

(1972) 01 DEL CK 0023

In the Delhi High Court

Case No : Letter Patent Appeal No. 65 of 1970

Union of India

APPELLANT

Vs

I.M. Lal and Another

RESPONDENT

Date of Decision : 20-01-1972

Acts Referred:

Citation : (1972) ILR Delhi 601

Hon'ble Judges : V.S. Deshpande, J;Rajinder Sachar, J;Hardayal Hardy, J

Bench : Full Bench

Advocate : R.M. Mehta and Anoop Singh, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) In these letters patent appeals (L.P.A. Nos. 27, 64, 65 and 66 of 1970) the main question is whether the retired members of the Indian Civil Service residing in India are entitled to be paid their pensions in pound sterling in the United Kingdom. The decision depends on the construction of the relevant provisions of law. The guarantee that the conditions of their service would be the same as they were at the commencement of the Constitution is contained in Article 314 of the Constitution which is as follows:

" EXCEPT as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions, of service as respects remuneration, leave and pensions and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement."

(2) Sarvasbri Krisima Prasad, I.M. Lal and R.P. Kapur who had been "appointed by the Secretary of State" within the meaning of Article 314 to the Indian Civil

Service retired after the commencement of the Constitution. Sarvashri Krishna Prasad and I.M. Lal retired after serving the full period of their service while Shri R.P. Kapur chose to retire after serving over 25 years but not for the full period of service. Their entitlement to pension (called "annuity" being paid annually) is governed primarily by Articles 561, 983 and 984 of the Civil Service Regulations as they stood at the commencement of the Constitution. They are, Therefore, reproduced below:-

"561.An officer who has been twenty-five years in service counting from the date of his covenant or from the date of the dispatch of the Secretary of State announcing his appointment (whichever may have been earlier); and who has rendered twenty-one years" active service is entitled, on his resignation of service being accepted to an annuity of Rs-10,666.10.8. The annuity is subject to a minimum of 1,000"

"983(A)When payment of annuities or gratuities is taken at the Home Treasury, it may be taken at the option of the recipient either in rupees converted into sterling at such rate of exchange as the Secretary of State in Council may by order prescribe or at the fixed sterling minimum.

(B)When payment is taken in India, it may be taken at the option of the recipient either in rupees or at the fixed sterling minimum converted into rupees at such rate of exchange as the Secretary of State in Council may by order prescribe; provided that annuitants of the following classes may, at their option, receive the fixed sterling minimum converted into rupees at the rate of 1s.4d to the rupees ,so long as they continue to reside in India:-

(I)Annuitants resident in India who were in receipt of annuities converted at this rate on the 1st February 1921.

(II)Annuitants of Indian domicile who were, on the 1st February, 1921, temporarily drawing their annuities in sterling. (III)Annuitants of Indian domicile who were serving in the Indian Civil Service on the 1st February 1921."

"984.Transfer from the Home Treasury to an Indian treasury, and vice versa is permitted twice only."

(3) Shri R.P. Kapur is also governed by the Premature Retirement Rules, 1937, the relevant part of paragraphs 2 and 3 of the Second Schedule of which are as follows:-

"2.Pensions expressed in rupees in this schedule shall be converted at the minimum rate of 1s.9d. per rupee, subject to the conditions stated in Article 936 of the Civil Service Regulations, or in any rule which may be constituted therefore.

THE conversion into rupees of pension expressed in sterling in this schedule shall be governed by the provisions of Article 933 A or 983, as the case may be, of the Civil Service Regulations, or of any rule that may be constituted for either of the

said Articles.

3.The pension admissible to an officer who is permitted to retire under these rules shall be as follows:-

(A)To an officer of the Indian Civil Service, N/21 x 1,000, subject to a maximum of 1000 a year: Provided that whenever the sum of Rs. 10,666.10.8 exceeds 1,000 in value that sum shall be substituted for 1,000 in both places where it occurs in this clause, and the pension shall be recalculated accordingly.

(4) In exercise of the power conferred on him by Csr 983, the Secretary of State fixed the rate of exchange for the purposes of Csr 983 at ls.6d. per rupee on 25-2-1928. This rate has never been revised since then. With the transfer of power on 15th August 1947 the Indian Civil Service came to an end. Most of the non-Indian members thereof left India. Under rule 3 of the Indian Administrative Service (Recruitment) Rules, 1954 made under the All India Services Act, 1951, the initial constitution of the Service included the former members of the Indian Civil Service not permanently allotted to the Judiciary including Sarvashri Krishna Prasad and R.P. Kapur. According to Article 312 of the Constitution and the All India Services Act, 1951, the Indian Administrative Service is "common to the Union and the States". Under the Indian Administrative Service (Cadre) Rules, 1954, a cadre of the Indian Administrative Service is constituted for each State or group of States. All members of the Indian Administrative Service in the country are divided into these cadres. The strength of the cadre of each State is determined under the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. As pointed out in Prem Kumar v. The Union of India, (1969) Delhi 121 and in Debesh Chandra Das Vs. Union of India (UOI), no member of the Indian Administrative Service could be allotted either to the Union territory or to the Union of India as such without belonging to a State cadre. Consequently, Shri R.P. Kapur was allotted to the State of Punjab and Shri Krishna Prasad to the State of Uttar Pradesh. Shri I.M. Lal was a judicial officer of the State of Punjab. Each of these persons received their pay and were to receive their pensions from their respective State Governments and not from the Union of India.

(5) Civil Service Regulations 561 and 983 were amended on 29-6-1957 with effect from 12-6-1956 by the Government of India by notification No. F 7(19) EV/57 deleting the provision regarding payment of pension in pound sterling in view of the changed circumstances and fixing the amount of pension in rupees at Rs. 13,333.33 in terms of the rate of exchange of ls.6d. to a rupee fixed in 1928 as stated above.

(6) On 6-6-1966 the rupee was devalued in terms of pounds and some of the Indian members of the former Indian Civil Service residing in India conceived the idea of benefiting thereby. Demands were made by Shri Krishna Prasad on the Government of Uttar Pradesh and by Shri I.M. Lal and R.P. Kapur on the Government of Punjab for payment of their pensions in sterling in the United Kingdom. All these demands were rejected, though after some indecision in the

case of Shri I.M. Lal by the State Government. Writ petitions were thereupon filed by these three members against their respective State Governments and the Union of India was also joined as a party. They alleged that the amendment of 1957 was ultra virus Article 314 of the Constitution and prayed that this Court should order the respective State Government and the Union of India to pay to them their pensions at the fixed minimum of , in the United Kingdom. The respondents defended the writ petitions and averred that the amendment of 1957 was valid and that the petitioners were not entitled to be paid their pensions in pounds in the United Kingdom.

(7) T.V.R. Tatachari J. was of the view on a construction of the Civil Service Regulations 561 and 983 that Sarvashri I.M. Lal and Krishna Prasad were entitled to be paid their pensions in the United Kingdom in pounds, and, Therefore, allowed their writ petitions. The case of Shri R.P. Kapur was, however, distinguished on the ground that he joined the Indian Administrative Service and thereupon lost his entitlement to be paid his pension in pound sterling in the United Kingdom. His writ petition was, Therefore, dismissed. Hence the letters patent appeals by the Union of India and the States of Punjab and Uttar Pradesh against Sarvashri I.M. Lal and Krishna Prasad. Shri R.P. Kapur has also filed his appeal against the Union of India and the State of Punjab. As stated above, in fact, every member of the former Indian Civil Service (including Shri Krishna Prasad) who was not permanently allotted to the Judiciary and who chose to serve the Government of India after 15-8-1947 became a member of the Indian Administrative Service. Article 312(1) expressly states that:-

"PARLIAMENT may by law provide for the creation of one or more all-India services common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service."

It follows that the All India Services Act, 1951 and the Rules and Regulations made there under which govern Sarvashri Krishna Prasad and R.P. Kapur could not prevail against Article 314 of the Constitution which occurs in the said chapter. With great respect, Therefore, we are unable to agree with the learned Judge that Shri R.P. Kapur's case is in any way different from those of Sarvashri Krishna Prasad and I.M. Lal.

(8) The claim for payment of pensions in pounds in the United Kingdom raises the following three questions for consideration before it can succeed, namely:-

(1) Whether the entitlement to the payment of sterling in the United Kingdom is such "as changed circumstances may permit" within the meaning of Article 314 of the Constitution ?

(2) Was there any right at all to the payment of pension in pounds in the United Kingdom immediately prior to the commencement of the Constitution ? and (3) If so, was such right enforceable ?

(9) Question No. 1 Article 314 guarantees the continuance, on and after the commencement of the Constitution, of

(1) the same conditions of service as respects remuneration, leave and pension; and

(2) the same rights as respects disciplinary matters or rights as similar thereto.

Both of them are to continue "as changed circumstances" may permit. As we read Article 314, we do not see any reason to restrict the qualification of "changed circumstances" to apply only to the "same right as respects disciplinary matters or rights as similar thereto" and not to apply to the "same conditions of service as respects remuneration, leave and pension". For, both these parts of the guarantee given by Article 314 have to be necessarily subject to the inevitable changes brought about by the transfer of power and the Constitution. No difference can be made between the two in this respect. We are, Therefore, in respectful disagreement with the contrary view expressed in *N. Bakshi Vs. Accountant General and Another*, . A learned commentator makes the following observation regarding the Patna decision:-

" THIS construction of Article 314 has not been disturbed by the Supreme Court on appeal." (Basu's Commentary on the Constitution of India, Fifth Edition, Volume 5, page 335).

We see, however, nothing in the Supreme Court decision in *The Accountant General, Bihar and Another Vs. N. Bakshi*, in an appeal against the Patna decision approving in any way the above view of the Patna High Court. On the contrary, in *R.P. Kapur Vs. Union of India (UOI) and Another*, the Supreme Court has expressly treated both these parts of the guarantee as being on the same footing in respect of the "changed circumstances". At page 445 in *R.P. Kapur's* case, a reference was made by the Supreme Court to their previous decision in *Bakshi's*(3) case and it was observed :-

" THAT case is an authority for the proposition that where any rule is framed, which is inconsistent with the guarantee contained in Article 314 with respect to remuneration, leave and pension, that rule would be bad. In the present case, we are concerned with another part of Article 314, namely, "the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement The same principle will apply to this part of Article 314 also."

At page 449 in *R.P. Kapur's* case their Lordships further observed:-

" BUT Article 314 does not speak of the protection which members of the All India Services had on August 13, 1947, it speaks of protection which they had immediately before the commencement of the Constitution, i.e., on January 25, 1950, and that brings us to a consideration of the changes that took place between 1947 and 1950 after the transfer of power on August 15, 1947."

Their Lordships then proceed to consider "the effect of the transfer of power" as also the effect of the Constitution. The decision in R.P. Kapur's case,⁽⁵⁾ Therefore, shows that both the parts of the guarantee in Article 314 are subject to "changed circumstances". There is no warrant, Therefore, for saying that it is only the latter part of the guarantee which is so subject and that the former part of the guarantee regarding "conditions of service as respects remuneration, leave and pension" is not subject to "changed circumstances". In these cases it was not contended that these conditions of service are not subject to changed circumstances at all. What we have said above is only to record our awareness of the Patna view and the commentary. We must, Therefore, know the precise meaning of the expression "changed circumstances". In R. P. Kapur's⁽⁵⁾ case, Wanchoo J. defined the said expression as follows at page 442 of the report :-

" WHAT the words "changed circumstances" mean is the change in circumstances due to transfer of power in August 1947 and the coming into force of the Constitution in January 1950, and no more."

Civil Service Regulations 561 and 983 were promulgated long ago in the nineteenth century when there was hardly any Indian in the Indian Civil Service about which it was cynically said that it was neither Indian nor civil nor a service. This is why C.S.R. 983 (a) provides for payment of annuities or gratuities to be taken at the "Home Treasury". The situation was reversed when India became independent with the result that there was hardly any non-Indian left in the Indian Civil Service immediately before the commencement of the Constitution. As stayed above, the Indian Civil Service itself ceased to exist and the members of that Service who had been appointed by the Secretary of State lost their jobs. After Independence, they were appointed to the Indian Administrative Service by the Government of India and allotted to different States. This was a traumatic change. The payment of the pension in sterling at the "Home Treasury" became an anachronism for several reasons. Firstly, when England ruled India the home of the empire was in London and the expression "Home Treasury" had a meaning. After the Independence, the British Treasury could not be the "Home Treasury" for India and this expression became meaningless. The treasury for payment of pensions to Sarvashri Lal, Kapur and Prasad was not even the Indian Treasury but the treasury of the State to which each of them was allotted. Secondly, under the British rule, the British Government was the master of the foreign exchange. As a rule, the pension of a person who has served in India should be payable in the Indian currency in India. But this rule was perverted for the benefit of the then members of the Indian Civil Service to enable them to take their pension in the United Kingdom because most of them were Englishmen and returned to England after retirement. Almost the first step taken by the interim Government of India even prior to the transfer of power on 15-8-47 was to enact the Foreign Exchange Regulation Act which came into force on 25-3-1947 which made it impossible for the pension to be paid in sterling in the United Kingdom to the members of the Indian Civil Service residing in India as will appear later when we examine the provisions of the said Act. The change in

the circumstances is so drastic and so total that we find it difficult to persuade ourselves that any member of the Indian Civil Service residing in India should, so late in the day, be allowed to claim payment of his pension in the United Kingdom. We cannot conceive of any independent country in the world which would pay pension to any member of its own services in a foreign currency in a foreign country. It is not only never done because it would be an unjustifiable expenditure of foreign exchange but would also be regarded as humiliating to the self-respect of a national Government. Thirdly, under C.S.R. 983 (a) payment of pension in sterling can be taken only "at the Home Treasury" implying thereby that the payment is made by the Government which had appointed the payees so that both for the payer and the payee the Home Treasury was in the United Kingdom. If possible, C.S.R. 983(a) should certainly be read mutates mutans. For instance, at page 442 of the Supreme Court decision in *R.P. Kapur v. Union of India*(5) referred to above, *Wanchoo J*, suggested that the Government of India should be substituted in place of the Secretary of State in the changed circumstances. If C.S.R.983(a) could be made applicable to the post independent India by this method, it would still continue to be operative. But if we are to do so, we will have to substitute the treasury of the State Government concerned in place of the British Treasury. No State Government in India possesses any foreign exchange which is a central subject. It cannot, Therefore, pay any pension in sterling in the United Kingdom. It was suggested by *Shri I.M. Lal* that such payment could be made to him through the High Commissioner for India in London. But no State Government in India has any control over the High Commissioner and the authority liable to pay pension is the concerned State Government and not the Government of India. Fourthly, the whole difference between the circumstances prior to Independence and after the Independence of India is the change of masters. While the British could pay pension in pounds to their employees as pounds was their currency, the Government of India can pay to its employees only in rupees which is the Indian currency. The members of the Indian Civil Service themselves realised this and, Therefore, not a single instance has been brought to our notice of any of them claiming to be paid in pounds in the United Kingdom while he was residing in India after Independence. Fifthly, the devaluation of rupee which made these members of the former Indian Civil Service in India make this claim has really nothing to do with the amount of payment received by them. Devaluation has affected the value of rupee only vis-a-vis the pound for the purpose of foreign exchange. It has no relevance inside the country. Payment of pension after Independence is a domestic matter for the Government of India and its employees in India. It is a startling proposition to advance that any civil servant should be paid in foreign currency in a foreign country merely to get the benefit of devaluation of the home currency. The fluctuations in the rate of exchange are concerned only with the international trade and payments and not with domestic trade and payments. Sixthly, what would be regarded as "changed circumstances" making it impossible to continue a particular right or condition of service would have to be decided according to the nature of the right and the context in which it is sought to be exercised. The

object of the payment of pension is to assure a civil servant of remuneration for past services after retirement. Every civil servant in this respect is similarly situated. If no other civil servant is entitled to get his pension in a foreign currency to get the benefit of devaluation of the home currency, there is no reason why after Independence only the members of the Indian Civil Service should be able to do so. In *The State of Madras Vs. C.G. Menon and Another*, the question was whether India could be regarded as a "British possession" within the meaning of Fugitive Offenders Act, 1881 of U.K. so as to make that part of the said Act applicable to India. At page 287 the Supreme Court observed as follows:

"IT is plain from the above provisions of the Act as well as from the Order in Council that British Possessions which were contiguous to one another and between whom there was frequent inter-communication were treated for purposes of the Fugitive Offenders Act as one integrated territory. ... The situation completely changed when India became a Sovereign Democratic Republic. After the achievement of Independence and the coming into force of the new Constitution by no stretch of imagination could India be describe -ed as a British possession."

Just as India could not be regarded as a "British possession" after Independence, similarly a member of the Indian Civil Service cannot be paid his pension at the British Treasury in the United Kingdom thereafter on the reasoning of this decision. The doctrine that a civil servant holds his office during the pleasure of the sovereign was imported into India from English law. In 1947 F.C.R. 89 (Federal Court) the right of a civil servant to recover arrears of pay was resisted on the ground that in view of the prerogative of the Crown no servant of the Crown could maintain an action against the Crown to recover arrears of pay. It was held, however, that this prerogative must be deemed to have been abandoned in India when the contrary provision in section 60 of the CPC was enacted. This decision was followed by the Supreme Court in *State of Bihar v. Abdul Majid*, (1954) Scr 786 Lastly, the claimants can take the pension in pounds in the United Kingdom only "at the Home Treasury." Even if this claim is conceded, it is incapable of being enforced as the British Treasury cannot be told by a State Government in India to pay it and will not pay it. Thus the claim may exist in theory but cannot be enforced as there is no "Home Treasury" from which it can be paid. The members of the Indian Civil Service in India thus cannot recover the "pound sterling" as there is no "Home Treasury" just as Shy lock the Jew in "Merchant of Venice" could not recover his "pound of flesh without" shedding a drop of blood. We are, Therefore, of the view that even if it is assumed that these persons could claim to be paid their pensions in pounds in the United Kingdom immediately prior to the transfer of power, the change of circumstances brought about by the transfer of power and the Constitution of India made it impossible for such claim to be put into practice.

(10) Question No. 2 Even if it is assumed for the sake of argument that "the

changed circumstances" do not come in the way of the assertion of this claim, we must consider whether such a right to the payment of pension in pounds in the United Kingdom at all existed immediately prior to the commencement of the Constitution. What is the nature of the right claimed ? The entitlement or eligibility to pension is created by C.S.R. 561 to an "annuity of Rs. 10,666.10.8" (subsequently increased to Rs. 13,333.33). The right to payment is in rupees only. The last sentence of C.S.R. 561 is "the annuity is subject to a minimum of 1000". What does this mean ? Its object is to guarantee that the amount of pension will not fall below 1000 at any time. Formerly when currencies were on gold standard, such guarantees used to be expressed in what used to be known as "gold clauses". In rule 151 of Dicey and Morris on "Conflict of Laws", Eighth Edition, page 867, the purpose of such a gold clause is stated as follows"-

" WHERE English law is the proper law of a contract, any reference therein to payment in gold of a specified standard of weight and fineness is presumed to be a gold value clause, i.e. a definition of the means by which the amount of the indebtedness is to be measured and ascertained, not a definition of the means by which the debt is to be discharged, and to give rise to an obligation to pay in legal tender of the stipulated currency an amount which, on the day of payment, will be sufficient to buy gold coins corresponding to the nominal amount of the debt. It is not an obligation to pay gold coins."

Learned authors further observed at page 873:-

" INSTEAD of choosing the value of gold coin as the yardstick for the purpose of measuring the debtor's obligation..... (parties may agree) for the payment of a sum of money linked with the purchasing power of a given currency. All these clauses are of the same legal nature as gold value clauses. There also exist clauses defining the amount of units of a given currency owed by the debtor by reference to another currency."

In Guaranty Trust Company of New York v. Berryman Henwood, 307 U.S. 247(9), the bonds were payable at the option of the holder in one or more countries in the currencies of those countries. At page 255, the U.S. Supreme Court remarked as follows about the object of such a clause:-

" THIS debtor's obligation was a monetary obligation. The foreign currencies promised were not bartered for as commodities, but their function was that of money to be paid in countries in which they were legal tender".

At page 257 it was further observed that:-

" THE admitted purpose of the multiple currency provision supplementing the gold clause was the same as that of the gold clause itself, that is, to afford creditors of United States debtors on domestic money obligations contractual protection against possible depreciation of United States money."

It is thus clear that the specification of the minimum of the pension at 1000 was by way of such guarantee against fluctuations of the value of money. The

currency of payment was rupees and not pounds. The latter was used only as a standard of guarantee. The obligation to pay pension was thus created in terms of rupees and not in terms of pounds. C.S.R. 983 does not create any right. It pre-supposes the right created by C.S.R. 561. It provides for payment of the pension either at the "Home Treasury" in London or in India. Who was to decide where the pension was to be paid in a particular case ? The members of the Indian Civil Service while serving in India must have received their pay from the concerned treasury in India while those members of the Indian Civil Service serving in England must be receiving their pay from the Home Treasury. C.S.R. 984 provides that "transfer from the Home Treasury to an Indian treasury and vice versa, is permitted twice only." It was for the Government to permit the transfer of the account of a pensioner from the United Kingdom to India and from India to the United Kingdom. This shows that the pensioner himself did not have a right to change the place of the payment of the pension. C.S.R. 984 thus destroys for good any claim to such a right. C.S.R. 893 has to be read in the context of C.S.R. 561 and C.S.R. 984. So read, it means that when a certain pensioner is receiving his pension at the "Home Treasury", he may be paid at his option either in rupees or in pound sterling. C.S.R. 983 (a) opens with the word "when". This word shows that the question who is to receive the pension at the "Home Treasury" has been already decided under C.S.R. 561 and C.S.R. 984. It is only when the Government has permitted a person to receive his pension at the "Home Treasury" that he can receive it in sterling. It would be unbelievable that the Government could have permitted an Indian member of the Indian Civil Service residing in India to transfer the place of payment of his pension from India to the "Home Treasury" in the United Kingdom. At any rate, if such payment of sterling in London depended on the discretion of the Government, then there was no enforceable right in the pensioner to compel the Government to do so. In construing paragraphs 2 and 3 of the Second Schedule to the Premature Retirement Rules, 1937, a distinction must be drawn between the money in which again a debt or an obligation is expressed and the money in which it is made payable. In paragraph 3(a) the pension is expressed in pound sterling. But these provisions are silent as to the money or currency in which the pension is payable. The conversion into rupees of pension expressed in sterling under paragraph 2 is governed by the provisions of Article 933A or 983, as the case may be, of the Civil Service Regulations. Article 933A did not apply to the Indian Civil Service at all. Therefore, members of the Indian Civil Service were governed by Article 983 only which provides for payment of pension in India only in rupees. On the construction of the above provisions, Therefore, we are of the view that ordinarily members of the Indian Civil Service resident in England drew their pensions from the "Home Treasury" and the members of the Indian Civil Service resident in India drew their pensions from the concerned State treasury in India. The latter did not have any right to compel the Government to transfer the place of payment of their pensions from India to the United Kingdom. Such a transfer could be permitted by the Government at their discretion. There was thus no enforceable right in this respect vested in the members of the Indian

Civil Service in India immediately prior to the commencement of the Constitution. No right thus existed which could be protected by Article 314 of the Constitution.

(11) Question No. 3 Even if it is assumed for the sake of argument that such a right existed immediately prior to the commencement of the Constitution, it would be seen that it was not enforceable. Firstly, u/s 4 of the Pensions" Act, 1871, no civil court could entertain a suit relating to any pension or grant of money conferred by the Government, whatever may have been the nature of the payment, claim or right for which such pension may have been substituted. The High Courts of the Punjab and Allahabad were not entitled to issue prerogative writs prior to the commencement of the Constitution. Sarvashri Lal, Kapur and Prasad could not, Therefore, enforce their claim immediately prior to the commencement of the Constitution. Further, a civil court could not issue an injunction against the Government in view of section 56(d) of the former Specific Relief Act directing it to pay pension in pound sterling particularly when such an injunction could not be enforced in view of the following provisions of the Foreign Exchange Regulation Act, 1947. A state Government could not buy or borrow foreign exchange from anyone except an authorised dealer and except with the previous general or special permission of the Reserve Bank of India in view of section 4(1) of the Foreign Exchange Regulation Act, 1947. Even if it wished, Therefore, a State Government could not acquire foreign exchange for payment of pension. It is to be noted, however, that Sarvashri Lal, Kapur and Prasad have not asked for payment of foreign exchange to them in India as they realised that this is impossible. What they asked for was that such payments should be made to them at the "Home Treasury" in the United Kingdom. This is prohibited by section 5(1)(a) of the Foreign Exchange Regulation Act, 1947 which says that no person in India shall make any payment to or for the credit of any person resident outside India except with the permission of the Reserve Bank. The payment of pension in pound sterling can be made only to some specified persons and this is prohibited by section 5(1)(a). Similarly, such a specified person would be further prohibited from transmitting the said foreign exchange to Sarvashri Lal, Kapur and Prasad in India by section 5(1)(c). The import of currency notes or bank notes of pound sterling into India is also prohibited by section 8 of the said Act. Even if it is assumed for the sake of argument that the concerned State Government was liable to pay pension in pound sterling, an implied condition was attached to this debt or obligation by sub-section (2) of section 21 of the said Act requiring permission of the Reserve Bank or of the Central Government to pay such debt or obligation in pound sterling. Clauses (a) and (b) of sub-section (3) of section 21 further provide that such permission is necessary even for the enforcement of any judgment or order for the payment of any such foreign exchange. The grant of such permission by the Reserve Bank or the Central Government is to be governed by relevant considerations which are embodied in the preamble to the Act, namely. "the economic and financial interests of India." It is certainly not in the economic or financial interests of

India to encourage a resident of India to seek adventitious profit due to devaluation. No Court, Therefore, could have ordered the Government of India or the Reserve Bank immediately prior to the Constitution to grant such permission to the concerned State Government. In fact sub-section (2) of section 20 of the said Act provides that:-

"NOTHING in this Act relating to the payment of any price or sum by the Central Government shall be construed as requiring the Central Government to pay that price or sum otherwise than in Indian currency or otherwise than in India."

The principles of Private International Law or Conflict of Laws which are applicable to India on the ground of "justice, equity and good conscience" are also the same. Rules 154(1) and 155(2) in Dicey and Morris on "Conflict of Laws" referred to above are as follows:-

"154.(1) An English court cannot give judgment for the payment of an amount in foreign currency. A debt which is expressed and damages which are calculated in a foreign currency must Therefore be converted into sterling for the purposes of litigation in England, irrespective of the place at which they are payable and irrespective of the law governing the substance of the obligation." "155. (2) Whatever is their proper law and wherever they are to be performed, "exchange contracts" are unenforceable if they involve the currency of any Member of the International Monetary Fund and if they are contrary to the exchange control regulations of any Member maintained or imposed consistently with the International Monetary Fund Agreement, (semble) whatever is the object for which these regulations are used."

(12) An action for specific performance of the payment of foreign currency could not be contemplated immediately prior to the commencement of the Constitution inasmuch as, pointed out by the U.S. Supreme Court in Guaranty Trust Company(9), case, referred to above, such foreign currency is referred to as money and not as a commodity. The suit would not, Therefore, be for the delivery of specific moveable, property but for the payment of money. A suit for the payment of money is not a suit for specific performance. A possible exception to Dicey's rule 154 is made by the decision of the House of Lords in British Bank for Foreign Trade v. Russian Commercial and Industrial Bank, (1921) 38 Times Law Report 65(10). But in that case, their Lordships were of the view that a decree for declaration should be granted even without further relief being claimed because in the particular circumstances of that case further relief could be had by separate actions thereafter. But" a declaration that a State Government was bound to pay pound sterling in the United Kingdom to the members of the Indian Civil Service in India could not have been granted by a court in India inasmuch as it would have been futile. India is, by agreement, a party to the Foreign Judgments (Reciprocal Enforcement) Act, 1933. But no judgment will be ordered to be registered there under if it could not be enforced by execution in the country of the original court. A decree for declaration is not executable and could not, Therefore, be registered under it. Similarly, a

judgment of a superior court in India can be registered under the said Act for being enforced in England if there is payable under such judgment a sum of money. Nothing is payable on a decree for declaration and, Therefore, such a decree could not be registered there under. It follows, Therefore, that a declaratory judgment in India could not have been enforced in England (more so because of the Sovereign Immunity of Governments of India, Uttar Pradesh or Punjab against being sued in the United Kingdom) and under rule 154(1) of Dicey's conflict of Laws an Indian court could not have passed a decree for payment of pension in pound sterling in India. The same principle is also codified in the provisions of the Foreign Exchange Regulation Act, 1947.

(13) It is a well known rule of construction that if a statute or a statutory provision is capable of two meanings, one making it unconstitutional or illegal and the other conforming to the law and the Constitution, then the latter is to be preferred. To construe C.S.R. 983 as giving a right to a member of the Indian Civil Service in India to demand payment of pound sterling in England is to bring it into conflict with the Foreign Exchange Regulation Act, 1947. This is an additional reason why C.S.R. 983 should be construed to imply an arrangement of payment only after the necessary permission for such payment has been granted by the authority concerned. Even if the original meaning of C.S.R. 983 was to give a right to the recipient, its meaning after the enactment of Foreign Exchange Regulation Act, 1947 on 25-3-1947 would alter if it is to continue to be legal there-after. We find, Therefore, that the right, if any, for the payment of pension in pound sterling in England was not enforceable immediately prior to the Constitution.

(14) Our conclusions about the claim for payment of pension in pound sterling in the United Kingdom made by these members of the Indian Civil Service are, Therefore, as follows:-

(1)Such a right, if it ever existed, did not survive the "changed circumstances" brought about by the transfer of power and the Constitution of India.

(2)On a construction of the Civil Service Regulations 561, 983 and 984 and paragraphs 2 and 3 of the Premature Retirement Rules, 1937 as they stood immediately prior to the Constitution, no such right existed at all.

(3)Even if it is assumed that such a right existed, even prior to the commencement of the Constitution it was unenforceable in the context of the domestic law including the Foreign Exchange Regulation Act, 1947 and the principles of private international law.

(4)The amendment of 1957 in omitting reference to pound sterling in payment of pension Therefore, recognised only the legal position as it existed immediately prior to the Constitution. It was not. Therefore, ultra virus Article 314.

(5)in view of our finding on No. (4) above, the writ petitions of Sarvashri I.M. Lal, R.P. Kapur and Krishna Prasad were unduly delayed inasmuch as the protest,

if any, by way of writ petitions should have been made by them in 1957 itself when the amendment was effected. These petitions were liable to be dismissed, Therefore, on the ground of delay also.

(15) The Letters Patent Appeals 64 of 1970 by the Union of India against Shri Krishna Prasad, 65 of 1970 by the Union of India against Shri I.M. Lal, 66 of 1970 by the State of Punjab against Shri I.M. Lal are, Therefore, allowed with costs and the orders appealed against are set aside. The L.P.A. No. 27 of 1970 by Shri R.P. Kapur against the Union of India and the State of Punjab is dismissed with costs and the order appealed against is maintained though for different reasons.