

A

STATE OF HARYANA AND ORS.

v.

AMAR NATH BANSAL

JANUARY 15, 1997

B

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

C

Service law—Superannuation age—Jind State Civil Services Regulations, Regn. 1. 27—Applicability—Jind State Regulation stood repealed by Ordinance No. 1 of S. 2005 and Ordinance No. 16 of S. 2005 issued by the Raj Pramukh of PEPSU—Notwithstanding the fact that Ordinances were temporary but intended to repeal the Regulation for all the time—Held, employee of erstwhile Jind State later becoming the employee of PEPSU and then Punjab State cannot claim to continue in service up to 62 years on basis of Regn. 27 of Jind Service Regulations—General Clause Act 1897. S. 6—PEPSU Service Regulations (1952), Art.9.1.

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Constitution of India. Art. 13—Treaty between Rulers to establish new sovereign—Held, its an act of State and clauses in such treaty to recognise rights of the subjects of ex-sovereign are not capable of enforcement in Courts of new sovereign.

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The Respondent was a civilian clerk in the Army of the erstwhile State of Jind. As per the Jind State Civil Service Regulation, 1945, the age of superannuation, as prescribed by Regn. 27 was 62 years.

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On May 5, 1948 Ruler of the Jind State entered in to covenant with its neighbour rulers of the States and unite their territories in one state to be known as PEPSU. As a result of integration of the services of the Union State, the respondent was posted as Auditor in the Treasury in PEPSU.

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On the coming into force of the Constitution of India, PEPSU became a part B state and continued as such, till the re-organisation of the state under the State reorganisation Act, 1956, then part B state of PEPSU became part of the recognised State of Punjab and the respondent was absorbed in the service of the State of Punjab. As a result of the re-organisation of the State of Punjab by the Punjab, re-organisation Act,

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1966, the respondent was allocated to the State of Haryana and while he

was employed as Assistant Treasury Officer in the State of Haryana he retired from the service, on attaining the age of 58 years. A

The respondent filed a civil suit for declaration that his retirement was illegal and against the service conditions and that he was entitled to continue in service up to the age of 62 years, as per the Jind State Civil Service Regulation, 1945 which was still applicable to him. The suit was dismissed by the Trial court on the ground that the service conditions of the respondent were governed by the Punjab Civil Service Rules, which prescribes 58 years as the superannuation age. In appeal, the appellate court reversed the judgement and held that the age of superannuation constitutes a condition of service and by virtue of the covenants entered into by the rulers of PEPSU, the said condition continued in operation in the State of Punjab, in view of State re-organisation Act, 1956 and in the State of Haryana in view of the Punjab re-organisation Act, 1966. B C

Appellant-State filed the second appeal in the High Court, which was dismissed. Hence, this appeal. D

The appellant contended that after the formation of PEPSU in 1948 the conditions of service of the respondents were governed by the rules applicable in the State of Patiala. After framing of the PEPSU Service Rules in 1952, the Jind Civil Service Rules, 1945 ceased to be applicable in the State of PEPSU. The respondents were governed by the PEPSU Service Rules 1952, till the Punjab service Rules became applicable, wherein age of retirement was 58 years. Therefore, he cannot claim to continue in service on the basis of the provisions contained in the Jind Civil Service Regulation, 1945. E

On the other hand, respondent contended that the Covenant was the constitution for the newly constituted State of PEPSU and the provisions contained in the Covenant were binding on PEPSU as well as on the successor States. F

Allowing the appeal, this Court G

HELD : 1.1. The Covenant entered into by the Rulers of the independent States which had joined together to form the PEPSU was a treaty entered into by the Rulers of States as a result of which, a new sovereign was established over the territories of the covenanting States. The covenant H

A is, therefore, an Act of State and the law regarding the act of state is well settled. That the residents of the territories, which are acquired do not carry with them the rights which are possessed as a subject of the ex-sovereign. As subjects of the new sovereign they possess only such rights as are granted or recognised by him. The clauses in a treaty entered into by the independent rulers providing for the recognition of the rights of the subjects of the ex-sovereign are incapable of enforcement in the Courts of the new sovereign. [270-D-E]

M/s. Dalmia Dadri Cement Co. Ltd. v. Comm. of Income-Tax, [1959] SCR 729 = AIR (1958) SC 816; *Pramod Chandra Deb v. State of Orissa*, [1962] Supp. 1 SCR 405 = AIR (1962) SC 1288; *State of Gujarat v. Vora Fiddali*, [1964] 6 SCR 461 = AIR (1964) SC 1043; *Pema Chibar Alias Premabhai Chhibabhai Tangal v. Union of India*, [1966] 1 SCR 357 = AIR (1966) SC 442 and *Vinod Kumar Shantilal Gosalia v. Gangadhar Narsingdas Agarwal*, [1982] 1 SCR 392 = AIR (1981) SC 1946, relied on.

D 1.2. There was no such declaration by the PEPSU Government recognising the duties and obligations of the rulers of Jind State. On the other hand, there was Ordinances promulgated by the Raj Pramukh whereby the laws of the covenanting States were repealed and the laws of Patiala State were made applicable in the entire territory of PEPSU. As a result of the said Ordinances, the Jind State Civil Service Regulation 1945 stood repealed and the relevent laws as applicable in the State of Patiala become applicable in the entire area of PEPSU, including the Jind State. So, the respondent could not claim any right on the basis of the Jind State Civil Service Regulation, 1945. [273-E, 274-B-C]

F 2. Since the repeal of the laws of other covenanting States by the Ordinance was intended to be for all time, the expiration of the said ordinance would not mean that the effect of the said ordinances regarding non-applicability of the laws of the other covenanting States in the territory of PEPSU was nullified on the expiration of the said Ordinance. The expiry of the Ordinance could, therefore, not have the effect of reviving the Jind State Civil Service Regulation of 1945. [277-C]

H 3. The provision of PEPSU Service Regulation, 1952 modified the earlier laws regarding age of superannuation applicable in the State of PEPSU, including the Jind State Civil Service Regulation 1945. The employee of PEPSU continued to be so governed till the Part B state of

PEPSU merged into the recognised State of Punjab under State Re-organisation Act, 1956. Thereafter Punjab Civil Service Rules were made applicable on them and as a result of which their age of superannuation was fixed at 58 years. Once it is held that the PEPSU Service Regulation and the Punjab Service Rules were applicable to all PEPSU government employees, the respondent who was one of such employee, has to be governed by these rules and cannot claim that he shall continue to be governed by the Jind State Civil Service Regulations, 1945. [278-B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1514 of 1994.

From the Judgment and Order dated 6.7.93 of the Punjab & Haryana High Court in R.S.A. No. 1491 of 1990.

Rao Ranjit and Prem Malhotra for the Appellants.

Pradeep Gupta and K.K. Mohan for the Respondent.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. This appeal, by special leave, arises out of a suit filed by the respondent-Amar Nath Bansal for a declaration that his retirement on attaining the age of 58 years was illegal and that he is entitled to continue in service till he attains the age of 62 years.

The respondent was appointed as a civilian clerk in the Army in the erstwhile State of Jind on July 12, 1943. In the Jind State the age of superannuation, as prescribed by Regulation 27 of the Jind State Civil Service Regulations, 1945, was 62 years. On May 5, 1948 the Ruler of Jind State and the Rulers of the States of Patiala, Kapurthala, Nabha, Faridkot, Malerkotla, Nalagarh and Kalsia entered into a Covenant whereby they agreed to unite and integrate their territories in one State to be known as Patiala and East Punjab States Union (for short 'PEPSU'). As a result of the integration of the services of the union States, the respondent was posted as Auditor in the Treasury in PEPSU. On the coming into force of the Constitution, PEPSU became a Part B State and continued as such till the re-organisation of the States under the States Re-organisation Act, 1956. With effect from November 1, 1956, the Part B State of PEPSU became a part of the reorganised State of Punjab and the respondent was absorbed in the service of the State of Punjab. As a result of the re-

- A** organization of the State of Punjab and the formation of the State of Haryana by the Punjab Re-organisation Act 1966 with effect from November 1, 1966, the respondent was allocated to the State of Haryana. While he was employed as Assistant Treasury Officer in the State of Haryana, he was retired from service on attaining the age of 58 years with effect from September 30, 1984. On September 25, 1987 he filed a suit (Civil Suit No. 392 of 1987) in the court of Sub-Judge IInd Class, Rohtak, for a declaration that his retirement at the age of 58 years was illegal and against the service condition and that he was entitled to continue in service upto the age of 62 years. The said suit was dismissed by the trial court on the view that the Jind State Service Rules were not applicable and the conditions of service of respondent were governed by Rule 3.26 of the Punjab Civil Service Rules Vol. I Part I which prescribes 58 years as the age of superannuation. The said judgment of the trial court was however, reversed in appeal by the Additional District Judge IV, Rohtak, who held that the age of superannuation constitutes a condition of service and by virtue of clause XVI of the Covenant the said condition continued in operation in the State of PEPSU and thereafter in the State of Punjab in view of the States Re-organisation Act, 1956 and in the State of Haryana in view of the Punjab Re-organisation Act, 1966 and it has not been shown that the approval of the Central Government had been taken for applying the provisions of Rule 3.26 of Vol. I Part I of the Punjab Civil Service Rules to the respondent.
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- C**
- D**
- E** Second appeal filed by the appellant-State against the said judgment and decree of the Additional District Judge was dismissed by the High Court by the impugned judgment dated July 6, 1993. Hence this appeal.

- F** The question that falls for consideration is whether the provisions of the Jind State Service Regulations, 1945 which prescribed 62 years as the age for superannuation of persons employed in the State service continued in operation after the formation of PEPSU and thereafter the State of Punjab and the State of Haryana. For a proper appreciation of the submissions of the learned counsel it is necessary to take note of the relevant provisions of the Covenant.
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- H** "Article X(2). Until a Legislature elected in accordance with the terms of the Constitution framed by it comes into being, the Constituent Assembly as constituted in the manner indicated in Schedule II shall function as the interim Legislature of the Union."

"Article XVI(1). The Union hereby guarantees either the continuance in service of the permanent members of the public services of each of the Covenating States on condition 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 on proportionate pension."

In accordance with Article VI of the Covenant the Raj Pramukh took over the administration of Jind State on August 20, 1948 and on the same date the Raj Pramukh promulgated the Patiala and East Punjab States Union Administration Ordinance No. 1 of S. 2005. Section 3 of the said Ordinance contained the following provision :

"As soon as the administration of any covenanting State has been taken over by the Raj Pramukh as aforesaid all Laws, Ordinances, Acts, Rules, Regulations, Notifications, Hidayate Firman-i-Shahi, having force of law in Patiala State on the date of commencement of this ordinance shall apply *mutatis mutandis* to the territories of the said State and with effect from that date all laws in force in such Covenating State immediately before that date shall be repealed :

Provided that proceedings of any nature whatsoever pending on such date in the courts or offices of any such Covenating State shall, notwithstanding anything contained in this Ordinance or any other Ordinance be disposed of in accordance with the laws governing such proceedings in force for the time being in any such Covenating State."

On February 15, 1949 Ordinance No. 1 of S. 2005 was repealed and replaced by Ordinance No. XVI of S. 2005. Section 3(1) of the said Ordinance was in the same terms as Section 3 of the Ordinance No. 1 of S. 2005. On April 9, 1949 the Rulers of the States constituting PEPSU entered into a Supplementary Covenant whereby Article X of the original Covenant was substituted as under :

"Until the commencement of the Constitution of India, the legislative authority of the Union shall vest in the Raj Pramukh, who may promulgate Ordinances for the peace and good Government of the Union or any part thereof, and any Ordinance so made shall

A have the like force of law as an Act passed by the Legislature of the Union."

B On November 24, 1949 the Raj Pramukh of PEPSU issued a proclamation accepting the Indian Constitution as that of the PEPSU and, as a result, PEPSU became a Part B State under the Indian Constitution on January 26, 1950. By virtue of Article 372 of the Constitution the laws in force in PEPSU immediately before the commencement of the Constitution were continued in force until altered, repealed or amended by competent legislature or other competent authority.

C By Notification Dated January 18, 1951 issued by the Finance Department of Government of PEPSU provision was made for payment of compensation to permanent employees of covenanting States for premature retirement. In the said Notification it was stated that the PEPSU Government had adopted the age limit of 55 years for retirement of government servants on superannuation for pension and that the service rules which were in force in erstwhile Nabha and Jind States prescribe 60 and 62 years respectively as the age for compulsory retirement from service. The said Notification made provision for payment of compensation by way of increase in monthly pension. Government servants who had retired between 1st September, 1948 and 31st August, 1949 were given an increase of 10% of monthly pension; those who retired between 1st September 1949 and 31st August 1950 were given an increase of 7% of monthly pension and those who retired between 1st September 1950 and 31st August 1951 were given an increase of 4% of the monthly pension. No compensation was provided for government servants who retired on or after 1st September 1951 on the ground that they would be getting the full benefit of the increased pay for pension. Thereafter the PEPSU Government issued the PEPSU Services Regulations, 1952. In Chapter IX, Article 9.1. of the said Regulations it was prescribed that every Government servant shall on attaining the age of 55 years retire on such pension as may be admissible to him under the rules for the time being in force. As a result of the reorganisation of the States under the States Re-organisation Act, 1956 the Part B State of PEPSU became a part of the reorganised State of Punjab. Provisions relating to services were made in Section 115 of the States Re-organisation Act, 1956. By virtue of sub-section (1) of Section 115 every person who immediately before the appointed day was serving in connection with the affairs of the existing State of PEPSU was to be

deemed to have been allotted to service in connection with the affairs of successor State, namely, the State of Punjab as from that day. In the proviso to sub-section (7) of Section 115 it was prescribed that the conditions of service applicable immediately before the appointed day in the case of any person referred to in sub-section (1) shall not be varied to his disadvantage except with the previous approval of the Central Government. In the State of Punjab there were Punjab Civil Service Rules which prescribed 58 years as the age of retirement for all employees except Class IV government employees (Rule 3.26). The State of Haryana was formed as a result of reorganisation of the State of Punjab under the Punjab Re-organisation Act, 1966. The proviso to sub-section (6) of Section 82 of the Punjab Re-organisation Act, 1966 contains a provision similar to that contained in the proviso to sub-section (7) of Section 115 of the States Re-organisation Act, 1956.

On behalf of the appellants it has been urged that after the formation of PEPSU in 1948 the conditions of service of the respondent were governed by the rules applicable in the State of Patiala and after the framing of the Pepsu Service Rules in 1952, the Jind State Civil Service Regulations, 1945 ceased to be applicable and the conditions of service of the respondent were governed by the Pepsu Service Rules of 1952 till the merger of Part B State of PEPSU into the State of Punjab in 1956 under the States Re-organisation Act when the Punjab Service Rules became applicable. It was submitted that under the Patiala State Rules the age of retirement was 55 years and that under the PEPSU Civil Service Rules also the age of retirement was 55 years and that as a result of the reorganisation of the States under the States Re-organisation Act, 1956 the respondent was governed by the Punjab Civil Service Rules wherein the age of retirement was 58 years and therefore the respondent has been rightly retired on his attaining the age of 58 years and he cannot claim to continue in service till he had attained the age of 62 years on the basis of the provisions contained in the Jind State Civil Service Regulations 1945.

Shri Pradeep Gupta, the learned counsel appearing for the respondent, has urged that the respondent was entitled to continue in service till he attained the age of 62 years in view of the provisions contained in the Jind State Civil Service Regulations, 1945 and reliance has been placed on clause XVI of the Covenant which guaranteed either the continuance in service of the permanent members of the public services of each of the

- A Covenanted States on conditions which will be not less advantageous than those on which they were serving on 1st February, 1948, or the payment of reasonable compensation or retirement on proportionate pension. Shri Gupta has submitted that the Covenant was in the nature of constitution for the newly constituted State of PEPSU and the provision contained in Article XVI of the Covenant was binding on PEPSU as well as the successor State, namely, the Part B State of PEPSU under the Indian Constitution as well as the State of Punjab as reorganised under the States Re-organisation Act, 1956 and the State of Haryana established under the Punjab Re-organisation Act, 1966. Shri Gupta has placed reliance on the decision of this Court in *Bholanath J. Thaker v. State of Saurashtra*, AIR (1954) SC 680.

- The Covenant entered into by the Rulers of the States which had joined together to form the PEPSU was a treaty entered into by the Rulers of independent States. Under the Covenant the rulers gave up their sovereignty over their respective territories and vested it in the ruler of the new State of PEPSU. As a result of the Covenant there was establishment of a new sovereign over the territories comprising the States of the Rulers who had signed the said covenant. The Covenant is, therefore, an Act of State. With regard to an act of State the law is well settled by the decisions of this Court. The residents of the territories which are acquired do not carry with them the rights which they possessed as subjects of the ex-sovereign. As subjects of the new sovereign they possess **only such** rights as are granted or recognised by him. The process of acquisition of new territories is one continuous act of State terminating on the assumption of sovereign powers *de jure* over them by the new sovereign and it is only thereafter that rights accrue to the residents of those territories as subjects of that sovereign. No act done or declaration made by the new sovereign prior to his assumption of sovereign powers over acquired territories can quoad the residents of those territories be regarded as having the character of a law conferring on them the rights such as could be agitated in courts. The clauses in a treaty entered into by the independent rulers providing for the recognition of the rights of the subjects of the ex-sovereign are incapable of enforcement in the courts of the new sovereign. [See : *M/s. Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income Tax*, [1959] SCR 729 at p. 746; *Pramod Chandra Deb v. State of Orissa*, [1962] Supp. 1 SCR 405 at pp. 434-436; *State of Gujarat v. Vora Fiddali*, [1964] 6 SCR 461; *Pema Chibar Alias Premabhai Chhibabhai Tangal v. Union of India & Ors.*,

[1966] 1 SCR 357 and *Vinodkumar Shantilal Gosalia v. Gangadhar Nar-singdas Agarwal & Ors.*, [1982] 1 SCR 392]. A

In *M/s. Dalmia Dadri Cement Co. Ltd.* (supra) it was contended that the Covenant entered into by the rulers of the States to form the PEPSU was more than an act of State and was in the nature of a constitution for the new State in the sense that it is a law under which all the authorities of the new State including the Raj Pramukh had to act, Reliance was also placed on Article XVI of the Covenant to show that the rights of the subjects of the quondam states were intended to be protected. Rejecting the said contention it was held that the Covenant is in whole and in parts an act of State. As regards Article XVI of the Covenant, it was stated 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". [p. 745]. After referring to Ordinance No. 1 of S. 2005, the Court observed :- B C D

"That undoubtedly is a law enacted by the sovereign conferring rights on his subjects and enforceable in a court of law, but at the same time the enactment of such a law serves to emphasise that the Articles have not in themselves the force of law and were not intended to create or recognise rights." E

[p. 745]

Reference may be made at this stage to the decision in *Bholanath J. Thaker* (supra) on which reliance has been placed by Shri Gupta. In that case the appellant was employed in the service of Wadhawan State. The ruler of the Wadhawan State along with the rulers of other Kathiawar States had entered into a Covenant to form the United State of Kathiawar (later known as Saurashtra) on January 24, 1948. The Raj Pramukh took oath of his office on February 15, 1948 and on March 1, 1948 he promulgated an Ordinance, being Ordinance No. 1 of 1948, continuing in force all laws, ordinances, acts, rules, regulations etc. having the force of law in the Covenanting State until repealed or amended under the provisions of the ordinance. The ruler of the Wadhawan State made over the administration of the State to the Saurashtra Government on March 16, 1948 and on the same date a proclamation was issued by the Saurashtra Government F G H

A declaring that whatever rights, jurisdiction and authority were with the Ruler with respect to the said State were then vested in the Saurashtra Government and the duties and obligations with regard to the Ruler's own State passed to the Saurashtra Government and the Saurashtra Government would fulfil the same. Article XVI(1) of the Covenant of the United States of Kathiawar contained provisions similar to those contained in Article XVI(1) of the covenant of the Rulers forming the States of PEPSU. By Order dated June 29, 1948, the appellant was retired by the Saurashtra Government on the ground that he had crossed the age of superannuation which was taken as 55 years. The appellant claimed that he was entitled to continue in service till the completion of 60 years of age on the basis of the provisions contained in Section 5 of the Dhara (Act) No. 29 of S. 2004 which had been promulgated by the Ruler of the Wadhawan State which came into force with effect from January 1, 1948 whereby the age of superannuation of state civil servants had been fixed at 60. He filed a civil suit claiming compensation for his premature compulsory retirement. The said suit was decreed by the trial court but on appeal the suit was dismissed by the High Court. Before this Court it was urged on behalf of the State that the Covenant by the rules of Kathiawar State was an act of State and the municipal courts were not competent to entertain any dispute arising out of the Covenant. Reliance was also placed on Article 363 of the Constitution which bars interference by courts in any dispute arising out of certain treaties and Covenants. The said contention was rejected by this Court on the view that when the Wadhawan State merged with the Saurashtra State and against when it acceded to the Dominion of India all the existing laws continued until repealed and the appellant's rights under Dhara No. 29 of S. 2004 were still good and could have been enforced in the municipal courts until either repealed or repudiated as an act of State. It was observed that there was in fact no such legislation and therefore his rights remained and the municipal courts would be entitled to examine the contract and apply Dhara No. 29 of S. 2004 and enforce whatever rights the appellant had under that Dhara and his contract of service. It was held that the Covenant could be looked at to see whether the new sovereign had waived his right to ignore rights given under the laws of the former sovereign and that the terms of the Covenant showed that the existing laws were to continue and whatever rights of the appellant were under the existing laws were available for enforcement to the appellant and there was

no bar to municipal courts entertaining the suit to enforce such rights. As regards the bar under Article 363 of the Constitution it was observed that there was no dispute arising out of the Covenant and what the appellant was doing was merely to enforce his rights under the existing laws which continued in force and till they were repealed by appropriate legislation. The decision in *Bholanath J. Thaker* (supra) thus proceeded on the basis that the law of the Wadhawan State (Dhara No. 29 of S. 2004) prescribing 60 as the age of superannuation, had been continued in force after the establishment of the State of Saurashtra by Ordinance No. 1 to 1948 and the appellant was entitled to enforce his rights under the said law which was in force at the relevant time. Moreover, in that case the Saurashtra Government had issued a proclamation on the same date on which the administration of the Wadhawan State was taken over by the Saurashtra Government, whereby it was declared by the Saurashtra Government that the duties and obligations with regard to the Ruler's own State had passed to the Saurashtra Government and that the Saurashtra Government would fulfil the same. Thus it was a case where apart from continuing the laws of the old sovereign the new sovereign had made an express declaration recognising the duties and obligations of the old sovereign.

In the instant case, there was no such declaration by the PEPSU Government recognising the duties and obligations of the rulers of Jind State under the laws of the Jind State. Nor was there a law similar to Ordinance No. 1 of 1948 of Saurashtra continuing the laws of the Jind State. On the other hand, there was Ordinance No. 1 of S. 2005 followed by Ordinance No. 16 of S. 2005 whereby the laws of the covenanting States were repealed and the laws of Patiala State were made applicable in the entire territory of PEPSU. Can it be said that inspite of the said ordinances the Jind State Service Regulations of 1945 which prescribed 62 years as the age of superannuation was a law in force in PEPSU on the date of commencement of the Constitution and by virtue of Article 372 of the Constitution the said Regulations continued in the Part B State of PEPSU after the coming into force of the Constitution and in the reorganised State of Punjab under the States Re-organisation Act, 1956 and in the State of Haryana under the Punjab Re-organisation Act, 1966? In our opinion, this question must be answered in the negative. As noticed earlier the Raj Pramukh of PEPSU took over the administration of Jind State on August

A 20, 1948 and on the same date he promulgated Ordinance No. 1 of S. 2005 and by section 3 of the said ordinance all laws, ordinances, acts, rules, regulations, notifications, Hidayate, Shahi-farman having force of law in Patiala State on the date of commencement of the said Ordinance were made applicable *mutatis mutandis* to the territories of all the covenanting States (including Jind State) and with effect from that date all laws of such covenanting States immediately before that date would stand repealed. Ordinance No. 1 of S. 2005 was followed by Ordinance No. 16 of S. 2005 which contained a similar provision. As a result of the said ordinances the Jind State Civil Service Regulations of 1945 stood repealed on August 20, 1948 and the relevant law as applicable in the State of Patiala became applicable in the entire area of PEPSU, including the Jind State, and the terms and conditions of the respondent were, therefore, governed by the provisions contained in the law that was applicable in Patiala State and he could not claim any right on the basis of the Jind State Civil Service Regulations 1945.

Shri Pradeep Gupta has urged that Ordinance No. 1 of S. 2005 which was followed by Ordinance No. 16 of S. 2005 were both temporary laws having an operation of six months in view of Article X(2) of the Covenant and that after the expiry of Ordinance No. 16 of S. 2005 in August 1949 the repeal of the Jind State Service Regulations under the Ordinances Nos. 1 and 16 of S. 2005 became ineffective and the Jind State Service Regulations stood revived and were law in force on the date of coming into force of the Constitution of India and by virtue of Article 372 of the Constitution the said regulations continued in force thereafter. In this connection, Shri Gupta has also submitted that the amendment that was made in Article X of the Covenant by the Supplementary Covenant was invalid since the rulers of the covenanting States, after having entered into the Covenant on May 5, 1948 and having divested themselves of all the sovereignty, were not competent to enter into the Supplementary Covenant and, therefore, the Ordinances Nos. 1 and 16 of S. 2005 could only remain in force for a period of six months. In support of the said submission Shri Gupta has placed reliance on the decision of this Court in *Lachhman Das on behalf of firm Tilak Ram Ram Bux v. State of Punjab and Ors.*, [1963] 2 SCR 353, wherein it has been laid down that the Supplementary Covenant that was entered into by the rulers of the States forming PEPSU cannot be held to be

effective for modifying the provisions in the original Covenant. Shri Gupta A
has also placed reliance on the decision of the Judicial Committee of the
Privy Council in *Gooderham and Worts Ltd. v. Canadian Broadcasting*
Corporation, AIR (1949) PC 90, in support of his submission that a law
repealed by a temporary legislation automatically resumes its full force
after the temporary legislation has expired by efflux of the prescribed time. B

In view of the decision of this Court in *Lachhman Das* (supra) it
must be held that Ordinance No. 16 of S. 2005 had ceased to operate
on August 15, 1949, on the expiry of the period of six months from the
date of its promulgation on February 15, 1949. The question which C
requires consideration is whether on the expiry of the said ordinance
the Jind State Civil Service Regulations, 1945, which had been repealed
by the said ordinance, stood revived. A similar question came up for
consideration before this court in *State of Orissa v. Bhupendra Kumar*
Bose, [1962] Supp. 2 SCR 380. In that case an ordinance had been D
promulgated whereby the elections to the Cuttack Municipality which
had been set aside by the Orissa High Court and the electoral rolls
prepared in respect of the other Municipalities in the State of Orissa,
which would have otherwise been irregular and invalid in accordance
with the judgment of the Orissa High Court, were validated. The Bill E
which contained substantially similar provisions as those of the or-
dinance was introduced in the Orissã Legislative Assembly but was
defeated by majority of votes and as a result the Ordinance lapsed after
the expiration of the prescribed period. It was contended that the
ordinance was a temporary statute which was bound to lapse after the
expiration of the prescribed period and that as soon as it lapsed the
invalidity in the Cuttack Municipal elections which had been cured by F
it revived. Rejecting the said contention, this Court has laid down :-

"In our opinion, what the effect of expiration of a temporary Act
would be must depend upon the nature of the right or obligation
resulting from the provisions of the temporary Act and upon their
character whether the said right and liability are enduring or not." G

[p. 398]

"Therefore, in considering the effect of the expiration of a tem-
porary statute it would be unsafe to lay down any inflexible rule. H

A If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter."

B

[p.400]

C The following statement of law in Craies on Statutes, 7th Edn. at p. 419, has been approved :-

D "If an act which repeals an earlier Act is itself only a temporary Act the earlier Act is revived after the temporary Act is spent; and inasmuch as ex-hypothesis the temporary Act expires and is not repealed, the rules of construction laid down by Ss. 11(1) and 38(2) of the Interpretation Act, 1889, do not apply. But there will be no revivor if it was clearly the intention of the legislature to repeal the earlier Act absolutely."

E After referring to the observations of Lord Ellenborough C.J., in *Warren v. Windle*, (1803) 3 East 205; 102 E.R. (K.B.) 578, this Court has observed that the said decision shows that "in some cases, the repeal effected by a temporary Act would be permanent and would endure even after the expiration of the temporary Act". The ordinance was construed by this Court as providing that the order of the court declaring the election to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections were valid and that effect of the said Ordinance would not come to an end on the expiry of the Ordinance.

G In *Gooderham and Worts Ltd.* (supra) Section 9(b) of the Canada Radio Broadcasting Act, 1932 had been repealed and substituted by a temporary Act in 1933 which was to be operative till April 30, 1934. The period of operation of the temporary Act was extended from time to time by successive temporary Acts till March 31, 1936. The last such temporary Act contained an express provision to the effect that on and after April 1, 1936 the principal Act of 1932 shall be read as if the temporary acts had never been enacted. In these circumstances the Privy Council held that the

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repeal effected by the temporary legislation was only a temporary repeal and when the temporary repeal expired the original legislation automatically resumed its full force. A

If the provisions of Section 3 of Ordinance No. 1 of S. 2005 and Section 3(1) of Ordinance No. 16 of S. 2005 are construed in the light of the principles laid down by this Court in *Bhupendra Kumar Bose* (supra), it must be held that the object underlying said provisions was to exclude the applicability of the laws of other covenanting States in the territory of PEPSU by repealing them absolutely and to apply the laws applicable in Patiala State in the entire territory of PEPSU. Since the repeal of the laws of other covenanting States by Ordinances Nos. 1 and 16 of S. 2005 was intended to be for all time, the expiration of the said Ordinances would not mean that the effect of the said Ordinances regarding non-applicability of the laws of other covenanting States in the territory of PEPSU was nullified on the expiration of Ordinance No. 16 of S. 2005. In view of the express terms used in the said Ordinances it must be held that Jind State Civil Service Regulations 1945 stood repealed absolutely and ceased to have any application after the Raj Pramukh of PEPSU took over the administration of Jind State on August 20, 1948. B C D

There is one more difficulty in the way of the respondent. The provisions of the Jind State Civil Service Regulations 1945 were not continued after the establishment of PEPSU on August 20, 1948. The repeal of the provisions of the laws of covenanting States of PEPSU by section 3 of the Ordinance No. 1 of S. 2005 does not mean that but for such repeal the said laws without anything more would have continued in force in the covenanting States. In the absence of any law, similar to that contained in Ordinance No. 1 of 1948 promulgated by the Raj Pramukh in *Bholanath J. Thaker* (supra), continuing the laws of Jind State in the territory of that State it cannot be said that the Jind State Civil Service Regulations, 1945 continued in force after the administration of Jind State was taken over by the Raj Pramukh of PEPSU on August 20, 1948. The expiry of Ordinance No. 16 of S. 2005 could, therefore, not have the effect of reviving Jind State Civil Service Regulations of 1945 after the expiry of the said Ordinance. E F G

Moreover, there is nothing to show that the Raj Pramukh of PEPSU had ever given his recognition to the rights conferred on the employees of the Jind State under the Jind State Civil Service Regulations of 1945 after the formation of PEPSU. On the other hand, we find that by Article 9.1 of H

- A Chapter IX of the PEPSU Service Regulations, 1952, 55 years was prescribed as the age for compulsory retirement for the employees of the State of PEPSU. The said provision in PEPSU Service Regulations, 1952 was a law which modified the earlier laws regarding age of superannuation applicable in the State of PEPSU including the Jind State Civil Service Regulations of 1945, even if it be assumed that the said Regulations were in force at that time by virtue of Article 372 of the Constitution. There was no legal impediment in the Part B State of PEPSU making a law modifying a law which was continued in force under Article 372 of the Constitution.
- B Clause XVI of the Covenant, on which reliance was placed by Shri Gupta, cannot be invoked to impose such a limitation because, as stated earlier, the Covenant is an act of State and the respondent cannot claim any right on the basis of the said clause in the Covenant. After the making of the PEPSU Service Regulations, 1952 the age of compulsory retirement of government servants in Part B State of PEPSU was fixed at 55 years which continued till the Part B State of PEPSU merged into the reorganised State of Punjab under the States Re-organisation Act, 1956 and thereafter the Punjab Civil Service Rules were made applicable to the erstwhile employees of PEPSU Government who became the employees of the Punjab Government and, as a result, their age of superannuation was fixed at 58 years. Once it is held that the PEPSU Service Regulations and the Punjab Service rules were applicable to all PEPSU government employees,
- C the respondent, who was one such employee, has to be governed by the PEPSU Service Regulations and the Punjab Service Rules and he cannot claim that he continued to be governed by the provisions of the Jind State Civil Service Regulations, 1945. Since the age of superannuation prescribed under Article 3.26 of the Punjab Service Rules was 58, the respondent was rightly retired on his attaining the said age.
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- E
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For the reasons aforementioned, we are unable to uphold the judgment of the High Court that the respondent was entitled to continue in service till he attained the age of 62 years on the basis of the provisions contained in the Jind State Civil Service Regulations, 1945. The appeal is, therefore, allowed, the impugned judgment of the High Court dated July 6, 1993 passed in R.S.A. No. 1491 of 1990 is set aside and the civil suit filed by the respondent is dismissed. But in the circumstances there is no order as to costs.

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