

LETTERS PATENT APPEAL.

Before Bhopinder Singh Dhillon and Harbans Lal, JJ.

MOHINDRA SINGH SON OF S. B. RACHPAL SINGH,—
Appellant.

versus

THE STATE OF PUNJAB and another,—Respondents.

Letters Patent Appeal No. 390 of 1974

April 15, 1976.

Punjab Civil Services Rules, Volume II, Rules 3.17, 13.10(3) (a), 13.13(4) and 13.31—Punjab Law Department Manual, 1938—Paras 4.10, 4.17 and Chapters 12-A(2) and 25—Provident Funds Act (XIX of 1925)—Section 4—Official working as Deputy Advocate-General on the date of his retirement—Service of such official as Public Prosecutor—Whether to be excluded for determining the qualifying service for pension—Determination of fee of Deputy Advocate-General in departmental enquiries—Chapter 12A(2) of the Manual—Whether applicable—Delay in the payment of Provident Fund without any fault of the subscriber—Such subscriber—Whether entitled to interest till the date of payment.

Held that the conditions of service of Public Prosecutors are governed by the Punjab Law Department Manual, 1938. Para 4.10 thereof specifically states the duration of engagement of a Public Prosecutor. The period of appointment of a Public Prosecutor has been provided to be four years unless specified to the contrary. On the completion of this period the post is regarded as vacant and after the expiry of the period the Public Prosecutor is not entitled to any claim for re-appointment and the Government can without assigning any reason appoint any person to be a Public Prosecutor. After the expiry of a period of 4 years, a new appointment is made and the re-appointment cannot be deemed as a continuous and uninterrupted service under the Government in the eyes of law. Moreover, para 4.17 of the Manual specifically provides that the appointment of Public Prosecutor carries with it no right of any kind to any gratuity or pension or other privileges not expressly stated in the rules. Thus, an official working as Deputy Advocate-General on the date of his retirement is not entitled to get his service as Public Prosecutor counted for the calculation of pension, such service being a temporary service in a non-pensionable establishment. (Paras 3 and 4).

Held, that Chapter 12-A(2) provides for the appointment of District level counsel in departmental enquiries. Such enquiries are ordinarily to be conducted by the Public Prosecutor in the district or by a private legal practitioner specifically chosen under the orders of the Legal Remembrancer and the standard rate of fee for

Public Prosecutor and the other legal practitioners selected for this purpose will be as stated in this chapter subject to the maximum fee fixed therein. This chapter primarily deals with the conduct of enquiries in the district by a Public Prosecutor or by a private legal practitioner working at district level. The Deputy Advocate-General has higher status and emoluments than the District Attorney. The rules under this chapter are, therefore, wholly inapplicable in the latter case. Chapter 25 of the Manual also has no specific provision dealing with the payment of fees to the Law Officers representing the Government in Departmental enquiries. Thus neither the provisions of Chapter 12-A (2) nor Chapter 25 of the Manual are applicable in determining the fee to be paid to a Deputy Advocate-General in departmental enquiries. (Paras 5 and 6).

Held, that if there is no specific bar created by the Punjab Civil Services Rules for the payment of interest to a subscriber of Provident Fund upto the date of the payment, then a subscriber is entitled to interest till such date. From a re-reading of rules 13.13(4) and 13.31 of Punjab Civil Services Rules, Volume II and section 4 of the Provident Fund Act, 1925, it is clear that if without any fault of the subscriber the paying authority fails to take steps to repay the Provident Fund to the subscriber as postulated under Rule 13.31 and under section 4 of the Provident Funds Act beyond a period of six months, then the subscriber shall be entitled to the interest till the date of payment of Provident Fund to him. (Paras 12 and 15).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice S. S. Sandhawalia passed in Civil Writ No. 2616 of 1969 on 27th May, 1974.

K. P. Bhandari, Advocate, with S. K. Aggarwal, Advocate, for the appellant-petitioner.

K. S. Raipuri, Advocate for Advocate-General, Punjab.

JUDGMENT

Bhopinder Singh Dhillon, J.

(1) This Letters Patent Appeal is directed against the judgment of Single Bench of this Court dated May 27, 1974. The appellant Mohindra Singh Panu was working as Deputy Advocate General, Punjab, in the office of the Advocate General Punjab on the date of his retirement. In December, 1962 Government of Punjab accorded sanction to the grant of three years extension in the service of the appellant beyond the age of his superannuation, which at the relevant time was 55 years. However, later on the age of superannuation was retrospectively enhanced to 58 years with effect

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from December 1, 1962. The appellant attained the age of 58 years on August 20, 1966. The Government of Punjab passed order on August 23/24, 1966 directing that the petitioner shall retire on the date of his compulsory retirement and that he should be relieved of his duties on August 28, 1966 in the afternoon. The appellant's prayer for leave preparatory to retirement was also declined. Aggrieved by the above said order, the appellant challenged the same by way of Civil Writ Petition No. 1851 of 1966. The said petition was admitted on August 28, 1966 and the operation of the retirement order was stayed. The writ petition was ultimately heard by a Full Bench of this Court and disposed of by judgment reported as *Mohindra Singh vs. The State of Punjab* (1) decided on December 9, 1966. The main contention of the appellant before the Full Bench, that three years' extension of service given to him by the Government should be counted from the date when he attained 58 years of age, was not upheld. However, on two other prayers namely that the appellant would be entitled to 120 days leave after the date of retirement and that he was entitled to claim his fees for Departmental Enquiries conducted by him against Shri P. S. Multani and Shri R. I. N. Ahuja, were allowed.

(2) The appellant filed the writ petition out of which the present Letters Patent Appeal arises alleging that the undertaking given on behalf of the respondent State was not adhered to and instead on January 20, 1967,—*vide* Annexure 'F' a notice was served upon him intimating that because of the decision in Civil Writ Petition No. 1851 of 1966, the stay order issued therein had come to an end, and, therefore, the earlier order retiring the petitioner from service with effect from August 28, 1966 had become effective. The appellant was directed to relinquish the charge immediately, and was informed that he would be allowed 120 days' leave in lieu of refused leave as directed by the High Court in the said order. As regards the claim of fee the appellant contended that an amount of Rs. 600 for 24 dates of hearing in the enquiries against Shri P. S. Multani and Shri R. I. N. Ahuja, in which he represented the State was grossly inadequate. It was further claimed by the appellant that the respondent State failed to make the payment of the provident fund which had become due to him immediately after he was made to retire till December, 1970 and, therefore, he was entitled to the interest on the

(1) A.I.R. 1967 Punjab 450.

provident fund deposited by him till the date of payment. His further grievance was that his temporary service as District Attorney should have been taken into consideration while calculating the pension awarded to him by the State Government. All these contentions having not found favour with the learned Single Judge, the appellant has come in appeal.

(3) It has been contended by the learned counsel for the appellant that his service as Public Prosecutor with effect from May 24, 1945 to July 13, 1956 has been wrongly excluded from consideration for determining the qualifying service for pension, reliance for this has been placed on rule 3.17 of the Punjab Civil Services Rules Volume II, which is as follows:—

“3.17. In the case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:—

- (i) periods of temporary or officiating service in non-pensionable establishment;
- (ii) period of service in work-charged establishment; and
- (iii) period of service paid from contingencies.”

It is no doubt true that the case of appellant is covered under the main clause of the rule, but the first exception of the rule specifically provides that period of temporary or officiating service in non-pensionable establishment is not to be taken into consideration for the calculation of pension. The finding of the learned Single Judge that the service of the appellant as a Public Prosecutor was a temporary service in a non-pensionable establishment, in our view has been correctly arrived at. It is not disputed that the conditions of service of Public Prosecutor are governed by the Punjab Law Department Manual, 1938. Para 4.10 thereof specifically states the duration of engagement of a Public Prosecutor. The period of appointment of a Public Prosecutor has been provided to be 4 years, unless specified to the contrary. On the completion of this period, the post will be regarded as vacant and after the expiry of this period the Public Prosecutor shall not be entitled to any claim for re-appointment and the Government can without assigning any reason appoint any person to

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be a Public Prosecutor. In view of this provision after the expiry of a period of 4 years, a new appointment is to be made and it is not possible to hold that the re-appointment should be deemed as continuous and un-interrupted service under the Government in the eyes of law. Moreover, para 4.17 of the Manual specifically provides that the appointment of Public Prosecutor carries with it no right of any kind to any gratuity or pension or other privileges not expressly stated in the rules.

(4) It was contended by the learned counsel for the appellant that the appellant attended 24 hearings in these enquiries and he has the Legal Remembrancer to the Government and the establishment of the Legal Remembrancer is not a temporary and non-pensionable establishment. This contention is without any merit. From the Law Department Manual it is clear that there are number of establishments in the Law Department which include the officers of different descriptions for instance Advocate General and his assistant law officers, is one type of establishment, Public Prosecutors is another type of establishment, thence another establishment mention of which is made in para 1 of the Manual provided for the office of the Department and so on. It is difficult to hold that the Department of Law under the Government is one establishment. In the case of public prosecutors, it has been specifically provided that the incumbent will not have any right of any kind to any pension, gratuity and other privileges not expressly stated in the rules. We are, therefore, in perfect agreement with the finding of the learned Single Judge that the appellant is not entitled to get his service as Public Prosecutor counted for the calculation of pension.

(5) It has been next contended by the learned counsel for the appellant that quantum of fee of Rs. 600 allowed to the appellant by the Government for representing the State Government in the Departmental enquiries against Shri P. S. Multani and Shri R. I. N. Ahuja, is not in keeping with the directions given by the Full Bench judgment and the said amount having been fixed arbitrarily, the appellant is entitled to higher sum in this regard. It is not disputed that the appellant attended 24 hearings in these enquiries and he has been allowed fee of Rs. 25 per diem in accordance with rules as contained in Chapter 12-A (2) of Punjab Law Department Manual. This has been so stated in para 32 of the return to the replication filed by Shri J. R. Rattan, Under-Secretary to Punjab Government, Home

Department. We have gone through the provisions of Chapter 12-A (2) and we find that the said rule provides for the appointment of district level counsel in departmental enquiries. It has been provided that such enquiries will ordinarily be conducted by the Public Prosecutor in the District or by a private legal practitioner specifically chosen under the orders of the Legal Remembrancer and the standard rate of fee for the Public Prosecutor and either legal practitioner selected for this purpose will be Rs. 25 per diem in an original case before any authority other than the High Court and Rs. 50 per diem for appearance in any appellate proceedings or any original departmental proceedings taken before the High Court subject to the maximum of Rs. 850 for any one month. This rule primarily deals with the conduct of enquiries in the district by Public Prosecutor or by a private legal practitioner working at district level. The appellant was admittedly working as Deputy Advocate General, which post certainly has a higher status and emoluments than the District Attorney. Therefore, this rule under which the fee has been fixed by the State Government is wholly inapplicable to the case of the appellant. Chapter 25 of the Manual provides for the fees payable to the law officers at the State level, i.e., Advocate General and his assistants for cases conducted by them. Para 25.1 provides for fee to be calculated on the basis of the value of the claim. Para 25.3 is in the following terms :—

“25.3. *Misc. Civil Cases* : The ordinary fees for appearance by the Advocate General or the Assistant Advocate General in miscellaneous civil cases shall be Rs. 100 for each day of attendance. The Legal Remembrancer is authorised to sanction a special fee of Rs. 200 in any one case of particular difficulty, taking up an excessive amount of time of the counsel employed.”

(6) This provision is directly applicable to the cases of Advocate General or the Assistant Advocate General. There is no specific provision in Chapter 25, which directly deals with the payment of fees to the Law Officers representing the Government in Departmental enquiries. Therefore, it is quite obvious that none of the other rules contained in Chapter 12-A or in Chapter 25 directly applies to the case of the appellant. In this view of the matter, observations of the Full Bench in *Mohindra Singh's case* (supra), in our opinion should have been kept in view by the State Government, while fixing the quantum of fee to which the petitioner was entitled. It was held by the Full

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Bench in *Mohindra Singh's case* (supra) that according to the terms of appointment of the appellant, he was entitled to claim fee for civil work as is admissible to a part-time Assistant Advocate General. It was further held that the Departmental proceedings have to be held to be a civil work for which the appellant has to be paid accordingly. The Full Bench in *Mohindra Singh's case* (supra), held as below:—

“The petitioner is, on the conclusion as above entitled to payment of fee under condition (2) of his terms of appointment for civil work done by him in connection with those enquiries and for the days he attended those enquiries on behalf of the respondent. In so far as the matter of quantum of fee is concerned, the respondent is to determine it also in accordance with the condition, that it is to say, on the basis of fees payable to the part-time Assistant Advocate General. If a schedule of such fees exists then the claim of the petitioner will be determined on the basis of that schedule. But if no such schedule of fees exists, then obviously the respondent will have to take a decision in regard to the quantum of fee payable to the petitioner in this respect, and that at present can be said is that the approach will have to be reasonable and on the same basis as schedule of fee have already been fixed for somewhat similar work done under the Advocate General. A certain measure of consistency will have to be observed by the respondent in this respect. This is being pointed out to avoid any arbitrary decision so that the petitioner may not be compelled to have recourse to a Court of law again in this respect.”

From the above quoted observations of the Full Bench in *Mohindra Singh's case* (supra), it is crystal clear that the respondent State was directed to fix the fee payable to the appellant on the basis of fee payable to the part-time Assistant Advocate General. It was further held that if a schedule of fee does not exist, then obviously the State shall have to take decision in regard to the quantum of fee payable to the appellant at reasonable rate and on the same basis as a schedule of fee has already been fixed for some of the similar work done under the Advocate-General. In our considered opinion, these directions of the Full Bench of this Court have not been complied with by the State Government. Chapter 12.2(A) under which the fee of Rs. 600 has been given to the appellant, as we have already held, is not applicable as the same is applicable to the District Attorneys and

other counsel appointed at district level. Paragraph 25.3 in the Law Manual is the only rule which can be said to be nearer for fixing of fee payable to the appellant. The said rule prescribes for the miscellaneous civil cases to be conducted by the Advocate General or the Assistant Advocate General and a fee of Rs. 100 per appearance has been provided. It would be further seen that in para 25.1 of the Schedule of Fee, the fee provided for on the basis of valuation for the Advocate General and the Assistant Advocate General, regarding civil cases, is the same. Therefore, the Assistant Advocate General, according to the provision, is entitled to get the fee at the same rate as the Advocate General gets. In this view of the matter, we are of the considered opinion that the State Government has gone wrong in fixing the fee of the appellant and has thus failed to keep in view the directions given by the Full Bench of this Court in *Mohindra Singh's case* (supra), while determining the fee payable to the appellant. We, therefore, direct that the directions of the Full Bench in *Mohindra Singh's case* (supra) be complied with and the fee for 24 days of hearing in the departmental enquiries against Shri P. S. Multani and Shri R. I. N. Ahuja, in which the appellant represented the State be fixed according to the guide lines as proved in para 25.3 of the Law Department Manual.

(7) It has been next contended by the learned counsel for the appellant that the appellant is entitled to the interest on the Provident Fund till the date of payment of the Provident Fund to him. It is not in dispute that after the decision of the Full Bench in *Mohindra Singh's case*, (supra), the appellant was ordered to be relieved from duty,—*vide* order, dated January 6, 1967, which order was received by the appellant on January 28, 1967 and from that date he was relieved from duty. It is further clear that the first order of retirement which was challenged by the appellant in C.W.P. No. 1851 of 1966, was to take effect from August 28, 1966. On this date the appellant attained the age of 58 years. This order was challenged by the appellant on the ground that he having been granted 3 years extension by the State Government, the said extension should be taken to be from August 28, 1966 and not from August 28, 1963, before which date the extension was granted. This plea became available to the appellant because of the amendment of the service rules under which the age of superannuation was raised from 55 to 58 years. This plea did not find favour with the Full Bench and the same was, therefore, rejected. If the matter had rested there, it was necessary for the State Government to have passed a fresh order retiring the appellant from service. But the

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State Government gave an undertaking before the Full Bench that the appellant would be given 129 days' leave in lieu of the refused leave and the said period of leave having not been granted to be the appellant before the retirement, therefore, it became necessary for the State Government after the decision of the Full Bench to comply with the undertaking and to grant 120 days' leave. Consequently, an order was passed by the State Government on October 20, 1967, copy Annexure 'V', retiring the appellant from service. By this order, the earlier order of retirement passed in August, 1966, was superseded and the appellant was made to retire with effect from January 28, 1967, afternoon. It may be pointed out that it was on this date that the appellant was relieved of the charge of his duties. By this order, the appellant was granted leave in lieu of the refused leave, with effect from January 20, 1967, under proviso to rule 8.21 of the Punjab Civil Services Rules, Volume I, Part I. Period from August 29, 1966 to January 27, 1967, was treated as extension in service. From what has been stated above, it is quite clear that two orders of retirement were passed by the State Government, first in August, 1966, and the subsequent order on October 20, 1967, which order superseded the earlier order. It is thus clear that the earlier order of retirement was superseded so that in the eye of law, there is only one order of retirement which is operative against the appellant and the said order is dated October 20, 1967. It is further clear that this order was not conveyed to the appellant till communication, dated May 4, 1968, was sent to him. It is for the first time by this communication that the appellant was informed that he has been made to retire from service by passing a proper order of retirement with effect from January 28, 1967. By this letter the appellant was asked to furnish his charge report to the Accountant-General, Punjab, so that his dues are released by that office. This position is clear from the return filed on behalf of the State as well.

(8) It is further clear from the records that salary from 1st of August, 1966 to 31st of December, 1966, was paid to the appellant on 24th of October, 1968. This is clear from letter, dated 12th of August, 1969, addressed by the Accountant-General, Punjab, to the appellant, copy of the said letter is Annexure 'P'. While making the payment of the salary for this period a sum of Rs. 3,000 was deducted as Provident Fund at the rate of Rs. 600 per mensem for the period for which the salary was given to the appellant. Salary from 1st of January, 1966 to 28th of January, 1967 and the salary for 120 days' refused leave was paid to the appellant on 15th of December, 1970,

and out of this another sum of Rs. 3,000 was deducted towards the payment of Provident Fund for this period. It is clear from letter, dated 15th of February, 1971, copy annexure 'U' addressed by the Accountant-General to the appellant. This is also clear from the averments made in the replication which averments have not been denied, though a reply was filed to this replication by the State. It is also an admitted case between the parties that the appellant was paid Provident Fund on 19th of January, 1971, that is, within a few days after he was paid salary up to 28th January, 1967 and for the period of refused leave. It may be pointed out at this stage that according to the provisions of Rule 13.10 (3)(a) of Chapter XIII of the Punjab Civil Services Rules, Volume II, it is the duty of the subscriber to intimate the fixation of the amounts of his monthly subscription in each year. Sub-rule (4) of Rule 13.10 *ibid* further provides that the amount of subscription so fixed shall remain unchanged throughout the year. It would thus be seen that since the appellant had got deducted Provident Fund at the rate of Rs. 600 per month on 31st of March, 1966, he, therefore, was liable to get deducted the Provident Fund at the same rate for the year 1966-67 which he got deducted and the last instalment was got deducted on December 15, 1970.

(9) It is further to be seen that as is clear from Annexure 'T' the office of the Accountant-General after calculating the interest on the whole amount of the Provident Fund of the appellant for the year 1968-69, allowed interest of Rs. 2,929 for the said year and deposited this amount in the account of the appellant. The averment made by the appellant that the interest was calculated and added to his account beyond July, 1967, has not been factually denied and the same is clearly proved from the records.

(10) It was for the first time that,—*vide* letter, dated 15th February, 1971 (copy Annexure 'U'), the appellant was told that he was entitled to interest on the Provident Fund up to July, 1967, as per rules. This was presumably done in view of the provisions of Rule 13.13(4) of the Punjab Civil Services Rules, Volume II, Part II, relating to the payment of interest on Provident Fund. Rule 13.13(4) *ibid* reads as under:—

"(4) In addition to any amount to be paid under Rules 13.28, 13.29 or 13.30, interest thereon up to the end of the month preceding that in which the payment is made, or up to the end of the sixth month after the month in which such

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amount became payable, whichever of these periods be less, shall be payable to the person to whom such amount is to be paid:

Provided that where the Accounts Officer has intimated to that person (or his agent) a date on which he is prepared to make payment in cash, or has posted a cheque, in payment to that person, interest shall be payable only up to the end of the month preceding the date so intimated, or the date of posting the cheque, as the case may be."

Note I appended to Rule 13.13 is also important and the same is reproduced as below:—

"Note 1.—When a subscriber is dismissed from the service of Government but has appealed against his removal, the balance at his credit shall not be paid over to him until final orders confirming the decision are passed on his appeal. Interest shall, however, be paid on the balance up to the end of the month preceding that in which such orders are passed".

Sub-rules (1) and (3) and Notes 1 and 2 under sub-rule (3) of Rule 13.31 *ibid* read as under:—

"13.31 (1) When the amount standing to the credit of a subscriber in the Fund becomes payable, it shall be the duty of the Accounts Officer to make payment, as provided in section 4 of the Provident Funds Act, 1925.

(2) * * * *
* * * *

(3) Any person who desires to claim payment under this rule shall send a written application in that behalf to the Accounts Officer. Payment of amounts withdrawn shall be made in India only. The persons to whom the amounts are payable shall make their own arrangement to receive payment in India.

Note 1.—When the amount standing to the credit of a subscriber has become payable under Rule 13.28, 13.29, or 13.30, the Accounts Officer shall authorise prompt payment of that portion of the amount standing to the credit of a subscriber in regard to which there is no dispute or doubt, the balance being adjusted as soon after as may be.

Note 2.—When the amount standing to the credit of a subscriber has become payable under rules 13.28, 12.29 and 13.30, the Head of Department/Office should immediately take up the preparation of General Provident Fund papers for furnishing them to the Audit Office. In the case of the subscribers, who are likely to retire in a particular year, their papers should be prepared and furnished in the requisite forms in time (i.e., 6 months in advance of the anticipated date of retirement). The Head of Department/Office should see to it that these forms are furnished to the Audit in time.”

Similarly, Section 4 of the Provident Funds Act, No. XIX of 1925 enjoins a duty on the officer to make payment of the sum of the provident fund or balance, as the case may be, to the subscriber or the depositor.

(11) It was contended by Mr. Raipuri, learned counsel for the respondents that in view of the provisions of sub-rule (4) of Rule 13.13, since the appellant was made to retire in January, 1967, even though the Provident Fund was paid to him on 19th January, 1971, he could be given interest on the Provident Fund till July, 1967. It has further been contended that since the appellant did not earlier apply for the payment of the Provident Fund as postulated under sub-rule (3) of Rule 13.31, and, therefore, he is not entitled to interest.

(12) Before dealing with the contention raised by Mr. Raipuri, it may be pointed out at this stage that it is well settled that under the general law of the land, a person whose money is kept and utilised, is entitled to interest on the amounts so utilised. Their Lordships of the Supreme Court in *The Godhra Electricity Co. Ltd. and another v. The State of Gujarat and another*, (2), declared the provisions of Section 6(6) of the Electricity Act (1910) as *ultra vires* of Articles 19(1)(g) and 19(1)(f) of the Constitution of India. The provisions of the Act deprived the licensee of his undertaking without payment of the purchase price and then required him or it to go to a court to enforce the liability for interest for the period for which the purchase price has been withheld. A full Bench of this Court in *Hari Krishan Khosla and others v. The Union of India and another*, (3), held that although there is no provision in the Requisitioning and Acquisition of the Immovable Property Act (30

(2) A.I.R., 1975 S.C. 32:

(3) A.I.R., 1975 Pb. and Hary., 74:

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of 1952) for the payment of interest, yet Section 1 of the Interest Act (XXXII of 1939) vests in every Court the discretion to allow interest on all sums certain which are payable by one party to the other. Their lordships further held that the amount of compensation payable by the Government to the landowner under the Act becomes a sum certain as soon as it is ascertained by the award of the Land Acquisition Collector, and that the Court has, therefore, the jurisdiction to award interest under Section 1 of the Interest Act even in the absence of any specific provision in the 1952 Act. It would thus be seen that if there is no specific bar created by the rules for the payment of interest to a subscriber of the Provident Fund upto the date of the payment, in that case the appellant will be entitled to the interest claimed by him. However, it is a different matter if it is found as a fact that it was the appellant himself who failed to withdraw the Provident Fund for one reason or the other when he was in a position to withdraw the same.

(13) From the factual position as stated in the earlier paragraphs of the judgment, it is quite clear that the only operative order retiring the appellant from service, is dated 20th of October, 1967. The said order was admittedly conveyed to the appellant on 4th of May, 1969. The appellant could only apply for the withdrawal of the Provident Fund after the final order of his retirement was communicated to him, as without the passing of that order the provident fund could not be paid to him. This position is clear from the stand taken by the Accountant-General while corresponding with the appellant. It was contended by Mr. Raipuri that the appellant did not apply for the withdrawal of the Provident Fund in accordance with the provisions of Rule 13.31(3), and, therefore, he is not entitled to the interest after July, 1967. Mr. Raipuri produced the papers from the records containing the application of the appellant purported to have been filed under sub-rule 13.31 for the withdrawal of Provident Fund of Rs. 3,000 only which amount was deducted from the salary of the appellant in the year 1970, as has been referred to above, and contends that there is no application filed by the appellant which can be traceable from the records claiming the withdrawal of the whole amount of the Provident Fund. However, he has admitted that inspite of that, the whole amount of Provident Fund amounting to Rs. 56,273 was paid to the appellant on 19th of January, 1971. It is no doubt true that under sub-rule (3) of Rule 13.31, a person, who desires to claim the payment of his Provident Fund shall send a written application in that behalf to the Account Officer, but

the said application could only be given if there was a valid retirement order. As is clear from the facts of this case, the question of retirement of the appellant from service was being agitated and ultimately after the decision of the Full Bench, the appellant was conveyed the orders of retirement on 4th of May, 1968, that he was paid salary for three months on 24th of October, 1968; that for about another three months, the salary was paid on 15th of December, 1970; that the Provident Fund of Rs. 3,000 was deducted on 24th of October, 1968, that another sum of Rs. 3,000 as Provident Fund was deducted on 15th of December, 1970. Therefore, it would be seen that in any case before the order of retirement was communicated to the appellant, he was not in a position to make any application for the payment of the Provident Fund and the whole amount which was more than Rs. 50,000 was not paid to him without any fault of his. The Government took time to pass the retirement order and after even having passed the same, took time to communicate the same to the appellant. Further, the payment of the last salary was made on 15th December, 1970, and sum of Rs. 3,000 was deducted as Provident Fund. The appellant could only take steps to file an application for withdrawal after all this was done. It is admitted that he made such an application and the whole amount of Provident Fund was paid to the appellant on 19th of January, 1971. In this application though a sum of Rs. 3,000 is mentioned, but the fact remains that the whole of the Provident Fund was paid to the appellant on the basis of this application alone as has been conceded by Mr. Raipuri.

(14) In any case, the provisions of rule 13.31(1) and the provisions of Section 4 of the Provident Funds Act, 1925, enjoin a duty on the Accounts Officer to make the payment of the Provident Fund when it becomes due. Provident Fund, according to the rules, becomes due after a person retires from the service. In this case, the appellant was informed of the retirement order on 4th of May, 1968, and thus, according to the rules, the Provident Fund became due and ought to have been paid by the Accounts Officer to the appellant. But since the salary of the appellant for a period of about 6 months was still under dispute and the same was paid on 24th October, 1968, and on 15th of December, 1970, in two instalments, the Provident Fund Account of the appellant could not be brought up-to-date, and it was because of this reason that he was not paid the Provident Fund earlier. The whole amount of the Provident Fund was paid to the appellant on 19th of January, 1971. The provisions of sub-rule (3) of Rule 13.31, in our opinion, are not mandatory

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and even if we hold that the Provident Fund cannot be paid without an application having been made under sub-rule (3) of Rule 13.31, still on the facts of this case, it is difficult for us to hold that the appellant did not make such an application. As is clear from the facts stated above, because of the litigation and the subsequent stand taken by the State Government the question of retirement of the appellant and the payment of the salary due to the appellant was dragged on, and it was not the appellant who was at fault or who never wanted to withdraw the Provident Fund. A retiring person is always in need of money at the time of his retirement, and from the lengthy correspondence produced from the file, we find that the appellant sent a number of representations to the State Government to finalise his case of pension and the payment of the Provident Fund. In this view of the matter, we do not find that the appellant was in any way negligent or that he did not file an application for the withdrawal of the Provident Fund as postulated under sub-rule (3) of Rule 13.31.

(15) The only other question which remains to be determined is whether the provisions of sub-rule (4) of Rule 13.13 are mandatory, or that in no case, can the interest be given to a subscriber beyond six months of the date of his retirement. It is well settled that the rules have to be interpreted harmoniously. Sub-rule (4) of Rule 13.13 has to be construed in the light of the provisions of Rule 13.31 and section 4 of the Provident Funds Act, 1925. Rule 13.31 read with Notes 1 and 2 and section 4 of the Provident Funds Act, 1925, enjoin a mandatory duty on the Accounts Officer to repay Provident Fund to a subscriber with promptitude when the said payment becomes due. If in a given case, the Accounts Officer fails to take steps for the repayment of the Provident Fund, may be for reasons that the Government concerned had failed to pass necessary orders entitling the subscriber for the withdrawal of the Provident Fund, in that case, it is difficult to construe the provisions of sub-rule (4) of Rule 13.13 to say that the interest on the Provident Fund on the prescribed rate cannot be given for more than six months after the date of retirement. Note 1 to Rule 13.13 gives an indication to that effect. It has been provided that when a subscriber is dismissed from the service of the Government but has filed appeal against his removal, the balance of his credit shall not be paid to him until the final orders are passed on his appeal. Interest shall, however, be paid up to the end of the month preceding the period in which such orders are passed. This indicates that in case where a Government servant has been dismissed and it takes time to decide his appeal, he is entitled to the interest to the end of the month preceding the period in which

such orders are passed irrespective of the bar of six months under sub-rule (4) of Rule 13.13. If sub-rule (4) of Rule 13.13 is not interpreted harmoniously with the provisions of Rule 13.31 and Section 4 of the Provident Funds Act, 1925, the said rule shall have to be declared *ultra vires* because a subscriber whose money is utilised by the State Government cannot be deprived of the interest without any fault of his. As has been pointed out earlier in *The Godhra Electricity Company's case* (supra), their lordships struck down the provisions of section 6(6) of the Electricity Act (1910) on the ground that the said provision compelled the owner of the Company to pursue his remedy in the Civil Court for claiming interest on the amount of the purchase price which still remained unpaid to the Company. We have already pointed out that in general law, the appellant is entitled to claim interest on the prescribed rate, we are, therefore, inclined to interpret Rule 13.13(4), Rule 13.31 and Section 4 of the Provident Funds Act, 1925, harmoniously so as to say that if without any fault of the subscriber the paying authority fails to take steps to repay the Provident Fund to the subscriber as postulated under Rule 13.31 and under Section 4 of the Provident Funds Act, 1925, beyond a period of six months, in that case, the subscriber shall be entitled to the interest till the date of payment of the Provident Fund to him. As has already been found, in the present case, the appellant was not at fault, and it was because of the stand taken by the State Government that the appellant could not be paid the Provident Fund even though he was made to retire in January, 1967. The order of retirement was passed in October, 1967, conveyed to the appellant in May, 1968, and the last salary having been paid to him on 15th of December, 1970, he was paid a huge sum of Provident Fund amounting to more than Rs. 50,000 on 19th of January, 1971 only. As has been pointed out, the Accountant-General's office had been crediting interest on the whole amount of Provident Fund in the account of the appellant up-to-date, but when the time of the payment came, the said amount was withheld. We, therefore, accept the contention of the appellant that the appellant is entitled to the interest at the prescribed rate till 19th of January, 1971, that is, the date of payment of the Provident Fund to him.

(16) We further direct that the interest may be calculated by the Accountant-General as directed above, and the payment be made to him within three months. We are giving this direction because the appellant had already gone through a prolonged litigation. While deciding *Mohindra Singh's case* (supra), the Full Bench of this Court hoped that the appellant would not be further dragged into litigation

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but this hope did not materialise. We are, therefore, issuing these directions so that the appellant, who put in best part of his life in serving the Government, may not be further put to unnecessary inconvenience and harassment.

(17) The learned Single Judge did not decide the question whether the appellant is entitled to the payment of interest as claimed by him with the observations that the appellant may file separate proceedings for the same. Keeping in view the fact that the appellant who retired from service in the year 1967, is an old man and has already undergone prolonged and protracted litigation, and keeping in view the observations of the Full Bench in *Mohindra Singh's case* (supra), we, therefore, think it proper to decide the question of interest in these proceedings, especially when the plea has been taken in the pleadings and the State Government was given an opportunity to reply to the said plea and all the facts being clear on the records. In order to avoid further litigation, we have adopted this course.

(18) We have also directed the State Government to fix the fee of the appellant regarding the Departmental Enquiries against Mr. P. S. Multani and Mr. R. I. N. Ahuja, in accordance with the guidelines as provided under para 25.3 of the Punjab Law Department Manual. We further direct that the said fee be assessed and paid by the State Government to the appellant within three months positively.

(19) No other point has been pressed by the learned counsel for the respondents.

(20) For the reasons recorded above, the appeal is accepted to the extent indicated in the earlier part of the judgment. However, there will be no order as to costs.

Harbans Lal, J.—I agree and have nothing to add.

N. K. S.

MISCELLANEOUS CIVIL

Before B. S. Dhillon and M. R. Sharma, JJ.

THE BAPPAULI COOPERATIVE AGRICULTURAL SERVICE
SOCIETY,—*Petitioner.*

versus

THE STATE OF HARYANA and others,—*Respondents.*

Civil Writ No. 427 of 1976

April 19, 1976.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 23,
84-A and 85 (2) (xxxviii)—Haryana State Central Co-operative Bank*