> In other words, there remained no State law of Income-tax in operation in any Part B State in the year 1949-50."

This passage from the judgment supports the contention of the appellant that as regards income of the accounting year 1949-50 or the year of assessment 1950-51 no State law of Income-tax was operative in any Part B State. It appears that the error which has crept in the judgment of the High Court has been due to misreading the year 1949-50 as being assessment year and not accounting year. In another case *D. R. Madhavakrishnaiah* v. *The Income-tax Officer* (1), section 13 of the Finance Act of 1950 was similarly interpreted. Therefore, both for the assessment years 1948-49 and 1949-50 the law applicable would be the Patiala Income-tax Law and not Indian Income-tax Act and consequently no appeal against the order of the Income-tax Officer was competent.

The answers to the questions would be as follows *Questions Nos.* **1** *and 2* : The Patiala Income-tax Act was in operation and no appeals lay. *Question No. 3*: In the negative.

The appeal is, therefore, allowed but as the Respondent company has not appeared and contested the appeal, there will be no order as to costs, in this court.

CIVIL WRIT

Before Bishan Narain, J.

MOHAN SINGH CHAUDHARI,—*Petitioner.*

versus

THE DIVISIONAL PERSONNEL OFFICER, NORTHERN RAILWAY, FEROZEPORE CANTT, AND OTHERS,—*Respondents.*

Civil Writ Application No. 29 of 1957.

1957

May, 17th

Constitution of India (1950)—Article 226—Decision by Civil Court in a suit—Whether binding on the parties in a

(1) 1954 S.C.R. 537

*petition under Article 226—*Res judicata*—Principle of—previous decision by Civil Court that appointing authority was General Manager—Whether open to Railway authorities in a petition under Article 226, to urge that appointing authority was not the General Manager.*

Held, that a decision of the Civil Court *inter partes* is binding on them in all proceedings including petitions under Article 226 of the Constitution till it is set aside in accordance with law. It is well-recognized and well-established that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. This principle is founded on sound public policy and is of universal application. The rule of *res judicata* is intended not only to prevent a new and possibly conflicting decision but also to prevent a new investigation so that a person may not be harassed over and over again to establish the same fact or right.

Held, that it is not open to the Railway authorities, in the face of the decision of the civil Courts that the petitioner was appointed by the General Manager, to argue in these proceedings that the appointing authority was not the General Manager.

Petition under Articles 226 and 227 of the Constitution of India praying that a Writ of certiorari, *mandamus prohibition or direction be issued quashing the order of respondent No. 1, dated 4th May, 1949, and further praying that petitioner be treated in service since then.*

H. S. DOABIA, for Petitioner.

K. L. GOSAIN, for Respondents.

JUDGMENT

Bishan Narain, J. BISHAN NARAIN, J.—Mohan Singh was a temporary clerk in the employment of the Northern Railway, and by order, dated the 30th of May, 1956, of the Divisional Personnel Officer, Northern Railway, Ferozepore Cantonment, he has been dismissed. His appeal has also been dismissed by the Divisional

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Superintendent, Ferozepore Cantonment. He has filed the present petition under Article 226 of the constitution challenging the validity of the order of dismissal passed against him.

The facts leading to the dismissal of the petitioner may be briefly stated. Mohan Singh was appointed on the 3rd of June, 1944, as a temporary clerk. After partition he joined the office of the Divisional Superintendent (Eastern Punjab Railway), Ferozepore, on the 1st of September, 1947. On the 17th of March, 1949, a charge-sheet was served on him and after enquiry he was dismissed by the Divisional Personnel Officer, Northern Railway, Ferozepore Cantonment, on the 4th of May, 1949. This led Mohan Singh to file a suit on the 3rd of July, 1952, for a declaration that his dismissal from service was illegal and inoperative and that he continued to be a clerk in Commercial Section, Divisional Superintendent's Office, Ferozepore, despite this order. One of the grounds taken in the suit against the validity of his dismissal was that he had been appointed by the General Manager and could not be dismissed by the Divisional Personnel Officer who is lower in rank than the General Manager. This ground was contested by the Railway authorities. The trial Court, however, found on the evidence produced before it that the plaintiff was appointed by the General Manager. Other objections were also dealt with by the trial Court and the suit was ultimately decreed on the 27th of February, 1953. The Railway authorities filed an appeal, but that appeal was dismissed by the Senior Sub-Judge on the 12th of October, 1953. The Senior Sub-Judge also, after going into the evidence, affirmed the finding of the trial Court that Mohan Singh was appointed by the General Manager and it was also pointed out in his judgment that there was no evidence that the General Manager had delegated his powers to appoint a clerk

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under rule 135(d) of the Indian Railway Establishment Code, Volume I, to any other person. The Railway authorities then reinstated Mohan Singh on the 8th of July, 1954, and about a month later an order was made for a fresh enquiry against the petitioner's conduct and the petitioner was suspended on the 24th of February, 1956. The Divisional Personnel Officer held an enquiry *ex parte* into the conduct of Mohan Singh on the 3rd of April, 1956, and served show-cause notice against the proposed dismissal on the petitioner on the 4th of April, 1956. Thereafter on the 30th of May, 1956, the Divisional Personnel Officer removed the petitioner from service. Mohan Singh appealed to the Divisional Superintendent, Ferozepore, mainly on the ground that in view of the finding of the Civil Courts he could not be dismissed by the Divisional Personnel Officer. This plea, however, did not prevail and his appeal was dismissed on the 19th of September, 1956. The present petition was filed on the 9th of January, 1957.

It appears to me that this petition must be accepted. In the civil suit both the Courts came to the conclusion that Mohan Singh had been appointed by the General Manager. If this decision is binding on the parties, which obviously is, then admittedly he could not be dismissed by the Divisional Personnel Officer who is lower in rank than the General Manager. Shri Kundan Lal Gosain has strenuously urged before me that the decision of the Civil Courts does not bind this Court when it is exercising jurisdiction under Article 226 of the Constitution. The learned counsel has argued that at the time when the civil suit was pending the Railway records were not available and on account of the absence of the Railway records the Civil Courts came to the conclusion that the General Manager had appointed Mohan Singh. According to the learned counsel, now that the record is available I should decide this matter on merits after

considering the documents produced in these proceedings. I cannot see my way to accede to the request of the learned counsel. It is well-recognized and well-established that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be reagitated. This principle is founded on sound public policy and is of universal application (*vide Burn and Company* v. *Their Employees* (1). There is no reason whatsoever for departing from this salutary principle of law. The rule of *res judicata* is intended not only to prevent a new and possibly conflicting decision but also to prevent a new investigation so that a person may not be harassed over and over again to establish the same fact or right. This is exactly what the Railway authorities have done in the present case by ignoring the decision of the Civil Courts and by allowing the Divisional Personnel Officer to hold an enquiry and order the petitioner's dismissal. This attitude towards the decision of the civil Courts by a public authority is improper and must be deprecated. As long as the decision of the Civil Courts stands it is binding on the parties till it is set aside in accordance with law. A decision of the Civil Courts can be got set aside by processes known to law, but in the present case admittedly no such effort has been made by the Railway authorities. The excuse taken for this extraordinary attitude is that the Railway authorities have received some documents from Pakistan which were not available to them at that time and that from these documents the contention raised is that it is clear that the petitioner was not appointed by the General Manager but by the Assistant Secretary to the General Manager, and, therefore, the dismissal by the Divisional Personnel Officer was correct. Even if

(1) A.I.R. 1957 S.C. 38.

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this contention be considered to be correct, the Railway authorities should have moved to get the order of the Civil Court set aside in accordance with law and should not have taken proceedings on the assumption that the decision of the Civil Court is not binding on them. The attitude taken savours almost affront to Civil Courts. I have no hesitation in holding that it is not open to the Railway authorities, in the face of the decision of the Civil Courts that the petitioner was appointed by the General Manager, to argue in these proceedings that the appointing authority was not the General Manager. In this connection it must be remembered that the petitioner has a right to file a suit for a declaration that his dismissal by the Divisional Personnel Officer is invalid and that suit must be decreed by the Civil Court in view of its previous decision even if this petition under Article 226 of the Constitution is dismissed. There is, however, no reason why this plea should not be allowed to prevail in these proceedings and the petitioner should be compelled to file a suit. In my opinion the petitioner is within his rights to avail of the remedy which is cheaper and much more expeditious than the remedy of filing a suit in a Civil Court.

Moreover, rule 135(d) of the Indian Railway Establishment Code lays down that the appointment to non-gazetted post in the Indian Railways is to be made by the General Manager or lower authority to whom he may delegate the power. In the civil suit the Railway authorities did not produce any evidence showing delegation of power to the Divisional Personnel Officer to appoint clerks. No attempt has been made in these proceedings also to produce any such evidence or even to allege that such a delegation had taken place. It cannot, therefore, be assumed that the Divisional Personnel Officer

acted in the exercise of delegated powers in appointing Mohan Singh as a temporary clerk. Shri Kundan Lal Gosain then prayed that the case may be adjourned for producing this evidence. I, however, see no ground for adjourning this case at this late stage.

Even on the merits I would not be inclined to accept the letter produced by the Railway authorities in proof of the fact that Mohan Singh was appointed by the Divisional Personnel Officer. That is a letter dated the 31st of May, 1944, which had been issued by the Assistant Secretary to the General Manager, N.W.R., Lahore, to Mohan Singh. It says that the addressee was offered employment as a temporary clerk and he was called upon to attend the office on or before the 30th of June, 1944, if the offer is acceptable to him. The letter further goes on to say that on appointment he will be required to sign an agreement of temporary service. This letter, therefore, cannot be said to be a letter of appointment. In any case this is not a letter by the Divisional Personnel Officer as such but by the Assistant Secretary to the General Manager. If the letter of appointment had been produced and if that had been signed by the Divisional Personnel Officer, then some argument may have been built up on the basis of that letter of appointment that it was not an appointment by the General Manager. There is no such evidence on this record.

For all these reasons I hold that Mohan Singh, the petitioner, was appointed by the General Manager, N.W.R., as temporary clerk. He has been dismissed by the Divisional Personnel Officer, who is admittedly subordinate to the General Manager. Article 311(1) of the Constitution lays down that no person who is employed in Civil Service of the Union shall be dismissed or removed by an authority subordinate to that

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by which he was appointed. That being so, the dismissal of Mohan Singh by the Divisional Personnel Officer contravenes the provisions of Article 311(1) of the Constitution and is, therefore, invalid.

The result is that this petition succeeds. Accordingly I hold that the dismissal of Mohan Singh on the 30th of May, 1956, was illegal and of no effect and he shall be deemed to continue in service. The petitioner is entitled to have his costs from the respondents. Counsel's fee Rs. 100.

CIVIL WRIT

Before Khosla, J.

THE BRITISH INDIA CORPORATION LIMITED,—
Petitioner

versus

THE EXCISE AND TAXATION COMMISSIONER, PUNJAB AND STATE OF PUNJAB,—*Respondents.*

Civil Writ Application No. 323 of 1956.

1957

May, 17th

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 4(1)(g) and Rule 18 of the Rules framed under the Act—Rent-free quarters allotted to workmen of a factory on payment of conservancy and repair charges—Conservancy and repair charges, whether rent within the meaning of rule 18 of the Act—Clubs of a factory—Whether can be regarded as premises used for the purpose of the factory.

Held, that where the premises are rent-free and there is no relationship of landlord and tenant it cannot be said that the payment made by the occupier is rent. The amount paid by a licensee for the use and occupation of the premises would not strictly speaking be rent, because rent is consideration paid in lieu of demise of the premises occupied. Some interest in the property must pass to the occupier before he can be said to be a tenant, and before the payment which he makes can be called rent. The amount which is levied from the workmen on account of the expenses of conservancy and repairs is not rent within the meaning of rule 18(ii).