ Petition No. 1387/96, Appeal No. 648 of 97 in Writ Petition No. 1651/96

Union of India and another

APPELLANT

Vs

Commander Uday Date and others

RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 51
Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 6
Income Tax Act, 1961 — Section 297
Merchant Shipping Act, 1958 — Section 80(1)
Merchant Shipping Act, 1986 — Section 17, 5, 78, 79, 80
Motor Vehicles Act, 1939 — Section 217(2), 47(3)
Saurashtra Rent Control Act, 1951 — Section 13(1)

Citation : AIR 1998 Bom 157 : (1998) 2 ALLMR 207 : (1998) 1 BomCR 214

Hon'ble Judges : M.B. Shah, C.J.;S.D. Gundewar, J

Bench : Division Bench

Advocate : R.A. Dada, Addl. Solicitor-General, S.M. Shah, R.C. Master, Mrs, S.V. Bharucha, instructed by H.D. Rathod, Virendra Tulzapurkar, Shyam Mehta and Satendra Kumar, for the Appellant;

Judgement

M.B. Shah, C.J.—These appeals are filed against the judgment and order dated 5th/6th December, 1996 passed by the learned Single Judge, directing the appellants to grant Certificates of Service as provided u/s 80(1) of the Merchant Shipping Act, 1958 (hereinafter referred to as "the Act"), to the respondents, who have attained the rank of Lieutenant in the Executive Branch of the Indian Navy prior to 14th August, 1986. Section 80 of the Act was deleted from 14th August, 1986. The petitioners in Writ Petition No. 490 of 1997 and Writ Petition No. 924 of 1997 have prayed for grant of similar Certificate of Service.

2. These appeals and writ petitions involve common questions of law and facts.

Contentions raised and submissions made in all these matters are identical. Hence, all these matters are disposed of by this common judgment. For the sake of convenience, we would refer to the facts stated in Appeal No. 149 of 1997.

3. The learned Additional Solicitor-General appearing on behalf of the appellants vehemently submitted that :---

(1) The amending Act manifested an intention to delete all provisions relating to "certificates of service" and thereby the following consequences had ensued :---

(a) No Certificate of Service can be granted after 14th August, 1986;

(b) No application for a Certificate of Service can be entertained, as there is no provision in the amended Act to consider and grant such an application;

(c) The phrase "duly certificated" can only refer to the certificates of competency or a Certificate of Service granted prior to 14th August, 1986;

(d) The Shipping Master is now enjoined only to allow a ship to sail if duly certificated officers are on board as provided in section 84;

(e) A Certificate of Service granted by a foreign country cannot be recognised if it is granted from and after 14th August, 1986;

(f) This is in consonance with International Convention.

(2) As the Original Petitioner has not applied for a Certificate of Service prior to 14th August, 1986 and the petition is filed only in 1996, there was no right accrued in favour of the petitioner prior to 14th August, 1986 because :

(a) A right to apply can never be treated as an accrued right;

(b) No application for a Certificate of Service could be granted without taking into account the provisions of section 80(5) and (6) read with the provisions relating to qualifications other than examination u/s 79;

(3) Prior to 14th August, 1986, the petitioner has only right of applying for Certificate of Service and, unless the Chief of Naval Staff had certified and the Government had determined the application in accordance with the provisions of section 80(5) and (6), the application would not have been granted.

(4) Assuming any right of Certificate of Service was accrued on 14th August, 1986, the same was clearly abrogated by the amending Act 33 of 1986, read with Act 13 of 1987.

4. For appreciating the aforesaid contentions, deleted section 80 of the Act is required to be considered. It reads as under :---

"80. Certificates of service of naval officers.---(1) A person who has attained the rank of lieutenant in the executive branch of the Indian Navy shall be entitled to a Certificate of Service as the master of a foreign-going ship without examination.

"(2) A person who has attained the rank of lieutenant or sub-lieutenant in the engineering branch of the Indian Navy shall be entitled without examination, if a lieutenant, to a Certificate of Service as first class engineer, and if a sub-lieutenant to a Certificate of Service as second class engineer.

"(3) The Central Government may, by rules made under this Act and subject to such conditions and restrictions as may be specified therein, provide for the grant of certificates of service to officers of the Indian Naval Reserve Forces who have attained the prescribed ranks.

"(4) A Certificate of Service shall differ in form from a certificate of competency and shall contain the name and rank of the person to whom it is delivered, and the Central Government shall deliver a Certificate of Service to any person who proves himself to be entitled thereto.

"(5) Notwithstanding anything contained in this section, the Central Government may, if it is of opinion that a person who is entitled to a Certificate of Service under this section is not a fit person to hold such certificate, refuse to grant or deliver such certificate to him.

"(6) The provisions of this Act (including the provisions relating to penalties) shall apply in relation to a Certificate of Service as they apply in relation to a certificate of competency."

The aforesaid section was deleted by the Merchant Shipping (Amendment) Act, 1986. Section 5 of the said Act 33 of 1986, which is a saving section, reads as under :---

"5. For the removal of doubts, it is hereby declared that the amendments made in the principal Act by this Act shall not apply to, or in relation to, any Certificate of Service granted u/s 80 or recognised u/s 86 of the principal Act before the commencement of this Act and the principal Act shall apply in relation to such certificates as if this Act had not been enacted."

The objects and reasons for amending the said Act are as under :---

"The International Convention on the Standards of Training, Certification and Watch keeping for Seafarers which was adopted in 1978 at the Conference organised by the Inter-Government Maritime Consultative Organization (now International Maritime Organization) came into force with effect from the 28th April, 1984. Government of India ratified the Convention on the 16th November, 1984. The Convention lays down basic requirements with respect to training", certification and watch keeping for seafarers in deck, engine and radio departments and also prescribes the syllabi for examination of candidates for various certificates and introduction of a number of training courses aimed at improving the standards of seafarers. "

5. The learned Additional Solicitor-General further relied on Act No. 13 of 1987, which is a second amendment of the Act, which, inter alia, interjects in the Act

section 75A, which reads as under :---

"75-A. Definitions.---In this Part unless the context otherwise requires,---

(a) "contiguous zone" means the contiguous zone of India described or notified as such for the time being u/s 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(b) "convention" means the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978, signed at London on the 7th day of July, 1978, as amended from time to time;"

Section 86A provides that foreign ships shall not sail to any port or place in India without the certificated officers.

Section 10 of Act No. 13 of 1987, which is the saving section, reads as under:--

"Notwithstanding anything contained in this Act, the amendments made to the principal Act by this Act shall not apply to, or in relation to, any certificate of competency granted u/s 78 or recognised u/s 86 of the principal Act before the commencement of this Act, and the principal Act shall continue to apply in relation to such certificates as if this Act had not been enacted."

6. The learned Additional Solicitor-General has further pointed out that, prior to 1958, also, in the Act of 1923, there were provisions u/s 17 of the Act that a person who has attained the rank of Lieutenant in His Majesty's Navy or in the Indian Navy shall be entitled to a Certificate of Service as the Master of a Foreign going ship without examination. Provision similar to section 80(2) was also there.

7. In the light of the aforesaid amendment in the Act, it has been vehemently contended by the learned Additional Solicitor-General that

(a) Section 80 is deleted and there is no provision in the amended Act to consider and grant an application by the petitioner for grant of Certificate of Service;

(b) The saving clause specifically saves the certificates granted prior to the amendment. It manifested intention not to give further certificate, without examination;

(c) this section was deleted to bring the procedure for passing the examination in conformity with the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, and what should be incorporated in the certificate was determined in April, 1984 by the International Maritime Organisation. The Government of India has ratified the said Convention on 16th November, 1984. Therefore, after deletion of section 80 in the year 1986, there is no question of granting Certificate of Service;

(d) In any set of circumstances, the persons who attained the rank of Lieutenants were not having any vested or accrued rights, because they have not applied for such certificates at the relevant time;

(e) There is no provision or procedure for grant of such certificates after deletion of section 80.

8. In our view, all these contentions are rightly considered and rejected by the learned Single Judge keeping in view the object of section 80(1) of the Act. The said section confers the crystallised right on the persons who attained the rank of Lieutenants in the Executive Branch of the Indian Navy. Section 80(1) of the Act specifically provides that "A person who has attained the rank of lieutenant in the executive branch of the Indian Navy shall be entitled to a Certificate of Service as the master of a foreign-going ship without examination". From this section, it can be said that---

(a) The said provision is in a mandatory term;

(b) A statutory right is conferred on persons who have attained the rank of Lieutenants in the Executive Branch of the Indian Navy to get the certificates of service as Masters of foreign-going ships without examination; and

(c) There is no question of filling any application for getting certificate. It follows on attaining the rank of lieutenant.

9. The question, therefore, is whether the said right is taken away by deletion of section 80 of the Act. In our view, by deletion of section 80, the right to obtain a certificate prior to its amendment is not taken away by any statutory provision. The saving Clause also nowhere provides that persons who have already attained the rank of Lieutenants would not be entitled to get the said Certificate of Service after amendment of the Act. The effect of deletion of section 80 is that, after its deletion, if a person attains the rank of Lieutenant in the Executive Branch of the Indian Navy, he will not be entitled to get the Certificate of Service without examination, but the right, which was crystallised prior to its amendment, is in no manner divested by any specific provision.

10. However, the learned Additional Solicitor-General submitted that, vide section 80(5), the appellants are entitled to refuse to grant the Certificate of Service to a person who is not a fit person to hold such a Certificate. He further submitted that, under sub-section (6), the provisions of the Act (including the provisions relating to penalties) which are applicable to certificates of competency are also equally applicable to a Certificate of Service. For this purpose, he relied upon sub-section (2) of section 79, which, inter alia, provides that the Central Government shall grant to every person, who is duly reported by the examiners to have passed the examination satisfactorily and to have given satisfactory evidence of his sobriety, experience, ability and general good conduct on board ship, such a certificate of competency, as the case may be. Hence, rights are not crystallised.

11. In our view, section 79, sub-section (2), refers to grant of certificate of competency to a person who has appeared in the examination and his work, including sobriety, experience and ability and general good conduct on board during the sail in India or prior to it was found satisfactory. Penalties are also

provided, but the same would not mean that the right which is conferred under sub-section (1) is not crystallised. As stated above, it gives an absolute right to get the Certificate of Service as the Master of foreign-going ship without examination. The only embargo is sub-section (5) of section 80, which provides that the Central Government may refuse to grant or deliver certificate to a person who is not a fit person to hold the said certificate. But this process of determining the fitness of a person would arise only in those cases where a person is entitled to Certificate of Service. Therefore, the Legislature has rightly used the words "the Central Government may refuse to grant or deliver such certificate". The question of delivery of certificates would arise only in those cases where persons are entitled to such certificates and certificates are ready.

12. The learned Single Judge rightly arrived at the conclusion that it is settled law that the saving provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. The rights which are not saved by the saving provision are not destroyed but they are saved by the principles embodied in section 6(c) of the General Clauses Act, 1897. For this purpose reliance is placed upon the decision rendered by the Supreme Court in *Commissioner of Income Tax Vs. Shah Sadiq and Sons*, wherein the Apex Court has held as under :---

"14. Under the Income Tax Act of 1922, the assessee was entitled to carry forward the losses of the speculation business and set off such losses against profits made from that business in future years. The right of carrying forward and set off accrued to the assessee under the Act of 1922. A right which had accrued and had become vested continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued unless the repealing statute took away such right expressly. This is the effect of section 6, General Clauses Act, 1897.

"15. In this case the "savings" provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words whatever rights are expressly saved by the "savings" provision stand saved. But, that does not mean that rights which are not saved by the "savings" provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section 6(c), General Clauses Act, 1897. The right to carry forward losses which had accrued under the repealed Income Tax Act of 1922 is not saved expressly by section 297, income tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by section 297 either expressly or by implication."

The learned Single Judge also relied upon the decision in the case of *Bansidhar and Others Vs. State of Rajasthan and Others*, wherein it is held that the State

of Rajasthan had a right to excess land which was not merely an inchoate right under the Rajasthan Tenancy Act, 1955, but a right "accrued" within the meaning of section 6(c) of the Rajasthan General Clauses Act, 1955. Hence, the liability of the land-owner to surrender the excess land as on 1-4-1966 was a liability "incurred" also within the meaning of the said provision. For this purpose, the Court held:

"...In other words whatever rights are expressly saved by the "savings" provision stand saved. But that does not mean that rights which are not saved by the savings provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section 6(c), General Clauses Act, 1897..."

13. However, findings given by the learned Judge are challenged by the learned Additional Solicitor-General appearing on behalf of the appellants. He relied upon the decision rendered by the Supreme Court in the case of Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., , and contended that petitioner was not having vested rights and right to get Certificate is completely obliterated. In that case, the Court dealt with the question, where, in 1988, the appellant was granted a stage carriage permit u/s 47(3) of the Motor Vehicles Act, 1939, for a period of three years. The Motor Vehicles Act, 1988, came into force from 1st July, 1989. The said permit was renewed for a further period of 5 years and the second renewal was granted in 1995. Objection was raised that such permit was void. The question was whether the operation of the old Act without the permit was saved by section 217(2)(a) read with sub-section(4) of the new Motor Vehicles Act. The Court considered various decisions and held that whenever an Act is repealed, It must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law. The Court thereafter referred to passage from Crawford's Interpretation of Law (1989) p. 626, which is as under:---

"An express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving Clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving Clause in order to preserve existing rights and to exempt pending litigation."

Thereafter, the Court observed that section 6 of the General Clauses Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not :

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding, or remedy may be instituted continued or enforced.

The Court further held as under :---

"Repeal is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a cause "total or pro tanto repeal."

14. Relying on this, the learned Additional Solicitor-General submitted that, in the present case, the intention of the Legislature in deleting section 80 of the Act is not a matter of mere form, and the Legislature has abrogated the former enactment by deleting section 80, which gave a right to obtain the Certificate of Service without examination. He submitted that only rights acquired by obtaining the Certificate of Service are saved by the saving Clause, and, therefore, those who have not obtained the certificates prior to the deletion of section 80 are not entitled to get the same after its repeal, as their rights, are abrogated. In our view, there is no doubt that section 80 of the Act is deleted, but, at the same time, there is no express abrogation of the rights conferred and, hence, those rights are saved under the provisions of section 6 of the General Clauses Act.

15. Mr. Dada, learned Addl. Solicitor-General, further referred to paragraph 25 of the said judgment for contending that the petitioner was having right to get the Certificate but as he had not acquired the Certificate, the said right is not "accrued right". The, observations in the said paragraph 25 are as under :---

"On "Saving of rights acquired", in the Principles of Statutory Interpretation by G.P. Singh (6th Edn.) - 1996 at p. 413, the learned author has stated that the effect of Clauses (c) to (e) of section 6 of the G.C. Act (General Clauses Act) is speaking briefly, to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such right and liabilities. At p. 418, the learned author has stated that the privilege to get an extension of a licence under an enactment is not an accrued right and no application can be filed after the repeat of the enactment for renewal of the licence. In Legislation and Interpretation by Jagdish Swarup (1974 Edn.) at p. 539, it is stated that the power to take advantage of an enactment may without impropriety be termed as a "right", but the question is whether it is a "right accrued". A mere right (assuming it to be properly so called) existing in the members of the community or any of them to take advantage of an amendment, without any act done by an individual towards availing himself of

that right, cannot properly be deemed a "right accrued".

16. He also referred to the discussion" in paragraph 29 of the said judgment, which is as under :---

"In Sutherland Statutory Construction (3rd Edn.) Vol. I by Horack, in paras 2043 to 2045, it is stated that :

"Under common law principles of construction and interpretation all rights, liabilities, penalties, forfeitures and offences which are of purely statutory derivation and unknown to the common law are effaced by the repeal of the statute which granted them, irrespective of their accrual. Likewise, where a common law principle is abrogated, its effective existence is destroyed both as to past actions and to pending proceedings. However, a right of a common law nature which is further embodied in statutory terms exists as an enforceable right exclusive of the statute declaratory of it, and therefore the right is not expunged by the repeal of the statute.

"Since the effect of a repeal is to obliterate the statute and to destroy its effective operation in future, or to suspend the operation of the common law when it is a common law principle which is abrogated, any proceedings which have not culminated in a final judgment prior to the repeal are abated at the consummation of the repeal. When, however, the repeal does not contemplate either a substantive common law or statutory right, but merely the procedure prescribed to secure the enforcement of the right, the right itself is not annulled but remains in existence enforced by applying the new procedure".

"Effect on vested rights

"Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.

"In order to become vested; the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition.

"Effect upon inchoate rights

"Rights of action which are dependent upon a statute, and which are still inchoate and not reduced to possession, or perfected by final judgment, are lost by the repeal of the statute from which they stem. This rule of construction is

simply a restatement of the common law principle of construction that the repeal of statute operates to divest all rights accruing under the repealed statute and all proceedings not concluded prior to the repeal, since inchoate rights are by definition not vested rights such as to escape the common law rule of effacement. The inchoate rights are but an incident to the statute and fall with its repeal."

17. He submitted that the petitioner was not having vested or accrued right, because he has not applied for getting the certificate. Hence, it cannot be said that his rights were perfected to the degree that the continued existence of the statute cannot further enhance the acquisition of the certificate. On the contrary, for getting the said certificate, he was required to apply and after considering the requirements of the provisions of section 80(5) and (6), the Central Government may or may not issue the certificate.

18. In our view, from the aforesaid discussions by the Apex Court, it is clear that, if the right is vested in the petitioner under the statute under which it was acquired, it is not affected by the repeal of section 80. The petitioner's right to get certificate was perfected to the degree that continued existence of the statute cannot further enhance the same. There was no question of filling application for getting the certificate. Subsequent procedure prescribed to get delivery of the certificate u/s 80(5) or (6) is deleted, but the right itself is not annulled. Hence, it remains in existence and the certificate can be obtained by filing application. The provisions of section 80(5) and (6) are merely procedural. u/s 80(1) of the Act, persons, who have attained the rank of Lieutenants, were entitled to get the Certificates of Service as a matter of course, and it was a mandate of the Parliament that such persons would get the Certificates of Service. The right conferred upon the petitioner to get the Certificates was absolute in effect and was not dependent upon happening of one or other events specified in the statute.

19. Further, in the aforesaid case, the Court observed that there is a distinction between the "right acquired or accrued", and "privilege, hope and expectation to get a right". A right to apply for renewal and to get a favourable order would not be deemed to be a right accrued unless some positive acts are done, before repeal. The Court, therefore, held that privilege to obtain a renewal or confirmation is not an "accrued right". As stated above, in the present case, there is no question of hope or expectation on the part of the petitioner that he may or may not get the Certificate of Service as section 80(1) clearly provided that the petitioner was entitled to get the certificate and the right to get the certificate had accrued on attaining the rank of Lieutenant at the relevant time.

20. The learned Additional Solicitor-General referred to the decision in the case of Isha Valimohamed and Another Vs. Haji Gulam Mohamad and Haji Dada Trust, . In that case, the question was whether a landlord is entitled to maintain a suit for recovery of possession from the tenant, on the ground of sub- letting, u/s 13(1)(e) of the Saurashtra Rent Control Act (even after its repeal from

1-1-1964) read with section 51 Proviso (2) of the Bombay Rent Act, although the sub-letting was made during the pendency of the Saurashtra Rent Control Act (i.e. before 1-1-1964) and neither the notice to terminate the contract was given nor the suit was filed before the date on which the Saurashtra Rent Control Act was repealed (i.e. before 1-1-1964). In that case, the Court referred to the observations made by the Judicial Committee in the case of *Abbott v. Minister of Lands*, (1895) A.C. 425 to the effect that the mere right existing at the date of the repealing statute to take advantage of the provisions of the Act repealed was not a "right accrued" within the meaning of the saving Clause.

21. Relying on the said observations, it is submitted that the petitioner was having right to apply to get Certificate of Service at the date of repeal of the statute, but that right itself is taken away by the deletion of section 80, and, therefore, he was not having any accrued right. In that case, the Court has referred to the decision in the case of *Director of Public Works v. Ho Po Sang*, (1961) A.C. 901, wherein it was held that the fact that the Director of Public Works had given to the lessee notice of intention to grant a re-building certificate, which would enable the lessee to recover vacant possession from the persons in occupation of the premises, did not confer any right to the certificate on the lessee, since various conditions had remained to be fulfilled before the certificate could be granted, so that the lessee had no more than a hope that it would be granted. The Court referred to the following passage from the said judgment :---

"Lord Morris of Borth-Y-Gest said:

"It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceedings is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. Upon a repeal the former is preserved by the Interpretation Act. The latter is not.

"In *Free Lanka Insurance Co. Ltd. v. Ranasinghe*, (1964) A.C. 541 Lord Evershed said that the distinction between what was, and what was not, a right must often be one of great fineness and the Court held that a claim given by the Ceylon Motor Car Ordinance of 1938 to an injured person against the other party involved in an accident was "something more than a mere hope or expectation.....he had in truth a right.....although that right might fairly be called inchoate or contingent."

22. Same principles are re-stated in the case of *Director of Public Works & another v. Ho Po Sang & others*, 1961 (2) All. E.R. 721, and the Court has further observed and agreed with the following observations of Blair-Kerr, J., that:

"It is one thing to invoke a law for the adjudication of rights which have already accrued prior to the repeal of that law; it is quite another matter to say that,

irrespective of whether any rights exist at the date of the repeal, if any procedural steps is taken prior to the repeal, then, even after the repeal the applicant is entitled to have that procedure continued in order to determine whether he shall be given a right which he did not have when the procedure was set in motion."

Similar principles are reiterated in the following decision rendered by the Supreme Court in the case of M/s. P.V. Mohammad Barmay Sons Vs. Director of Enforcement, :---

"There is a distinction between a legal proceeding for enforcing a right acquired or accrued or liability, penalty, forfeiture, punishment incurred and the legal proceedings for acquisition of a right, the former is saved whereas the latter is not. In spite of repeal the right to investigation or to take legal proceedings remain unaffected and preserved as if the old Act continues to be operative. What remains to be done, after the Act came into force, is the quantification, if necessary after due investigation and legal proceedings and if proved to imposed the penalty, forfeiture or punishment. The Court takes cognizance of the offence and not the offender or the acts done. What the Court is to enquire into is whether the Act is incompatible with the repealed Act and whether it manifested any contrary intentions to the Repealed Act. Unless a different intention has been manifested in the Act, the Repealed Act would continue to be operative. Even in a case of bare repeal accompanied by a fresh legislation on the same subject, the provisions of the new Act will have to be looked into to find where and how far the new Act envisages a contrary intention affecting the operation of section 6 of the General Clauses Act. Unless such contrary intention is manifested, liabilities, penalties, forfeiture or punishment under the Repealed Act will continue to exist and remain in force by operation of section 6 of the General Clauses Act."

23. In view of this settled legal position, it cannot be said that the judgment and order passed by the learned Single Judge is in any way illegal or erroneous. As stated above, the right to get the Certificate of Service is conferred upon the person. No application or further investigation or legal proceeding is necessary. No investigation was required to be carried out to decide whether the Certificate of Service should or should not be given. Further, upon the repeal of the said Act, the right is not abrogated and, hence, remains preserved u/s 6 of the General Clauses Act. The petitioner has attained the rank of Lieutenant and was having a vested or accrued right of getting Certificate of Service. It was an absolute right and not subject to any conditions precedent under which that right was to be investigated and could be defeated. What Was only required to be done was that he was to be given the certificate as contemplated. No doubt, before delivering such certificate, the Central Government was required to find out that such person is fit person to hold such certificate or not. If he is found not fit to hold such certificate, it could refuse to grant or deliver such certificate. But that was not a condition precedent for entitlement of such certificate.

24. It was further contended that in view of the second amendment of the Act, there was a clear intention on the part of the Legislature to abrogate all the right under subsection (1) of section 80. He submitted that because of the International Convention on the Standards of Training, Certification and Watch keeping for Seafarers, 1978 signed by the Central Government, before issuing Certificate of Service, examination is a must. In our view, there is no substance in this contention, because even the saving section 10 of the Amending Act No. 13 of 1987, which is reproduced above, also nowhere provides that such right was abrogated. On the contrary, it provides that, notwithstanding anything contained in the Act, the amendments made to the principal Act shall not apply to, or in relation to, any certificate of competency granted u/s 78 or recognised u/s 86 of the principal Act before the commencement of this Act, and the principal Act shall continue to apply in relation to such certificates as if this Act had not been enacted. The other provisions of the Amending Act nowhere envisage a contrary intention affecting operation of section 6 of the General Clauses Act.

25. In this view of the matter, in our view, there is no substance in these appeals and are, therefore, dismissed. The appellants are directed to issue Certificates of Service, as directed by the learned Single Judge, within a period of eight weeks from today.

26. For the foregoing reasons, both Writ Petitions No. 490 of 1997 and No. 924 of 1997 are allowed. The respondents are directed to issue to the petitioners Certificates of Service within eight weeks from today.

27. Issuance of certified copy of this judgment is expedited.

28. Appeals dismissed & petitions allowed.