

somebody "other than actual subscribers". If this reason is to be taken as enough of a justification in law for disconnecting a telephone connection and is to be taken to its logical end then in all probability, every telephone would have to be disconnected as in that situation the use of a telephone even by a family member of the subscriber would provide the respondent-authorities with enough of a ground to disconnect the same.

(4) For the reasons recorded above, I allow this petition and direct the respondent-authorities to reconnect or reinstall the telephone at Shop No. 52, Kabari Market, Industrial Area, Chandigarh, within a week from today. The petitioner is also held entitled to the costs of this litigation which I determine at Rs. 500.

N. K. S.

*Before I. S. Tiwana, J.*

BHAGAT RAM SHARMA,—*Petitioner.*

— *versus* —

UNION OF INDIA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 5440 of 1982*

May 31, 1984

*Constitution of India 1950—Article 226—Himachal Legislative Assembly (Allowance and Pension of Members) Act, 1971—Section 6-B—Punjab State Public Service Commission (Conditions of Service) Regulations, 1958—Regulation 8(3)(i)—Claim for pensionary benefits under section 6-B—Claimant a former member of the State Legislature of then Punjab before its reorganisation in 1966—Constitutency of the claimant after reorganisation falling in the State of Himachal Pradesh—Writ petition seeking benefits from the State of Himachal Pradesh filed in the Punjab and Haryana High Court—Such High Court—Whether has territorial jurisdiction to entertain the petition—Member of Punjab Public Service Commission not in the employment of Central or State Government before his appointment as such—Such member—Whether entitled to pension under Regulation 8(3)(i) as substituted in 1972—Substituted Regulation 8—Whether retrospective.*

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*Held*, that Article 226 of the Constitution of India places two-fold limitation on the jurisdiction of a High Court (i) power under this Article can be exercised by the High Court throughout the territories in relation to which the High Court exercises jurisdiction meaning thereby that the writs issued by the High Court cannot operate beyond the territories subject to its jurisdiction and (ii) the person or authority to whom the writ is issued must be within the territories subject to the jurisdiction of the High Court or in other words, such person or authority must be amenable to the jurisdiction of the High Court either by residence or location within those territories. Where a claimant a former member of the State Legislature of then Punjab before its reorganisation in 1966 claims pensionary benefits under section 6-B of the Himachal Act from the State of Himachal Pradesh and his constituency after reorganisation falls in the State of Himachal Pradesh, then neither the cause of action arises within the territorial jurisdiction of the Punjab and Haryana High Court nor the authority to whom direction or writ is sought to be issued, is located or resides within the territorial jurisdiction of this Court. The claim obviously has to be declined for want of territorial jurisdiction.

(Para 3)

*Held*, that substitution of a provision of law is undoubtedly a mode of amending or changing or altering that law. Any change of the scope or effect of an existing statute whether by addition, omission or substitution of provisions which do not wholly terminate its existence is essentially to be treated as amendatory. It is the effect and not the name given to the Act that determines its character. Thus merely because the amendment in the 1958 Regulations was effected by way of substitution of Regulation 8, does not mean that the newly added regulation has to be taken as in existence with effect from the date when the Regulations were initially framed or enforced. In the absence of any retrospectivity being given to the newly substituted regulation, the same has essentially to operate prospectively.

(Para 6)

*Held*, that the claim of a person is completely covered by sub-regulation 3(i) of the newly substituted Regulation 8 of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 if on the date of its substitution he was a retired member of the Punjab Public Service Commission who on the date of his appointment as such was not in the service of the Central or the State Government. It is nowhere the requirement of this regulation that it would not be applicable to the members of the Public Service Commission who had retired or ceased to hold office prior to the coming into force of this regulation. In case this regulation has not to treat all the retired members of the Commission who undoubtedly form a homogenous class, similarly, the

same would essentially suffer from the vice of discrimination. No distinction can possibly be created between the retirees from the Commission on the ground of 'being in service' or 'retiring subsequent to a specified date'. All such retirees from a class and some of them cannot be given unequal treatment solely on the ground that they had retired earlier and others retired later. Thus, a member of a Public Service Commission who was not in the employment of the Central or State Government before his appointment as such is entitled to pension under Regulation 8(3)(i) as substituted in 1972.

(Para 7)

*Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to:—*

- (i) *Quash the orders/letters Annexures P-3 and P-5 issued by respondents No. 2 and 4, respectively, by an appropriate writ or order;*
- (ii) *Declare that the petitioner is entitled to a pension of Rs. 500 per mensem;*
- (iii) *Direct the concerned respondents to pay this pension to the petitioner with effect from the date when it became due;*
- (iv) *Award the petitioner interest at the rate of 12 per cent per annum on the amount payable to him;*
- (v) *Grant the petitioner any other suitable relief to which he is entitled in the circumstances of the case; and*
- (vi) *Allow the petition with costs.*

H. L. Sibal, Senior Advocate with Mr. C. M. Sharma, Advocate, for the Petitioner.

A. S. Sandhu, Additional A.G. Punjab, for respondents Nos. 2 and 4.

#### JUDGMENT

*I. S. Tiwana, J.:*

(1) The petitioner, an old timer, feels disappointed with the action of the two State Governments—Mimachal Pradesh and Punjab—in not allowing him the pensionary benefits in views of the following facts and circumstances.

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(2) Prior to the partition of the country in the year 1937, he was elected as a member of the Punjab Legislative Assembly from Kangra West (General Constituency). This success of his was notified in the gazette copy of which is Annexure P.1. On account of the outbreak of the Second World War, this Assembly had a longer life than its usual tenure and fresh elections to the Assembly could only be held in the year 1946. Petitioner again succeeded in representing his constituency in the newly elected Assembly. This re-election of his was again duly notified in the Gazette copy of which is Annexure P.2. Before the expiry of the normal term of this Assembly, the partition of the country took place and by virtue of section 5 of the India (Provincial Legislatures) Order, 1947, the petitioner became a member of the East Punjab Legislative Assembly. This Assembly was dissolved on June 19, 1951 and was reconstituted on May 3, 1952. The petitioner was again elected from this very constituency to the reconstituted Assembly. He continued to be a member of this Assembly till January 2, 1953 when, as per his contention, under mandate from his party bosses, he resigned the membership of the Assembly to become a member of the Punjab Public Service Commission with effect from January 3, 1953. With the passing of the Punjab Reorganisation Act, 1956, the area of the abovenoted constituency and the place of petitioner's residence admittedly are no more part of the Punjab State and fall within the territorial limits of Himachal Pradesh. Though as long as he remained a member of the abovenoted Assemblies no allowance or pensionary benefits were payable to such members, yet in the year 1971, the Himachal Pradesh Legislature passed an Act known as "Himachal Legislative Assembly (Allowance and Pension of Members) Act, 1971" and according to the petitioner he became entitled to pensionary benefits under section 6-B of this Act. Since this claim of his has been declined by the Himachal Government primarily on the ground that the period of his membership of the Punjab Assembly prior to the partition of the country and East Punjab Assembly cannot be counted for purpose of his entitlement to the pension under the above noted Act, he has filed this petition for the said relief. Having given my thoughtful consideration to the claim of the petitioner in the light of the submissions of his learned counsel Mr. H. L. Sibal, I am of the opinion that no relief in this regard can be granted by this Court.

(3) Though no objection has been taken on behalf of the Himachal Government to the jurisdiction of this Court to grant the

abovenoted relief to the petitioner, yet I find that a bare reading of Article 226 of the Constitution, takes the matter out of the jurisdiction of this Court. This Article places two-fold limitation on the jurisdiction of a High Court (i) Power under this Article can be exercised by the High Court throughout the territories in relation to which the High Court exercises jurisdiction meaning thereby that the writs issued by the High Court cannot operate beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the writ is issued must be within the territories subject to the jurisdiction of the High Court or in other words, such person or authority must be amenable to the jurisdiction of the High Court either by residence or location within those territories. It is patent from the abovenoted narration of facts that either the cause of action arose to the petitioner within the territorial jurisdiction of this Court—it is conceded that the 1971 Act under which the petitioner has preferred his claim is operative only within the territories of Himachal State—nor the authority to whom direction or writ is sought to be issued, is located or resides within the territorial jurisdiction of this Court. In view of this, this claim of the petitioner is obviously to be declined for want of jurisdiction.

(4) The second grouse of the petitioner is as follows. He admittedly remained a member of the Punjab Public Service Commission for a full term of six years, with effect from January 3, 1953. For the first time the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, were brought on the statute book on March 10, 1958, but were made operative with effect from November 1, 1956 by sub-clause (2) of Regulation 1. *Vide* these regulations pensionary benefits were conferred on those members of the Commission only who prior to their joining the Commission were civil servants. However, later on a reconsideration of the matter it was accepted in the year 1972 that persons who were not in Government service prior to their joining the Public Service Commission, be also made entitled to pensionary benefits. This was done by substituting the old Regulation No. 8 by the new Regulation, the relevant portion of which reads as follows:—

“In the Punjab State Service Commission (Conditions of Service) Regulations, 1958 (hereinafter referred to as the said regulations, for regulation 8, the following regulation shall be substituted namely:—

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|--------|---|---|---|---|
| 8(1) * | * | * | * | * |
| (2) *  | * | * | * | * |

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- 3(i) A Member, who at the date of his appointment as such was not in the service of the Central or a State Government shall, on his ceasing to hold office as such Member, be paid a pension of four hundred rupees per month:

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According to the petitioner, he is entitled to the pensionary benefit in the light of this newly substituted regulation. As against this the stand of the Punjab State Government is as follows:—

- “2. That there was no provision in the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 for the grant of pension to the petitioner when he served as a Member of the Punjab Public Service Commission. The amendment in the said Regulations, allowing the grant of pension was made on 10th August, 1972, much after his ceasing to hold office in the year 1959. The said amendment in the Regulations, *ibid*, had not been given retrospective effect. The benefit of amended Regulations could, therefore, be drawn by those members only who were in position on the date of amendment, viz., 10th August, 1972 or appointed thereafter. Since the petitioner had served the Commission prior to 10th August, 1972, his claim is not tenable.”

(5) Mr. H. L. Sibal, learned counsel for the petitioner, now contends that firstly the effect of substitution of the new regulation, *ibid*, is that it would be deemed to be a part of the 1958 Regulations as enacted for the first time on March 10, 1958, and since at that point of time the petitioner was a member of the Punjab Public Service Commission, the newly substituted regulation would apply to him and he would be entitled to pensionary benefits. In a nutshell, the submission is that this substitution of regulation 8 has retrospective effect with effect from the date the 1958 Regulations were introduced and made operative. Secondly as per the learned counsel, even if Regulation 8 is not retrospective in operation, still the petitioner is entitled to pensionary benefits thereunder with effect from August 10, 1972, the date it came into operation, as on that date even the petitioner was a retired member of the Punjab

Public Service Commission who on the date of his appointment as such was not in the service of the Central or the State Government. In a nut-shell, the stand of the learned counsel is that Regulation 8 entitles every retired member of the Punjab Public Service Commission to a pension of Rs. 400 per month from the date of his ceasing to hold that office in case on the date of his appointment as such he was not a civil servant or was not in the employment of either the Central or the State Government. The learned counsel further maintains that in case this Regulation 8 is not to be given this meaning or interpretation, then it suffers from the vice of discrimination in-as-much as it treats the members of the Commission retired prior to August, 10, 1972, i.e., the date of substitution of this regulation, differently from the members who retired subsequent to this date. While finding no merit in the first contention of Mr. Sibal, I find that the second is not devoid of merit.

(6) Substitution of a provision of law is undoubtedly a mode of amending or changing or altering that law. Any change of the scope or effect of an existing statute whether by addition, omission or substitution of provisions which do not wholly terminate its existence is essentially to be treated as amendatory. It is the effect and not the name given to an Act that determines its character. Thus merely because the amendment in the 1958 Regulations has been effected by way of substitution of Regulation 8, does not mean that the newly added regulation has to be taken as in existence with effect from the date when the 1958 Regulations were initially framed or enforced. In the absence of any retrospectivity being given to the newly substituted regulation, the same has essentially to operate prospectively. Thus I repel this contention of Mr. Sibal.

(7) The learned counsel appears to be wholly right in submitting that the claim of the petitioner is completely covered by sub-regulation 3(i) of the newly substituted Regulation 8. On the date of its substitution, i.e., August 10, 1972, the petitioner was a retired member of the Punjab Public Service Commission who on the date of his appointment as such was not in the service of the Central or the State Government. It is nowhere the requirement of this regulation that it would not be applicable to the members of the Public Service Commission who had retired or ceased to hold office prior to the coming into force of this regulation. Thus

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no exception can be taken to Mr. Sibal's stand that as per this regulation the petitioner is entitled to a pension of Rs. 400 per month from the date of the coming into force of this regulation, i.e., August 10, 1972. The learned counsel further appears to be right in submitting that in case this regulation has not to treat all the retired members of the Commission who undoubtedly form a homogenous class, similarly, the same would essentially suffer from the vice of discrimination. No distinction can possibly be created between the retirees from the Commission on the ground of 'being in service' or 'retiring subsequent to a specified date'. All such retirees form a class and some of them cannot be given unequal treatment solely on the ground that they had retired earlier and others retired later. For this conclusion of mine I seek support from these observations of their Lordships of the Supreme Court in *D. S. Nakara and others v. Union of India*, (1):—

“The fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of Legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. The doctrine of classification was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. Where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay

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(1) AIR 1983 S.C. 130.



merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement? Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later."

The petitioner is thus entitled to pension as a retired member of the Punjab Public Service Commission with effect from August 10, 1972.

(8) In the light of the discussion above, I allow this petition to the extent that the Punjab State Government would pay to the petitioner pension as a retired member of the Punjab Public Service Commission with effect from August 10, 1972 in accordance with law and the observations made above. The arrears up to date would be cleared off by this respondent within a period of four months from today. Since the petitioner has been deprived of the pensionary benefits all through without any justifiable cause, he is held entitled to interest at the rate of 12 per cent on the arrears of the pensionary amount till the date of its payment. He would also have Rs. 500 as costs of this petition.

(9) Against all other respondents, the petition fails and is dismissed.

N. K. S.

Before J. V. Gupta, J.

DHANI RAM,—Appellant.

versus

THE CHAIRMAN, HARYANA STATE ELECTRICITY BOARD,—  
Respondent

Regular Second Appeal No. 1144 of 1976

August 2, 1984

*Haryana Government Electrical Undertakings (Dues Recovery) Act (XXIX of 1970)—Sections 4 and 5—Excess amount allegedly demanded by the Electrical Undertaking—Such amount deposited under protest—Suit for recovery of the amount filed beyond six months from the date of deposit—No evidence that any notice of*